

House Bill 2065

Sponsored by Representative GILLIAM (Pre-session filed.)

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**.

Creates process through which licensee or applicant to practice dentistry may petition Oregon Board of Dentistry to expunge from board records information related to disciplinary hearings.

A BILL FOR AN ACT

1
2 Relating to practice of dentistry; amending ORS 679.140.

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

4 **SECTION 1.** ORS 679.140 is amended to read:

5 679.140. (1) The Oregon Board of Dentistry may discipline as provided in this section any person
6 licensed to practice dentistry in this state for any of the following causes:

7 (a) Conviction of any violation of the law for which the court could impose a punishment if the
8 board makes the finding required by ORS 670.280. The record of conviction or a certified copy
9 thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered,
10 is conclusive evidence of the conviction.

11 (b) Renting or lending a license or diploma of the dentist to be used as the license or diploma
12 of another person.

13 (c) Unprofessional conduct.

14 (d) Any violation of this chapter or ORS 680.010 to 680.205, of rules adopted pursuant to this
15 chapter or ORS 680.010 to 680.205 or of an order issued by the board.

16 (e) Engaging in or permitting the performance of unacceptable patient care by the dentist or by
17 any person working under the supervision of the dentist due to a deliberate or negligent act or
18 failure to act by the dentist, regardless of whether actual injury to the patient is established.

19 (f) Incapacity to practice safely.

20 (2) "Unprofessional conduct" as used in this chapter includes but is not limited to the following:

21 (a) Obtaining any fee by fraud or misrepresentation.

22 (b) Willfully betraying confidences involved in the patient-dentist relationship.

23 (c) Employing, aiding, abetting or permitting any unlicensed personnel to practice dentistry or
24 dental hygiene.

25 (d) Making use of any advertising statements of a character tending to deceive or mislead the
26 public or that are untruthful.

27 (e) Impairment as defined in ORS 676.303.

28 (f) Obtaining or attempting to obtain a controlled substance in any manner proscribed by the
29 rules of the board.

30 (g) Prescribing or dispensing drugs outside the scope of the practice of dentistry or in a manner
31 that impairs the health and safety of an individual.

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 (h) Disciplinary action by a state licensing or regulatory agency of this or another state re-
 2 garding a license to practice dentistry, dental hygiene or any other health care profession when, in
 3 the judgment of the board, the act or conduct resulting in the disciplinary action bears a demon-
 4 strable relationship to the ability of the licensee or applicant to practice dentistry or dental hygiene
 5 in accordance with the provisions of this chapter. A certified copy of the record of the disciplinary
 6 action is conclusive evidence of the disciplinary action.

7 (3) The proceedings under this section may be taken by the board from the matters within its
 8 knowledge or may be taken upon the information of another, but if the informant is a member of the
 9 board, the other members of the board shall constitute the board for the purpose of finding judgment
 10 of the accused.

11 (4) In determining what constitutes unacceptable patient care, the board may take into account
 12 all relevant factors and practices, including but not limited to the practices generally and currently
 13 followed and accepted by persons licensed to practice dentistry in this state, the current teachings
 14 at accredited dental schools, relevant technical reports published in recognized dental journals and
 15 the desirability of reasonable experimentation in the furtherance of the dental arts.

16 (5) In disciplining a person as authorized by subsection (1) of this section, the board may use
 17 any or all of the following methods:

- 18 (a) Suspend judgment.
- 19 (b) Place a licensee on probation.
- 20 (c) Suspend a license to practice dentistry in this state.
- 21 (d) Revoke a license to practice dentistry in this state.
- 22 (e) Place limitations on a license to practice dentistry in this state.
- 23 (f) Refuse to renew a license to practice dentistry in this state.
- 24 (g) Accept the resignation of a licensee to practice dentistry in this state.
- 25 (h) Assess a civil penalty.
- 26 (i) Reprimand a licensee.
- 27 (j) Impose any other disciplinary action the board in its discretion finds proper, including as-
 28 sessment of the costs of the disciplinary proceedings as a civil penalty.

29 (6) If the board places any person upon probation as set forth in subsection (5)(b) of this section,
 30 the board may determine and may at any time modify the conditions of the probation and may in-
 31 clude among them any reasonable condition for the purpose of protection of the public and for the
 32 purpose of the rehabilitation of the probationer or both. Upon expiration of the term of probation,
 33 further proceedings shall be abated by the board if the person holding the license furnishes the
 34 board with evidence that the person is competent to practice dentistry and has complied with the
 35 terms of probation. If the evidence fails to establish competence to the satisfaction of the board or
 36 if the evidence shows failure to comply with the terms of the probation, the board may revoke or
 37 suspend the license.

38 (7) If a license to practice dentistry in this state is suspended, the person holding the license
 39 may not practice during the term of suspension. Upon the expiration of the term of suspension, the
 40 license shall be reinstated by the board if the board finds, based upon evidence furnished by the
 41 person, that the person is competent to practice dentistry and has not practiced dentistry in this
 42 state during the term of suspension. If the evidence fails to establish to the satisfaction of the board
 43 that the person is competent or if any evidence shows the person has practiced dentistry in this
 44 state during the term of suspension, the board may revoke the license after notice and hearing.

45 (8) Upon receipt of a complaint under this chapter or ORS 680.010 to 680.205, the board shall

1 conduct an investigation as described under ORS 676.165.

2 (9)(a) Information that the board obtains as part of an investigation into licensee or applicant
 3 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
 4 licensee or applicant conduct is confidential as provided under ORS 676.175. Notwithstanding ORS
 5 676.165 to 676.180, the board may disclose confidential information regarding a licensee or an ap-
 6 plicant to persons who may evaluate or treat the licensee or applicant for drug abuse, alcohol abuse
 7 or any other health related conditions.

8 **(b) If a licensee or applicant is disciplined under this section, the licensee or applicant**
 9 **may petition the board, three years after the date on which the disciplinary sanction ends,**
 10 **to expunge from the board’s records information described in paragraph (a) of this sub-**
 11 **section. The board shall expunge from the board’s records the information if the board finds**
 12 **that the cause for which the licensee or applicant had been disciplined no longer presents a**
 13 **risk of harm to the public. The board shall adopt by rule a process for making a petition**
 14 **under this paragraph.**

15 (10) The board may impose against any person who violates the provisions of this chapter or
 16 ORS 680.010 to 680.205 or rules of the board a civil penalty of up to \$5,000 for each violation. Any
 17 civil penalty imposed under this section shall be imposed in the manner provided in ORS 183.745.

18 (11) Notwithstanding the expiration, suspension, revocation or surrender of the license, or the
 19 resignation or retirement of the licensee, the board may:

20 (a) Proceed with any investigation of, or any action or disciplinary proceedings against, the
 21 dentist or dental hygienist; or

22 (b) Revise or render void an order suspending or revoking the license.

23 (12)(a) The board may continue with any proceeding or investigation for a period not to exceed
 24 four years from the date of the expiration, suspension, revocation or surrender of the license, or the
 25 resignation or retirement of the licensee; or

26 (b) If the board receives a complaint or initiates an investigation within that four-year period,
 27 the board’s jurisdiction continues until the matter is concluded by a final order of the board fol-
 28 lowing any appeal.

29 (13) Withdrawing the application for license does not close any investigation, action or pro-
 30 ceeding against an applicant.

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