

Senate Bill 230

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands purposes for which professional corporation may be organized to include professional corporation to practice health care services. Provides that professional corporation to provide health care services may consist of professional corporation organized for purpose of practicing medicine or professional corporation organized for purpose of practicing dentistry.

Specifies requirements for holding shares and governing professional corporation organized to provide health care services.

Becomes operative on January 12, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to professional corporations organized to provide health care services; creating new pro-
3 visions; amending ORS 58.015, 58.375, 58.377, 58.379, 58.381, 58.383, 58.385, 58.387, 58.389 and
4 679.020; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 58.015 is amended to read:

7 58.015. As used in this chapter, *unless the context requires otherwise*:

8 (1) "Foreign professional corporation" means a professional corporation organized under laws
9 other than the laws of this state.

10 (2) "Health care practitioner licensing authority" means the Oregon Medical Board or the
11 Oregon Board of Dentistry.

12 [(2)] (3) "License" *includes* means a license, certificate of registration, permit or other legal
13 authorization required by law as a condition precedent to *the* rendering *of* professional service
14 or services within this state.

15 (4) "Licensed health care practitioner" means a physician, as defined in ORS 677.010, who
16 holds a license to practice medicine issued by the Oregon Medical Board under ORS chapter
17 677 or a dentist, as defined in ORS 679.010, who holds a license to practice dentistry issued
18 by the Oregon Board of Dentistry under ORS chapter 679.

19 [(3)] (5) "Oregon Business Corporation Act" has the same meaning given that term in ORS
20 60.951.

21 [(4)] "Practicing medicine" has the meaning given that term in ORS 677.085.]

22 [(5)] (6) "Professional" means:

23 (a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;

24 (b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;

25 (c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;

26 (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;

27 (e) Dentists licensed under ORS chapter 679 or the laws of another state;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;
 2 (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;
 3 (h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;
 4 (i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;
 5 (j) Physicians licensed under ORS chapter 677 or the laws of another state;
 6 (k) Podiatrists licensed under ORS chapter 677 or the laws of another state;
 7 (L) Medical imaging licensees under ORS 688.405 to 688.605 or the laws of another state;
 8 (m) Real estate appraisers licensed or certified under ORS chapter 674 or the laws of another
 9 state; and
 10 (n) Other persons providing to the public types of personal service or services substantially
 11 similar to those listed in paragraphs (a) to (m) of this subsection that may be lawfully rendered only
 12 pursuant to a license.

13 [(6)] (7) "Professional corporation" or "domestic professional corporation" means a corporation
 14 organized under this chapter for the specific purpose of rendering professional service or services
 15 and for [*such*] other purposes provided under this chapter.

16 [(7)] (8) "Professional service" means personal service or services rendered in this state to the
 17 public which may be lawfully rendered only pursuant to a license by a professional.

18 (9) **"Provide health care services" means to practice medicine, as described in ORS**
 19 **677.085, or to practice dentistry, as defined in ORS 679.010.**

20 [(8)] (10) "Regulatory board" means the governmental agency of the State of Oregon required
 21 or authorized by law to license and regulate the rendering of a professional service or services for
 22 which a professional corporation is organized.

23 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS chapter 58.**

24 **SECTION 3. (1) A professional corporation organized to provide health care services may**
 25 **be organized either for the purpose of practicing medicine, as described in ORS 677.085, or**
 26 **for the purpose of practicing dentistry, as defined in ORS 679.010.**

27 **(2) If the professional corporation is organized for the purpose of practicing medicine:**

28 **(a) The rights, duties, functions and responsibilities this chapter assigns to a licensed**
 29 **health care practitioner must be held or performed by a physician, as defined in ORS 677.010,**
 30 **who holds a license to practice medicine issued by the Oregon Medical Board under ORS**
 31 **chapter 677; and**

32 **(b) The health care practitioner licensing authority is the Oregon Medical Board.**

33 **(3) If the professional corporation is organized for the purpose of practicing dentistry:**

34 **(a) The rights, duties, functions and responsibilities this chapter assigns to a licensed**
 35 **health care practitioner must be held or performed by a dentist, as defined in ORS 679.010,**
 36 **who holds a license to practice dentistry issued by the Oregon Board of Dentistry under ORS**
 37 **chapter 679; and**

38 **(b) The health care practitioner licensing authority is the Oregon Board of Dentistry.**

