

House Bill 2284

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Administrative Law Section)

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**.

Removes authority of various licensing agencies to assess against licensee costs of disciplinary action taken against licensee.

A BILL FOR AN ACT

1
2 Relating to licensing agencies; creating new provisions; and amending ORS 97.948, 673.730, 675.595,
3 675.745, 676.992, 677.205, 677.265, 679.140, 682.224, 684.100, 684.155, 686.150, 687.081 and 688.660.

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

5 **SECTION 1.** ORS 673.730 is amended to read:

6 673.730. The State Board of Tax Practitioners shall have the following powers, in addition to the
7 powers otherwise granted by ORS 673.605 to 673.740, and shall have all powers necessary or proper
8 to carry the granted powers into effect:

9 (1) To determine qualifications of applicants for licensing as a tax consultant or a tax preparer
10 in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to
11 qualified applicants upon their compliance with ORS 673.605 to 673.740 and the rules of the board.

12 (2)(a) To restore the license of any tax consultant or preparer whose license has been suspended
13 or revoked.

14 (b) The power of the board to suspend any license under ORS 673.700 includes the power to
15 restore:

16 (A) At a time certain; or

17 (B) When the person subject to suspension fulfills conditions for reissuance set by the board.

18 (c) The power of the board to restore a license under paragraph (a) of this subsection specif-
19 ically includes the power to restore a license suspended or revoked for the reason that the person
20 has been convicted of a crime. In making a determination to restore a license, the board shall con-
21 sider the relationship of the facts which supported the conviction to the code of professional conduct
22 and all intervening circumstances in determining the fitness of the person to receive or hold a tax
23 consultant's or tax preparer's license.

24 (3) To prescribe fees, subject to ORS 673.685, and to collect fees.

25 (4) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted
26 thereunder. The board may keep information gathered pursuant to an investigation by the board
27 confidential until there is a final order or determination by the board, unless disclosure is consid-
28 ered necessary by the board for the investigation or prosecution of an alleged violation of ORS
29 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial
30 information gathered pursuant to an investigation by the board confidential after a final order or
31 determination by the board, unless disclosure is considered necessary by the board for the investi-

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 gation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted
 2 thereunder. For purposes of this subsection, personal financial information includes but is not lim-
 3 ited to tax returns.

4 (5) To enforce the provisions of ORS 673.605 to 673.740 and to exercise general supervision over
 5 tax consultant and tax preparer practice.

6 (6) To issue an order directed to a person to cease and desist from any violation or threatened
 7 violation of ORS 673.615, 673.643 or 673.705, or any rule or order adopted thereunder, if the board
 8 has reason to believe that a person has been engaged, is engaging or is about to engage in any vi-
 9 olation of ORS 673.615, 673.643 or 673.705, or any rule or order adopted thereunder.

10 (7) To assess civil penalties within a cease and desist order issued under subsection (6) of this
 11 section if the board has reason to believe that a person has been engaged or is engaging in any vi-
 12 olation of ORS 673.615, 673.643 or 673.705, or any rule or order adopted thereunder. The civil pen-
 13 alty may not exceed \$5,000 per violation.

14 (8) To formulate a code of professional conduct for tax consultants and tax preparers.

15 *[(9) To assess against the licensee or any other person found guilty of violating any provision of*
 16 *ORS 673.605 to 673.740, or any rule or order adopted thereunder, in addition to any other sanctions,*
 17 *the costs associated with the disciplinary or other action taken by the board.]*

18 *[(10)]* (9) To order that any person who has engaged in or is engaging in any violation of ORS
 19 673.605 to 673.740, or any rule or order adopted thereunder, shall offer to rescind and pay restitution
 20 to anyone harmed by the violation who seeks rescission.

21 **SECTION 2.** ORS 675.595 is amended to read:

22 675.595. In addition to the powers otherwise granted under ORS 675.510 to 675.600, the State
 23 Board of Clinical Social Workers shall have the following powers:

24 (1) To determine the qualifications of applicants to practice clinical social work in this state.

