

# Christian Wolff, MA

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February 20, 2017

To: Oregon House Committee on Healthcare  
Re: **House Bill 2394 (2017)**  
Position: **Against**

Dear Members of the Oregon House Committee on Healthcare:

**I am writing today AGAINST HB 2394.**

False appearance of HB 2394: It is very easy to see why increasing the powers of healthcare regulatory boards (HRB) to send “impaired” licensees to “impaired health professional programs” (IHPP) would seem a good thing. For instance:

The evaluative functions of impaired health professional programs ostensibly help boards to make sure providers are not impaired physically, mentally, or via substance abuse in such a way that they could not meet standards of care and thereby be a threat to public safety. The treatment functions of IHPP’s ostensibly help providers who ARE impaired to re-enter practice in a way that assures they are again ready and able to practice at the standard of care and are no longer a threat to public safety.

However, healthcare regulatory boards have come to assert that nearly everything they do is for “public safety,” when, in fact, there has been little-to-no investigation into whether their efforts actually achieve that goal. In the name of “public safety,” often, more harm is done than good.

**The House Committee on Healthcare must not pass HB 2394 until they have heard from the citizens harmed by Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) already in place which HB 2394 is attempting to amend and extend. *I can produce those people.***

The error in which HB 2394 could become entangled runs deep and it starts with a sorely derailed healthcare regulatory board system. The core of the problem is gross lack of oversight. The solution is simple. Provide the independent oversight. Until such is provided, no more tools should be provided to HRB’s by which they can do more harm to the public.

Where do we look for guidance? To the HRB’s of other states? Nay. The state HRB’s already look to one another for guidance. Choosing mimicry over reason and “within-board” cogitation, state HRB’s reach out for templates from other states in hope that congruency may conceal poor quality. Bad is thrown after bad and this is exactly what would happen if HB 2394 is passed.

Over a relatively short period of time, state HRB’s have created a Gordian Knot which they, themselves, cannot untangle.

**There is NO mechanism in place which prevents a healthcare regulatory board from erroneously, capriciously, or God forbid, maliciously, sending licensees through corrective processes they do not need.**

Turning our attention to the statutes HB 2394 would amend (ORS 675.583, 676.185, 676.190 and 676.200), we see a set of provisions surrounding referrals to impaired health professional programs for which a licensee must pay out of pocket. Generally, or perhaps exclusively, healthcare regulatory boards send licensees to IHPP's which DO NOT accept medical insurance. This may be due to the alleged diagnoses not meeting the criteria for medical necessity. It may be because the facilities lack accreditation and fail to meet treatment efficacy standards, or it may be due to the non-competitive rates at the HRB chosen facility. So add to this expense, the licensee's expenditure for their own attorney, the frequently demanded hiatus from practice, and the ever increasing demands that licensees bear the entire costs of HRBs' disciplinary and corrective processes, licensees are frequently driven into poverty and unable to afford legal assistance necessary for appeal.

With healthcare regulatory boards of considerable spurious external repute and incomprehensibly aggressive DOJ's providing legal representation, healthcare regulatory boards and their respective DOJ's team up to simply out-money guilty and innocent licensees alike.

Too many HRB's are already erroneously, capriciously or maliciously pulling good, competent, and ethical healthcare providers out of the communities they serve and away from the consumers who need them. Until this matter has been further investigated and the already harmed have heard, HB 2394 must not pass.

There is another matter related to this bill. This is the matter of the contractual arrangements the Oregon healthcare regulatory boards are allowed to make, by statute, with "board approved" evaluation & treatment centers of their choosing. Forcing a licensee referred for evaluation or treatment to go to a facility contracted with their licensing board and to disallow alternatives which are perfectly acceptable by the reasonable judgement of recognized authorities outside the HRB seem such a flagrant conflict of interest that any intelligent person failing to recognize it as such should be held up to models of moral turpitude.

There are no stations of power, unfortunately, in which those with the power of their station can be presumed to be of good character.

Healthcare practitioners receive oversight for this reason and for this reason, healthcare regulatory boards and associated impaired health professional programs must receive independent oversight as well. This is why I am asking the House Committee on Healthcare to reject HB 2394. I am asking for an act of legislative oversight. I am asking that this bill not be rubber stamped.

Declare this an emergency effective July 1, 2017? We know what asking for emergency passage means. Declaring bills "emergencies" was quite the popular appendage for bills in 2015. It means the promulgator(s) of the bill don't want the legislature to look at the bill too closely or to give full consideration to the ramifications of the bill's passage.

There is virtually no literature to support the efficacy of IHPP's. If there is, then I would challenge this bill's advocates to produce it and for this committee to read such reports with a critical eye.

HB 2394 amends ORS 676.185 which references ORS 676.160. ORS 676.160 describes the HRB's HB 2394 would affect. As it turns out HB2394 would effect 21 major Oregon HRB's including the Oregon Medical Board (OMB), the Oregon Board of Psychologist Examiners (OBPE), and the Oregon Board of Licensed Professional Counselors & Therapists (OBLPCT), HRB's which are all legally represented by the DOJ's Assistant Attorney General Warren Foote. See the full list of affected HRB's here: <https://www.oregonlaws.org/ors/676.160>

That is a LOT of Oregon licensed healthcare professionals to put in harm's way, and a lot of Oregon citizens to be deprived of their good healthcare professionals. Fortunately, however not all healthcare regulatory boards at present have the authority to abuse their power in this heinous manner and one of those HRB's is the OBPE. Incidentally, OBPE is also asking the legislature this session for the authority to assess to licensees, the full cost of *unchecked* disciplinary procedures against them. See HB 2329 <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2329/Introduced>

Although ORS 675.583, 676.185, 676.190 and 676.200 sorely need amending<sup>1</sup>, the passage of HB 2394 would move extremely important matters in a catastrophically wrong direction.

I will be more than happy to work with this committee, facilitate investigative research, provide more witnesses, and provide concrete references to to the relevant literature.

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### 1. An example is ORS 676.200 (2)(a)

ORS 676.200 (2)(a) at present:

(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the program, the board shall ensure that:

(a) An independent third party approved by the board<sup>2</sup> to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board

As proposed by HB 2394:

(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the **impaired health professional** program, the board shall ensure that:

(a) An independent third party approved by the board<sup>2</sup> to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board

As sorely needs amending:

(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the program, the board shall ensure that:

(a) [An] **Any** independent third party **or parties, chosen by the licensee and** approved by the [board] **state** to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board

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2. Note: "Independent third party" and "approved by the board" are inherently contradictory and therefore prejudicial to the licensee. A party which must be "approved by a the board" can be neither independent nor a third party.

**Please reject HB 2394.**

Thank you.

Sincerely,

Christian Wolff, MA