39 **SECTION 4. ORS 58.375 is amended to read:**

40 58.375. (1) In a professional corporation organized [*for the purpose of practicing medicine*] **to**
 41 **provide health care services:**

42 (a) The holders of the majority of each class of shares entitled to vote [*shall be physicians who*
 43 *are licensed in this state to practice medicine*] **must be licensed health care practitioners.**

44 (b) A majority of the directors [*shall be physicians who are licensed in this state to practice*
 45 *medicine*] **must be licensed health care practitioners.**

1 (c) All officers except the secretary and treasurer, if any, must be [*physicians who are licensed*
 2 *in this state to practice medicine*] **licensed health care practitioners**. [*Any two or more offices may*
 3 *be held by*] The same person **may hold two or more offices**.

4 (d) Except as otherwise provided by law, [*the Oregon Medical Board*] **a health care practi-**
 5 **tioner licensing authority** may expressly require that **licensed health care practitioners hold**
 6 more than a majority of each class of shares entitled to vote [*be held by physicians who are licensed*
 7 *in this state to practice medicine*].

8 (e) Except as otherwise provided by law, [*the Oregon Medical Board*] **a health care practitioner**
 9 **licensing authority** may expressly require that more than a majority of the directors be **licensed**
 10 **health care practitioners** [*physicians who are licensed in this state to practice medicine*].

11 (2) A professional corporation may be a shareholder of a professional corporation organized [*for*
 12 *the purpose of practicing medicine solely for the purpose of effecting*] **to provide health care services**
 13 **solely to effect** a reorganization as defined in the Internal Revenue Code.

14 (3) The provisions of subsections (1) and (2) of this section do not apply to nonprofit corporations
 15 organized under Oregon law to provide medical services to migrant, rural, homeless or other med-
 16 ically underserved populations under 42 U.S.C. 254b or 254c or to health centers qualified under 42
 17 U.S.C. 1396d(l)(2)(B) that operate in compliance with other applicable state and federal law.

18 **SECTION 5.** ORS 58.377 is amended to read:

19 58.377. If [*all of the outstanding shares of a professional corporation organized for the purpose of*
 20 *practicing medicine are held by*] an administrator, executor, personal representative, guardian,
 21 conservator or receiver of the estate of a former shareholder **holds all of the outstanding shares**
 22 **of a professional corporation organized to provide health care services**, or [*by*] **if** a transferee
 23 [*who*] receives [*such*] shares by operation of law or by a judgment, **the** [*such*] administrator, execu-
 24 tor, personal representative, guardian, conservator, receiver or transferee may be a director, officer
 25 or shareholder of the professional corporation for a period of six months following receipt or
 26 transfer of [*such*] **the** shares.

27 **SECTION 6.** ORS 58.379 is amended to read:

28 58.379. **Unless a health care practitioner licensing authority provides otherwise**, a profes-
 29 sional corporation organized [*for the purpose of practicing medicine*] **to provide health care ser-**
 30 **vices** has the powers enumerated in ORS 60.077 and 60.081[, *except as provided otherwise by the*
 31 *Oregon Medical Board*].

32 **SECTION 7.** ORS 58.381 is amended to read:

33 58.381. (1) A proxy to vote the shares of a professional corporation organized [*for the purpose*
 34 *of practicing medicine*] **to provide health care services** may be given under the following condi-
 35 tions:

36 (a) If the shareholder granting the proxy is a [*physician licensed in this state to practice*
 37 *medicine*] **licensed health care practitioner**, the proxy may be given only to a shareholder of the
 38 same corporation who is also a [*physician licensed in this state to practice medicine*] **licensed health**
 39 **care practitioner**, or to an attorney licensed to practice law in this state or another person simi-
 40 larly licensed.

41 (b) If the shareholder granting the proxy is not a [*physician licensed in this state to practice*
 42 *medicine*] **licensed health care practitioner**, the proxy may be given only to another shareholder
 43 of the same corporation, whether or not the other shareholder is a [*physician licensed in this state*
 44 *to practice medicine*] **licensed health care practitioner**, or to an attorney licensed to practice law
 45 in this state or another person similarly licensed.

1 (2) [No] A voting trust may **not** be created to vote the shares of a professional corporation or-
 2 ganized [*for the purpose of practicing medicine*] **to provide health care services**.