25 (2) To cause to have examinations prepared, conducted and graded.

26 (3) To grant certificates or licenses to qualified applicants upon their compliance with the pro-
 27 visions of ORS 675.510 to 675.600 and the rules of the board.

28 (4) To grant or deny annual renewal of certificates or licenses and to renew certificates and li-
 29 censes that have lapsed for nonpayment of the renewal fee, subject to the provisions of ORS 675.510
 30 to 675.600.

31 (5) To suspend or revoke certificates or licenses, subject to ORS 675.510 to 675.600.

32 (6) To issue letters of reprimand or to impose probationary periods with the authority to restrict
 33 the scope of practice of a licensed clinical social worker or clinical social work associate.

34 (7) To require that a licensee practice under supervision.

35 (8) To require that a licensee obtain additional training in social work.

36 (9) To require that a licensee undergo psychological, physical or psychiatric assessment, enter
 37 into and remain in any prescribed treatment program and disclose the results of the treatment pro-
 38 gram to the board.

39 (10) To impose civil penalties not to exceed \$1,000.

40 (11) To restore certificates or licenses that have been suspended, revoked or voided by nonpay-
 41 ment of the renewal fee.

42 (12)(a) To collect annual fees for application, examination and certification or licensing of ap-
 43 plicants, for renewal of certificates and licenses, and for issuance of limited certificates, such fees
 44 to be used to defray the expenses of the board as provided in ORS 675.571; and

45 (b) To collect delinquent renewal fees as provided in ORS 675.571 (4).

1 (13) To investigate alleged violations of ORS 675.510 to 675.600.

2 (14) To issue subpoenas for the attendance of witnesses, take testimony, administer oaths or af-
3 firmations to witnesses, conduct hearings and require the production of relevant documents in all
4 proceedings pertaining to the duties and powers of the board.

5 (15) To enforce 675.510 to 675.600 and exercise general supervision over the practice of clinical
6 social work in this state.

7 (16) To adopt a common seal.

8 (17) To formulate and enforce a code of professional conduct for the practice of clinical social
9 work giving particular consideration to the code of ethics.

10 (18) To formulate and enforce continuing education requirements for licensed clinical social
11 workers to ensure the highest quality of professional services to the public.

12 (19) To take such other disciplinary action as the board in its discretion finds proper[, *including*
13 *but not limited to assessment of the costs of the disciplinary process*]. **The board may not require**
14 **the payment of costs of a proceeding or other monetary penalties except as specifically au-**
15 **thorized by law.**

16 **SECTION 3.** ORS 675.745 is amended to read:

17 675.745. (1) The Oregon Board of Licensed Professional Counselors and Therapists may deny,
18 suspend, revoke or refuse to issue or to renew any license issued under ORS 675.715 to 675.835 upon
19 proof that the applicant for licensure or the licensee:

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

23 (b) Is unable to perform the practice of professional counseling or marriage and family therapy
24 by reason of mental illness, physical illness, drug addiction or alcohol abuse;

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

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

29 (e) Has failed to file a professional disclosure statement or has filed a false, incomplete or mis-
30 leading professional disclosure statement;

31 (f) Has practiced outside the scope of activities, including administering, constructing or inter-
32 preting tests, for which the licensee has individual training and qualification; or

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

35 (2)(a) The board may reprimand or impose probation on a licensee or an intern registered under
36 ORS 675.720 upon proof of any of the grounds for discipline provided in subsection (1) of this section.

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

39 (A) Restrictions on the scope of practice of the licensee or intern;

40 (B) Requirements for specific training;

41 (C) Supervision of the practice of the licensee or intern; or

42 (D) Other conditions the board finds necessary for the protection of the public.

43 (3) The board may initiate action against persons violating any provision of ORS 675.715 to
44 675.835 or any rules adopted by the board.

45 (4) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$1,000 for

1 each violation of subsection (1) or (2) of this section.

