

Enrolled Senate Bill 430

Sponsored by Senator KRUSE (Pre-session filed.)

CHAPTER

AN ACT

Relating to licensure of mental health professionals; creating new provisions; and amending ORS 675.070, 675.540 and 675.745.

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

SECTION 1. ORS 675.070 is amended to read:

675.070. (1) *[Where]* **If** any of the grounds enumerated in subsection (2) of this section exist, the State Board of Psychologist Examiners may impose any of the following sanctions:

- (a) Deny a license to any applicant;
- (b) Refuse to renew the license of any psychologist or psychologist associate;
- (c) Suspend the license of any psychologist or psychologist associate for a period of not less than one year;
- (d) Issue a letter of reprimand;
- (e) Impose probation with authority to restrict the scope of practice of a psychologist or psychologist associate or require practice under supervision;
- (f) Revoke the license of any psychologist or psychologist associate; or
- (g) Impose a civil penalty as *[set forth]* **described** in subsection (3) of this section.

(2) *[Grounds exist for imposition of any of the sanctions enumerated]* **The board may impose a sanction listed** in subsection (1) of this section against any psychologist or psychologist associate or applicant, or, *[where]* **if** applicable, any unlicensed person found in violation of ORS 675.010 to 675.150, when, in the judgment of the board, the person:

- (a) Has an impairment as defined in ORS 676.303;
- (b) Has been convicted of violation of any law relating to controlled substances;
- (c) Has been convicted of any felony or of any misdemeanor involving moral turpitude;
- (d) Is guilty of immoral or unprofessional conduct or of gross negligence in the practice of psychology, *[which includes]* **including** but *[is]* not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the psychological profession or any conduct or practice that constitutes a danger to the health or safety of a patient or the public, or any conduct, practice or condition that adversely affects a psychologist or psychologist associate's ability to practice psychology safely and skillfully.

(B) Willful ordering or performing of unnecessary tests or studies, administration of unnecessary treatment, failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care, or otherwise ordering or performing any psychological service or treatment which is contrary to recognized standards of practice of the psychological profession;

- (e) Has practiced or attempted to practice medicine without being licensed to do so;

(f) Has obtained or attempted to obtain a license under ORS 675.010 to 675.150 by fraud or material misrepresentation;

(g) Has impersonated a licensed psychologist or psychologist associate or has allowed another person to use the license of the psychologist;

(h) Has violated any provision of ORS 675.010 to 675.150 or any provision of the code of professional conduct formulated under ORS 675.110 (12); [or]

(i) Has obtained a fee or payment from a patient or third party payer through fraud or intentional misrepresentation; **or**

(j) Notwithstanding ORS 670.280, has been convicted of a sex crime as defined in ORS 181.805 or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 181.805.

(3) The board may impose a civil penalty under subsection (1) of this section:

(a) In an amount not to exceed \$5,000; or

(b) In an amount not to exceed \$10,000, if any of the following conditions exist:

(A) The conduct giving rise to the penalty had a serious detrimental effect on the health or safety of another person;

(B) The person subject to the penalty has a history of discipline for the same or similar conduct;

(C) The conduct giving rise to the penalty involves a willful or reckless disregard of the law;

(D) The conduct giving rise to the penalty was perpetrated against a minor, an elderly person or a person with a disability; or

(E) The person subject to the penalty violated ORS 675.020 by practicing psychology or representing that the person is a psychologist without having a license.

(4) [In case of any] **If a conviction [required under] described in subsection (2) of this section [as] is used as** grounds for denial, refusal, suspension, revocation, reprimand, probation or imposition of a civil penalty, a certified copy of the record of the conviction shall be conclusive evidence.

(5) The board may license an applicant or renew or restore any license suspended or revoked under subsection (2)(a) of this section due to a mental health condition if the board determines that the applicant or former licensed psychologist or former psychologist associate no longer has an impairment due to a mental health condition.

(6) License suspension or revocation in another state is grounds for license denial or disciplinary action by the board.

SECTION 2. ORS 675.540, as amended by section 3, chapter 60, Oregon Laws 2013, is amended to read:

675.540. (1) The State Board of Licensed Social Workers may impose any or all of the sanctions specified in subsection (2) of this section, upon proof, after a hearing pursuant to the provisions of ORS chapter 183 relating to a contested case, that a regulated social worker:

(a) Has been convicted in this or any other state of a crime that is a felony in this state;

(b) Has been convicted of a felony in a federal court;

(c) Is unable to perform the practice of social work by reason of physical illness;

(d) Has an impairment as defined in ORS 676.303;

(e) Has been grossly negligent or has engaged in unprofessional conduct in the practice of social work; [or]

(f) Has violated any provision of ORS 675.510 to 675.600 or any rule adopted under ORS 675.600; **or**

(g) Notwithstanding ORS 670.280, has been convicted of a sex crime as defined in ORS 181.805 or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 181.805.

(2) Pursuant to the provisions of subsection (1) of this section, the board may:

(a) Deny, suspend, revoke or refuse to renew any authorization to practice regulated social work issued under ORS 675.510 to 675.600.