3 (3) Two or more shareholders of a professional corporation organized [*for the purpose of prac-*
 4 *ticing medicine*] **to provide health care services** may enter into a voting agreement provided that
 5 the voting agreement does not transfer voting rights from a shareholder who is a [*physician licensed*
 6 *in this state to practice medicine*] **licensed health care practitioner** to a shareholder who is not
 7 [*so licensed*] **a licensed health care practitioner**. Notwithstanding any provision of this subsection,
 8 voting rights may be transferred to an attorney licensed to practice law in this state or another
 9 person similarly licensed.

10 **SECTION 8.** ORS 58.383 is amended to read:

11 58.383. (1) A shareholder of a professional corporation organized [*for the purpose of practicing*
 12 *medicine*] **to provide health care services** may sell or transfer shares only in a manner that leaves
 13 the corporation in compliance with this chapter.

14 (2) Subject to subsection (1) of this section, the articles of incorporation, bylaws or agreements
 15 among shareholders of a professional corporation organized [*for the purpose of practicing medicine*
 16 *may provide limitations on*] **to provide health care services may limit** the issuance and
 17 transferability of shares of the corporation and may provide for the **corporation's** purchase or re-
 18 demption of shares [*by the corporation*].

19 **SECTION 9.** ORS 58.385 is amended to read:

20 58.385. (1) If a [*physician practicing medicine*] **licensed health care practitioner who provides**
 21 **health care services** on behalf of a professional corporation is disqualified from [*practicing*
 22 *medicine*] **providing health care services** for more than six months or assumes a public office, the
 23 duties of which prohibit [*practicing medicine*] **providing health care services** for more than six
 24 months under the rules of the [*Oregon Medical Board*] **health care practitioner licensing au-**
 25 **thority** or other law, the professional corporation [*shall have*] **has** the right to redeem the shares
 26 of the [*physician*] **licensed health care practitioner** within 60 days after the disqualification or
 27 prohibition occurs.

28 (2) If a [*physician practicing medicine*] **licensed health care practitioner who provides health**
 29 **care services** on behalf of a professional corporation is disqualified from [*practicing medicine*] **pro-**
 30 **viding health care services** for six months or less or assumes a public office, the duties of which
 31 prohibit [*practicing medicine*] **providing health care services** for six months or less under the rules
 32 of the [*Oregon Medical Board*] **health care practitioner licensing authority** or other law, the
 33 [*physician*] **licensed health care practitioner** may retain ownership of the shares in the corporation
 34 and may remain a director and officer of the corporation during the period of disqualification, unless
 35 otherwise prohibited under the rules of the [*Oregon Medical Board*] **health care practitioner li-**
 36 **censing authority** or by law.

37 **SECTION 10.** ORS 58.387 is amended to read:

38 58.387. (1) A professional corporation organized [*for the purpose of practicing medicine and its*]
 39 **to provide health care services and the corporation's** shareholders may provide for the disposi-
 40 tion of a deceased shareholder's shares in the articles of incorporation, in the bylaws, by agreement
 41 between the corporation and [*its*] **the corporation's** shareholders or by agreement among the
 42 shareholders. If there is no such provision, the [*shares shall first be offered for sale to the remaining*
 43 *shareholders of the corporation by the*] personal representative of the deceased shareholder's estate
 44 **shall first offer the shares for sale to the remaining shareholders of the corporation**. If the
 45 shares are not disposed of within six months after the date of the death of the deceased shareholder,

1 a special meeting of the shareholders [*shall*] **must** be called, at which meeting [*it shall be decided*
 2 *by vote of*] the remaining shareholders **shall vote to decide** whether the corporation shall redeem
 3 the shares or whether **to dissolve** the corporation [*shall be*] voluntarily [*dissolved*]. The meeting
 4 [*shall*] **must** be held within seven months after the date of the death of the deceased shareholder.
 5 The action [*determined to be taken by*] **that** the shareholders [*shall*] **decide to take must** be com-
 6 pleted within nine months after the date of death of the deceased shareholder. At the special meet-
 7 ing, the shares of the deceased shareholder may not be voted or counted in the [*determination*]
 8 **decision** of whether **to redeem** the shares [*shall be redeemed*] or whether **to dissolve** the corpo-
 9 ration [*shall be*] voluntarily [*dissolved*].