2 (5) 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.

5 (6) In addition to the actions authorized by subsections (1) and (2) of this section, the board may
 6 take such disciplinary action as the board in its discretion finds proper[, *including but not limited*
 7 *to the assessment of the costs of the disciplinary process*]. **The board may not require the payment**
 8 **of costs of a proceeding or other monetary penalties except as specifically authorized by law.**

9 **SECTION 4.** ORS 676.992 is amended to read:

10 676.992. (1) In addition to any other penalty or remedy provided by law, the Health Licensing
 11 Office may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes
 12 and any rule adopted thereunder:

- 13 (a) Sections 1 to 11, chapter 736, Oregon Laws 1999 (athletic training);
- 14 (b) ORS 690.500 to 690.570 (body piercing);
- 15 (c) ORS 690.005 to 690.235 (cosmetology);
- 16 (d) ORS 680.500 to 680.570 (denture technology);
- 17 (e) ORS 687.405 to 687.495 (direct entry midwifery);
- 18 (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- 19 (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- 20 (h) ORS 688.800 to 688.840 (respiratory therapy); and
- 21 (i) ORS chapter 700 (environmental sanitation).

22 (2) The agency may take any other disciplinary action that it finds proper[, *including but not*
 23 *limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000,*] for violation of any
 24 statute or rule adopted under any statute listed in subsection (1) of this section. **The agency may**
 25 **not require the payment of costs of a proceeding or other monetary penalties except as**
 26 **specifically authorized by law.**

27 (3) Subsection (1) of this section shall not limit the amount of the civil penalty resulting from
 28 a violation of ORS 694.042.

29 (4) In imposing a civil penalty pursuant to this section, the agency shall consider the following
 30 factors:

- 31 (a) The immediacy and extent to which the violation threatens the public health or safety;
- 32 (b) Any prior violations of statutes, rules or orders;
- 33 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
 34 lation; and
- 35 (d) Any other aggravating or mitigating factors.

36 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

37 (6) The moneys received by the agency from civil penalties under this section shall be paid into
 38 the General Fund of the State Treasury and credited to the Health Licensing Office Account. Such
 39 moneys are continuously appropriated to the Health Licensing Office for the administration and
 40 enforcement of the laws the agency is charged with administering and enforcing that govern the
 41 person against whom the penalty was imposed.

42 **SECTION 5.** ORS 677.265 is amended to read:

43 677.265. In addition to any other powers granted by this chapter, the Board of Medical Exam-
 44 iners for the State of Oregon may:

- 45 (1) Adopt necessary and proper rules for administration of this chapter including but not limited

1 to:

2 (a) Establishing fees and charges to carry out its legal responsibilities, subject to prior approval
 3 by the Oregon Department of Administrative Services and a report to the Emergency Board prior
 4 to adopting the fees and charges. Such fees and charges shall be within the budget authorized by
 5 the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and
 6 charges established under this section shall not exceed the cost of administering the program or the
 7 purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the
 8 board's budget, or as modified by the Emergency Board or future sessions of the Legislative As-
 9 sembly.

10 (b) Establishing standards and tests to determine the moral, intellectual, educational, scientific,
 11 technical and professional qualifications required of applicants for licenses under this chapter.

12 (c) Enforcing the provisions of this chapter and exercising general supervision over the practice
 13 of medicine and podiatry within this state. In determining whether to discipline a licensee for a
 14 standard of care violation, the board shall determine whether the licensee used that degree of care,
 15 skill and diligence that is used by ordinarily careful physicians or podiatric physicians and surgeons
 16 in the same or similar circumstances in the community of the physician or podiatric physician and
 17 surgeon or a similar community.

18 (2) Issue, deny, suspend and revoke licenses and limited licenses, assess [*costs of proceedings and*
 19 *finis*] **civil penalties** and place licensees on probation as provided in this chapter.

20 (3) Use the gratuitous services and facilities of private organizations to receive the assistance
 21 and recommendations of such organizations in administering this chapter.