(b) Place a regulated social worker on probation and impose conditions or limits on the scope of practice of a regulated social worker.

(c) Impose a civil penalty not to exceed \$3,000 for each violation.

(3) The expiration, or voluntary surrender by a regulated social worker, of an authorization to practice regulated social work does not deprive the board of jurisdiction to proceed with any investigation of, or any action or disciplinary proceedings against, the regulated social worker.

(4) Information that the board obtains as part of an investigation into the conduct of a regulated social worker or an applicant for an authorization to practice regulated social work or as part of a contested case proceeding, consent order or stipulated agreement involving the conduct of a regulated social worker or applicant, is confidential as provided under ORS 676.175.

(5) Subject to the provisions of ORS chapter 183 relating to a contested case, the board may impose a civil penalty in an amount up to \$5,000 upon proof that, after a person's authorization to practice regulated social work has been revoked by the board, the person has:

(a) Engaged in the practice of clinical social work; or

(b) Represented that the person is a regulated social worker.

(6) Subject to the provisions of ORS chapter 183 relating to a contested case, the board may impose a civil penalty of up to \$3,000 upon proof that a person who is not a regulated social worker has:

(a) Represented that the person is a regulated social worker; or

(b) Used the title "social worker" or any title, words or abbreviations that indicate that the person has an authorization to practice regulated social work in violation of ORS 675.520.

(7) Subject to the provisions of ORS chapter 183 relating to a contested case, the board may impose a civil penalty of up to \$5,000 upon proof that a person who is not a clinical social worker licensed under ORS 675.530 or a clinical social work associate certified under ORS 675.537 has:

(a) Engaged in the practice of clinical social work, unless the person is permitted to practice clinical social work under ORS 675.523; or

(b) Represented that the person is a clinical social worker or clinical social work associate.

SECTION 3. ORS 675.745 is amended to read:

675.745. (1) The Oregon Board of Licensed Professional Counselors and Therapists may deny, suspend, revoke or refuse to issue or to renew any license issued under ORS 675.715 to 675.835 upon proof that the applicant for licensure or the licensee:

(a) Has been convicted of violating ORS 675.825 or of a crime in this or any other state or territory or against the federal government that brings into question the competence of the licensee in the role of a counselor or a therapist;

(b) Is unable to perform the practice of professional counseling or marriage and family therapy by reason of physical illness;

(c) Has an impairment as defined in ORS 676.303;

(d) Has been grossly negligent in the practice of professional counseling or marriage and family therapy;

(e) Has violated one or more of the rules of the board pertaining to the licensure of professional counselors or licensed marriage and family therapists;

(f) Has failed to file a professional disclosure statement or has filed a false, incomplete or misleading professional disclosure statement;

(g) Has practiced outside the scope of activities, including administering, constructing or interpreting tests or diagnosing or treating mental disorders, for which the licensee has individual training and qualification; [or]

(h) Has been disciplined by a state mental health licensing board or program in this or any other state for violation of competency or conduct standards; or

(i) Notwithstanding ORS 670.280, has been convicted of a sex crime as defined in ORS 181.805 or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 181.805.

(2)(a) The board may reprimand or impose probation on a licensee or a registered intern upon proof of any of the grounds for discipline provided in subsection (1) of this section.

(b) If the board elects to place a licensee or a registered intern on probation, the board may impose:

- (A) Restrictions on the scope of practice of the licensee or intern;
- (B) Requirements for specific training;
- (C) Supervision of the practice of the licensee or intern; or
- (D) Other conditions the board finds necessary for the protection of the public.

(3) The board may initiate action against persons violating any provision of ORS 675.715 to 675.835 or any rules adopted by the board.

(4) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$2,500 for each ground for discipline listed in subsection (1) of this section found by the board.

(5) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$2,500 for each violation of or failure to observe any limitation or condition imposed by the board on the licensee's or registered intern's practice under subsection (2) of this section.

(6) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

(7) In addition to the actions authorized by subsections (1) and (2) of this section, the board may take such disciplinary action as the board in its discretion finds proper, including but not limited to the assessment of the costs of the disciplinary process.

SECTION 4. (1) The amendments to ORS 675.070 by section 1 of this 2015 Act apply to applications for licensure received, and licenses issued or renewed, by the State Board of Psychologist Examiners on or after the effective date of this 2015 Act.

(2) The amendments to ORS 675.540 by section 2 of this 2015 Act apply to applications for licensure, certification or registration received, and licenses, certifications or registrations issued or renewed, by the State Board of Licensed Social Workers on or after the effective date of this 2015 Act.

(3) The amendments to ORS 675.745 by section 3 of this 2015 Act apply to applications for licensure received, and licenses issued or renewed, by the Oregon Board of Licensed Professional Counselors and Therapists on or after the effective date of this 2015 Act.

Passed by Senate April 7, 2015

Received by Governor:

Repassed by Senate June 17, 2015

.....M.,....., 2015

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2015

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 9, 2015

Filed in Office of Secretary of State:

.....M.,....., 2015

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Tina Kotek, Speaker of House

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Jeanne P. Atkins, Secretary of State