10 (2) If a deceased shareholder of a professional corporation organized [*for the purpose of practic-*
 11 *ing medicine*] **to provide health care services** was the only shareholder of the corporation at the
 12 time of death, the corporation shall cease to [*practice medicine*] **provide health care services** as
 13 of the date of death of the deceased shareholder unless the corporation has retained the services
 14 of another [*physician licensed in this state to practice medicine*] **licensed health care practitioner**.
 15 Within six months after the date of death of the deceased shareholder:

16 (a) The shares of the deceased shareholder [*shall*] **must** be sold to [*a physician or physicians*
 17 *who are licensed in this state to practice medicine*] **another licensed health care practitioner**;

18 (b) The name of the corporation [*shall*] **must** be changed and restated articles adopted, which
 19 [*shall*] **must** be filed with the Secretary of State in accordance with ORS chapter 60; or

20 (c) The corporation [*shall*] **must** be dissolved.

21 **SECTION 11.** ORS 58.389 is amended to read:

22 58.389. If the articles of incorporation or bylaws of a professional corporation organized [*for the*
 23 *purpose of practicing medicine*] **to provide health care services** do not provide a price or method
 24 of determining a price at which the corporation may purchase or redeem the shares, or at which
 25 [*its*] **the corporation's** shareholders may purchase the shares, of a legally disqualified or deceased
 26 shareholder, and the corporation and shareholders or the shareholders have not provided the price
 27 or a method of determining the price by private agreement, then the price for the shares [*shall be*]
 28 **is** the book value as of the end of the month preceding the disqualification or death of the share-
 29 holder, payable in cash or on [*such*] other terms [*as may be agreed to by*] **upon which** the parties
 30 **agree**. Book value [*shall*] **must** be determined from the books and records of the corporation in
 31 accordance with the regular method of accounting [*used by*] the corporation **uses**.

32 **SECTION 12.** ORS 679.020 is amended to read:

33 679.020. (1) A person may not practice dentistry without a license.

34 [(2) *Only a person licensed as a dentist by the Oregon Board of Dentistry may own, operate, con-*
 35 *duct or maintain a dental practice, office or clinic in this state.*]

36 [(3) *The restrictions of subsection (2) of this section, as they relate to owning and operating a*
 37 *dental office or clinic, do not apply to a dental office or clinic owned or operated by any of the fol-*
 38 *lowing:*]

39 **(2) Except as provided in subsection (3) of this section, a person may not own, operate,**
 40 **conduct or maintain a dental practice, office or clinic in this state unless the Oregon Board**
 41 **of Dentistry has licensed the person as a dentist.**

42 **(3) The following persons or entities may operate a dental office or clinic without ob-**
 43 **taining a license as a dentist from the Oregon Board of Dentistry:**

44 (a) A labor organization, as defined in ORS 243.650 and 663.005 (6), or [*to any*] a nonprofit or-
 45 ganization formed by or on behalf of [*such*] a labor organization for the purpose of providing dental

1 services. *[Such]* **The** labor organization must have *[had an active existence]* **actively existed** for at
 2 least three years, have a constitution and bylaws, and be maintained in good faith for purposes other
 3 than providing dental services.

4 (b) The School of Dentistry of the Oregon Health and Science University.

5 (c) *[Institutions]* **An institution** of higher education listed in ORS 352.002.

6 (d) **A** local *[governments]* **government**.

7 (e) *[Institutions or programs accredited by]* **An institution or program that** the Commission on
 8 Dental Accreditation of the American Dental Association **accredits** to provide education and
 9 training.

10 (f) **A** nonprofit *[corporations]* **corporation** organized under Oregon law to provide dental ser-
 11 vices to rural areas and medically underserved populations of migrant, rural community or homeless
 12 individuals under 42 U.S.C. 254b or 254c or health centers qualified under 42 U.S.C. 1396d(l)(2)(B)
 13 *[operating]* **that operates** in compliance with other applicable state and federal law.

14 (g) **A** nonprofit charitable *[corporations]* **corporation** as described in section 501(c)(3) of the
 15 Internal Revenue Code *[and determined by]* **that** the Oregon Board of Dentistry *[as]* **determines is**
 16 providing dental services by volunteer licensed dentists to populations with limited access to dental
 17 care at no charge or a substantially reduced charge.