22 (4) Make its personnel and facilities available to other regulatory agencies of this state, or other
 23 bodies interested in the development and improvement of the practice of medicine or podiatry in this
 24 state, upon such terms and conditions for reimbursement as are agreed to by the board and the
 25 other agency or body.

26 (5) Appoint examiners, who need not be members of the board, and employ or contract with the
 27 American Public Health Association or the National Board of Medical Examiners or other organ-
 28 izations, agencies and persons to prepare examination questions and score examination papers.

29 (6) Determine the schools, colleges, universities, institutions and training acceptable in con-
 30 nection with licensing under this chapter. All residency, internship and other training programs
 31 carried on in this state by any hospital, institution or medical facility shall be subject to approval
 32 by the board. The board shall accept the approval by the American Osteopathic Association or the
 33 American Medical Association.

34 (7) Prescribe the time, place, method, manner, scope and subjects of examinations under this
 35 chapter.

36 (8) Prescribe all forms that it considers appropriate for the purposes of this chapter, and require
 37 the submission of photographs, fingerprints and relevant personal history data by applicants for
 38 licensure under this chapter.

39 (9) Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas
 40 in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are rea-
 41 sonably necessary to carry out its duties under this chapter.

42 **SECTION 6.** ORS 679.140 is amended to read:

43 679.140. (1) The Oregon Board of Dentistry may discipline as provided in this section any person
 44 licensed to practice dentistry in this state for any of the following causes:

45 (a) Conviction of any violation of the law for which the court could impose a punishment if the

1 board makes the finding required by ORS 670.280. The record of conviction or a certified copy
 2 thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered,
 3 is conclusive evidence of the conviction.

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

6 (c) Unprofessional conduct.

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

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

12 (f) Incapacity to practice safely.

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

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

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

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

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

20 (e) Addiction, dependency upon or self-abuse of alcohol or other drugs.

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

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

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

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

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

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

42 (a) Suspend judgment.

43 (b) Place a licensee on probation.

44 (c) Suspend a license to practice dentistry in this state.

45 (d) Revoke a license to practice dentistry in this state.

1 (e) Place limitations on a license to practice dentistry in this state.

2 (f) Refuse to renew a license to practice dentistry in this state.

3 (g) Accept the resignation of a licensee to practice dentistry in this state.

4 (h) Assess a civil penalty.

5 (i) Reprimand a licensee.

6 (j) Impose any other disciplinary action the board in its discretion finds proper[, *including as-*
 7 *essment of the costs of the disciplinary proceedings as a civil penalty*]. **The board may not require**
 8 **the payment of costs of a proceeding or other monetary penalties except as specifically au-**
 9 **thorized by law.**

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

19 (7) If a license to practice dentistry in this state is suspended, the person holding the license
 20 may not practice during the term of suspension. Upon the expiration of the term of suspension, the
 21 license shall be reinstated by the board if the board finds, based upon evidence furnished by the
 22 person, that the person is competent to practice dentistry and has not practiced dentistry in this
 23 state during the term of suspension. If the evidence fails to establish to the satisfaction of the board
 24 that the person is competent or if any evidence shows the person has practiced dentistry in this
 25 state during the term of suspension, the board may revoke the license after notice and hearing.

26 (8) Upon receipt of a complaint under this chapter or ORS 680.010 to 680.205, the board shall
 27 conduct an investigation as described under ORS 676.165.

28 (9) Information that the board obtains as part of an investigation into licensee or applicant
 29 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
 30 licensee or applicant conduct is confidential as provided under ORS 676.175. Notwithstanding ORS
 31 676.165 to 676.180, the board may disclose confidential information regarding a licensee or an ap-
 32 plicant to persons who may evaluate or treat the licensee or applicant for drug abuse, alcohol abuse
 33 or any other health related conditions.

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

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

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

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

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

45 (b) If the board receives a complaint or initiates an investigation within that four-year period,

1 the board's jurisdiction continues until the matter is concluded by a final order of the board fol-
 2 lowing any appeal.

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

5 **SECTION 7.** ORS 684.100 is amended to read:

6 684.100. (1) The State Board of Chiropractic Examiners may refuse to grant a license to any
 7 applicant or may discipline a person upon any of the following grounds:

8 (a) Fraud or misrepresentation.

9 (b) The practice of chiropractic under a false or assumed name.

10 (c) The impersonation of another practitioner of like or different name.

11 (d) A conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of
 12 conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence of
 13 the conviction.

14 (e) Commitment to a mental institution. A copy of the record of commitment, certified to by the
 15 clerk of the court entering the commitment, is conclusive evidence of the commitment.

16 (f) Habitual intemperance in the use of intoxicants or controlled substances to such an extent
 17 as to incapacitate the person from the performance of professional duties.

18 (g) Unprofessional or dishonorable conduct, including but not limited to:

19 (A) Any conduct or practice contrary to recognized standard of ethics of the chiropractic pro-
 20 fession or any conduct or practice that does or might constitute a danger to the health or safety
 21 of a patient or the public or any conduct, practice or condition that does or might impair a physi-
 22 cian's ability safely and skillfully to practice chiropractic.

23 (B) Willful ordering or performance of unnecessary laboratory tests or studies; administration
 24 of unnecessary treatment; failure to obtain consultations or perform referrals when failing to do so
 25 is not consistent with the standard of care; or otherwise ordering or performing any chiropractic
 26 service, X-ray or treatment that is contrary to recognized standards of practice of the chiropractic
 27 profession.

28 (C) Gross malpractice or repeated malpractice.

29 (h) Failing to notify the board of a change in location of practice as provided in ORS 684.054.

30 (i) Representing to a patient that a manifestly incurable condition of sickness, disease or injury
 31 can be permanently cured.

32 (j) The use of any advertising making untruthful, improper, misleading or deceptive statements.

33 (k) The advertising of techniques or modalities to infer or imply superiority of treatment or di-
 34 agnosis by the use thereof that cannot be conclusively proven to the satisfaction of the board.

35 (L) Knowingly permitting or allowing any person to use the license of the person in the practice
 36 of any system or mode of treating the sick.

37 (m) Advertising either in the name of the person or under the name of another person, clinic
 38 or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed
 39 paper or document, professing superiority to or a greater skill than that possessed by other
 40 chiropractic physicians that cannot be conclusively proven to the satisfaction of the board.

41 (n) Aiding or abetting the practice of any of the healing arts by an unlicensed person.

42 (o) The use of the name of the person under the designation, "Doctor," "Dr.," "D.C.,"
 43 "Chiropractor," "Chiropractic D.C.," "Chiropractic Physician," or "Ph.C.," or any similar desig-
 44 nation with reference to the commercial exploitation of any goods, wares or merchandise.

45 (p) The advertising or holding oneself out to treat diseases or other abnormal conditions of the

1 human body by any secret formula, method, treatment or procedure.

2 (q) Violation of any provision of this chapter or any rule adopted thereunder.

3 (r) Gross incompetency or gross negligence.

4 (s) The suspension or revocation by another state of a license to practice chiropractic, based
5 upon acts by the licensee similar to acts described in this section. A certified copy of the record
6 of suspension or revocation of the state making the suspension or revocation is conclusive evidence
7 thereof.

8 (t) Failing to give prior notice to patients of the permanent or temporary closure of the physi-
9 cian's practice or failing to give reasonable access to the records and files of the physician's pa-
10 tients at any time.

11 (u) The suspension or revocation by another licensing board in the state of a license to practice
12 as another type of health care provider.

13 (2) The board may, at any time two years or more after the refusal, revocation or cancellation
14 of registration under this section, by a majority vote, issue a license restoring to or conferring on
15 the person all the rights and privileges of the practice of chiropractic as defined and regulated by
16 this chapter. Any person to whom those rights have been restored shall pay to the board the annual
17 registration fee for the license category plus one-half thereof.