18 **(h) A professional corporation organized to provide health care services in accordance**
 19 **with ORS chapter 58, provided that the professional corporation is organized for the specific**
 20 **purpose of practicing dentistry.**

21 (4) For the purpose of owning or operating a dental office or clinic, an entity described in sub-
 22 section (3) of this section must:

23 (a) Name an actively licensed dentist as *[its]* **the office's or clinic's** dental director, who *[shall*
 24 *be]* **is** subject to the provisions of ORS 679.140 in the **licensed dentist's** capacity as dental director.
 25 The dental director, or an actively licensed dentist designated by the director, *[shall have]* **has** re-
 26 sponsibility for the clinical practice of dentistry, which includes, but is not limited to:

27 (A) *[Diagnosis of]* **Diagnosing** conditions within the human oral cavity and *[its adjacent]* tissues
 28 and structures **adjacent to the human oral cavity**.

29 (B) Prescribing drugs that are administered to patients in the practice of dentistry.

30 (C) *[The treatment plan of any]* **Treating a** dental patient **under a treatment plan**.

31 (D) **Establishing, ensuring and evaluating the** overall quality of patient care that is rendered
 32 or performed in the practice of dentistry **at the office or clinic**.

33 (E) *[Supervision of]* **Supervising** dental hygienists, dental assistants or other personnel involved
 34 in direct patient care **in accordance with standards of supervision established by statute or**
 35 **by the rules of the board** and *[the authorization for]* **authorizing** procedures *[performed by them]*
 36 **the dental hygienists, dental assistants or other personnel perform** *[in accordance with the*
 37 *standards of supervision established by statute or by the rules of the board]*.

38 (F) **Rendering** other specific services within the scope of clinical dental practice.

39 (G) *[Retention of]* **Retaining** patient dental records as required by statute or by rule of the
 40 board.

41 (H) Ensuring that each patient receiving services from the dental office or clinic has a dentist
 42 of record.

43 (b) Maintain current records of the names of licensed dentists who supervise the clinical activ-
 44 ities of dental hygienists, dental assistants or other personnel **the entity uses to provide** *[involved*
 45 *in]* direct patient care *[utilized by the entity]*. The records must be available to the board upon

1 written request.

2 (5) Subsections (1) and (2) of this section do not apply to a limited access permit dental hygienist
3 who renders services authorized by a limited access permit *[issued by]* the board **issues** *[pursuant*
4 *to]* **under** ORS 680.200.

5 (6) *[Nothing in]* This chapter *[precludes]* **does not preclude** a person or entity not licensed by
6 the board from:

7 (a) *[Ownership or leasehold of any]* **Owning or leasing** tangible or intangible assets used in a
8 dental office or clinic. *These assets include]* **such as** real property, furnishings, equipment and in-
9 ventory but *[do not include]* **not including** dental records of patients related to clinical care.

10 (b) Employing or contracting for the services of personnel other than licensed dentists.

11 (c) *[Management of]* **Managing** the business aspects of a dental office or clinic that do not in-
12 clude the clinical practice of dentistry.

13 (7) *[If all of the ownership interests of a dentist or dentists in a dental office or clinic are held*
14 *by]* **If** an administrator, executor, personal representative, guardian, conservator or receiver of the
15 estate of a former shareholder, member or partner **holds all of the ownership interests of a**
16 **dentist in a dental office or clinic**, the administrator, executor, personal representative, guardian,
17 conservator or receiver may retain the ownership interest for a period of 12 months following the
18 creation of the ownership interest. The board shall extend the ownership period for an additional
19 12 months upon 30 days' notice and may grant additional extensions upon reasonable request.

20 **SECTION 13.** (1) **Section 3 of this 2011 Act and the amendments to ORS 58.015, 58.375,**
21 **58.377, 58.379, 58.381, 58.383, 58.385, 58.387, 58.389 and 679.020 by sections 1 and 4 to 12 of this**
22 **2011 Act become operative January 1, 2012.**

23 (2) **The Secretary of State, the Oregon Medical Board or the Oregon Board of Dentistry**
24 **may take any action before the operative date specified in subsection (1) of this section that**
25 **is necessary to enable the Secretary of State, the Oregon Medical Board or the Oregon Board**
26 **of Dentistry to exercise, on and after the operative date specified in subsection (1) of this**
27 **section, the duties, functions and powers conferred on the Secretary of State, the Oregon**
28 **Medical Board or the Oregon Board of Dentistry by section 3 of this 2011 Act and the**
29 **amendments to ORS 58.015, 58.375, 58.377, 58.379, 58.381, 58.383, 58.385, 58.387, 58.389 and**
30 **679.020 by sections 1 and 4 to 12 of this 2011 Act.**

31 **SECTION 14.** This 2011 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
33 on its passage.

34