18 (3) If the board determines that a chiropractic physician's continuation in practice would con-
19 stitute a serious danger to the public, the board may suspend the license of the chiropractic physi-
20 cian without a hearing. Simultaneously with the order of suspension, the board must institute
21 proceedings for a hearing provided under this section and the suspension may continue unless
22 injunctive relief is obtained from a court of competent jurisdiction showing just cause or undue
23 burden under the circumstances existing.

24 (4) If a physician refuses a written request for an informal interview with the board, the board
25 shall have grounds to suspend or revoke the license of a physician pursuant to this section.

26 (5) Prior to or following an informal interview as described in this section, the board may re-
27 quest any Oregon licensed chiropractic physician in good standing to assist the board in preparing
28 for or conducting any professional competency examination as the board may deem appropriate.

29 (6) Notwithstanding any other provisions of ORS 684.010, 684.040, 684.050, 684.090, 684.100,
30 684.112, 684.130, 684.150 and 684.155, the board may at any time direct and order a professional
31 competency examination limited to the area of practice out of which a specific complaint has arisen
32 and make an investigation, including the taking of depositions or otherwise in order to fully inform
33 itself with respect to the performance or conduct of a physician licensed under ORS 684.010, 684.040,
34 684.050, 684.090, 684.100, 684.112, 684.130, 684.150 and 684.155.

35 (7) If the board has reasonable cause to believe that any chiropractic physician is or may be
36 unable to practice with reasonable skill and safety to patients, the board may cause a competency
37 examination of that physician for purposes of determining the physician's fitness to practice
38 chiropractic with reasonable skill and safety to patients.

39 (8) Refusal by any person to take or appear for a competency examination scheduled by the
40 board shall constitute grounds for disciplinary action.

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

43 (a) Suspend judgment.

44 (b) Place the person on probation.

45 (c) Suspend the license of the person to practice chiropractic in this state.

1 (d) Revoke the license of the person to practice chiropractic in this state.

2 (e) Place limitations on the license of the person to practice chiropractic in this state.

3 (f) Impose a civil penalty not to exceed \$10,000.

4 (g) Take other disciplinary action as the board in its discretion finds proper[, *including assess-*
 5 *ment of the costs of the disciplinary proceedings*]. **The board may not require the payment of costs**
 6 **of a proceeding or other monetary penalties except as specifically authorized by law.**

7 (10)(a) Any information that the board obtains pursuant to ORS 684.100, 684.112 and 684.155 (8)
 8 is confidential as provided under ORS 676.175.

9 (b) Any person who reports or provides information to the board under ORS 684.090, 684.100,
 10 684.112, 684.150 and 684.155 and who provides information in good faith shall not be subject to an
 11 action for civil damages as a result thereof.

12 **SECTION 8.** ORS 684.155 is amended to read:

13 684.155. In addition to any other powers granted by this chapter, the State Board of Chiropractic
 14 Examiners may:

15 (1) Adopt necessary and proper rules:

16 (a) Establishing standards and tests to determine the moral, intellectual, educational, scientific,
 17 technical and professional qualifications of applicants for licenses to practice in this state.

18 (b) To enforce the provisions of this chapter and to exercise general supervision over the prac-
 19 tice of chiropractic within this state.

20 (c)(A) To establish standards and procedures to certify ancillary personnel as qualified to pro-
 21 vide physiotherapy, electrotherapy or hydrotherapy under the direction of a chiropractic physician,
 22 and to establish continuing education requirements as a condition of maintaining such certification.

23 (B) As used in this paragraph, “ancillary personnel” means a chiropractic physician’s staff per-
 24 sonnel who are directed or designated, by spoken or written words or other means, to follow and
 25 carry out the chiropractic physician’s orders or directions.

26 (2) Issue, deny, suspend and revoke licenses and limited licenses, assess [*costs of proceedings*]
 27 **civil penalties** and place persons on probation as provided in this chapter.

28 (3) Without the necessity of prior administrative proceedings or hearing and entry of an order
 29 or at any time during such proceedings if they have been commenced, institute proceedings to enjoin
 30 the practice of any person operating in violation of this chapter.

31 (4) Make its personnel and facilities available to other regulatory agencies of this state, or other
 32 bodies interested in the development and improvement of the practice of chiropractic in this state,
 33 upon such terms and conditions for reimbursement as are agreed to by the board and the other
 34 agency or body.

35 (5) Determine the chiropractic schools, colleges and institutions and the training acceptable in
 36 connection with licensing under this chapter and approve residency, internship and other training
 37 programs carried on by chiropractic schools, colleges or institutions or chiropractic facilities.

38 (6) Prescribe the time, place, method, manner, scope and subjects of examinations under this
 39 chapter.

40 (7) Prescribe all forms that it considers appropriate for the purposes of this chapter, and require
 41 the submission of photographs, fingerprints and relevant personal history data by applicants for li-
 42 censes to practice chiropractic in this state.

43 (8) Subject to ORS 684.150, administer oaths, issue notices and subpoenas in the name of the
 44 board, enforce subpoenas in the manner authorized by ORS 183.440, hold hearings and perform such
 45 other acts as are reasonably necessary to carry out its duties under this chapter.

1 (9) Establish specialty certificate requirements within the practice of chiropractic, adopt rules
 2 applicable to specialty certification and require specialty certification for chiropractic physicians
 3 engaging in practices identified by the board as requiring specialty certification.

4 **SECTION 9.** ORS 686.150 is amended to read:

5 686.150. If, pursuant to ORS 686.120 and 686.135, the Oregon State Veterinary Medical Examin-
 6 ing Board determines that disciplinary action is necessary, the board may take any or all of the
 7 following actions:

- 8 (1) Revoke, suspend or refuse to renew the license;
- 9 (2) Place the person on probation;
- 10 (3) Suspend execution of an order of the board;
- 11 (4) Place limitations on an individual's license or permit to practice veterinary medicine in
 12 Oregon;
- 13 (5) Issue a reprimand [*or assess to the individual the costs of the disciplinary proceedings*];
- 14 (6) Require board-approved community services; or
- 15 (7) Impose a civil penalty not to exceed \$1,000 for each violation.

16 **SECTION 10.** ORS 687.081 is amended to read:

17 687.081. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend,
 18 revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on
 19 probation if the licensee:

- 20 (a) Has violated any provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the
 21 board adopted under ORS 687.121.
- 22 (b) Has made any false representation or statement to the board in order to induce or prevent
 23 action by the board.
- 24 (c) Has a physical or mental condition that makes the licensee unable to conduct safely the
 25 practice of massage.
- 26 (d) Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of
 27 habit-forming drugs or controlled substances.
- 28 (e) Has misrepresented to any patron any services rendered.
- 29 (f) Has been convicted of a crime that bears a demonstrable relationship to the practice of
 30 massage.
- 31 (g) Fails to meet with any requirement under ORS 687.051.
- 32 (h) Violates any provision of ORS 167.002 to 167.027.
- 33 (i) Engages in unprofessional or dishonorable conduct.
- 34 (j) Has been the subject of disciplinary action as a massage therapist by any other state or
 35 territory of the United States or by a foreign country and the board determines that the cause of
 36 the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or
 37 rules of the board if it occurred in this state.

38 (2) If the board places a licensee on probation pursuant to subsection (1) of this section, the
 39 board may impose and at any time modify the following conditions of probation:

- 40 (a) Limitation on the allowed scope of practice.
- 41 (b) If the board finds that the licensee is physically or mentally impaired, a requirement for
 42 successful completion of appropriate treatment as determined by the board.
- 43 (c) Individual or peer supervision.
- 44 (d) Such other conditions as the board may deem necessary for the protection of the public and
 45 the rehabilitation of the licensee.

1 (3) If the board determines that a licensee's continued practice constitutes a serious danger to
 2 the public, the board may impose an emergency suspension of the license without a hearing. Si-
 3 multaneous with the order of suspension, the board shall institute proceedings for a hearing as
 4 provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless
 5 and until the licensee obtains injunctive relief from a court of competent jurisdiction or the board
 6 determines that the suspension is no longer necessary for the protection of the public.

7 (4) In addition to the discipline described in subsection (1) of this section, the board may impose
 8 a civil penalty as provided under ORS 687.250. Civil penalties under this subsection shall be imposed
 9 pursuant to ORS 183.745.

10 (5) Prior to imposing any of the sanctions authorized under this section, the board shall con-
 11 sider, but is not limited to, the following factors:

12 (a) The person's past history in observing the provisions of ORS 687.011 to 687.250, 687.895 and
 13 687.991 and the rules adopted pursuant thereto;

14 (b) The effect of the violation on public safety and welfare;

15 (c) The degree to which the action subject to sanction violates professional ethics and standards
 16 of practice;

17 (d) The economic and financial condition of the person subject to sanction; and

18 (e) Any mitigating factors that the board may choose to consider.

19 *[(6) In addition to the sanctions authorized by this section, the board may assess against a licensee*
 20 *the costs associated with the disciplinary action taken against the licensee.]*

21 *[(7)]* (6) The board shall adopt a code of ethical standards for practitioners of massage and shall
 22 take appropriate measures to ensure that all applicants and practitioners of massage are aware of
 23 those standards.

24 *[(8)]* (7) Upon receipt of a complaint under ORS 687.011 to 687.250, 687.895 and 687.991, the
 25 board shall conduct an investigation as described under ORS 676.165.

26 *[(9)]* (8) Information that the board obtains as part of an investigation into licensee or applicant
 27 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
 28 licensee or applicant conduct is confidential as provided under ORS 676.175.

29 **SECTION 11.** ORS 97.948 is amended to read:

30 97.948. (1) The Director of the Department of Consumer and Business Services may discipline
 31 as provided in this section any certified provider or master trustee, or person acting as a certified
 32 provider or master trustee without a certification or registration, who has been found by an audit
 33 or examination conducted by the director:

34 (a) To be in violation of one or more of the provisions of ORS 97.923 to 97.949;

35 (b) To be insolvent because the certified provider's or master trustee's liabilities exceed the
 36 certified provider's or master trustee's assets;

37 (c) The certified provider or master trustee cannot meet obligations as they come due; or

38 (d) The certified provider or master trustee is in such financial condition that the certified
 39 provider or master trustee cannot adequately protect the interests of the certified provider's or
 40 master trustee's customers.

41 (2) In disciplining a certified provider, master trustee or person acting as a certified provider
 42 or master trustee without a certification or registration as authorized by subsection (1) of this sec-
 43 tion, the director may take any or all of the following actions:

44 (a) Impose probation.

45 (b) Suspend the certificate or registration.

1 (c) Revoke the certificate or registration.

2 (d) Place limitations on the certificate or registration.

3 (e) Refuse to issue or renew a certificate or registration.

4 (f) Take such other disciplinary action as the director in the director's discretion finds proper,
5 including *[assessment of the costs of the investigation and disciplinary proceedings and]* assessment
6 of a civil penalty not to exceed \$10,000 per violation. **The director may not require the payment
7 of costs of a proceeding or other monetary penalties except as specifically authorized by law.**

8 (3) If the certificate or registration of a certified provider or master trustee is suspended under
9 this section, the holder of the certificate or registration may not engage in the activities allowed
10 by the certificate or registration during the term of suspension. Upon the expiration of the term of
11 suspension, the director shall reinstate the certificate or registration if the conditions for which the
12 certificate or registration was suspended no longer exist.

13 (4) The director shall enter each case of disciplinary action on the records of the Department
14 of Consumer and Business Services.

15 (5) Civil penalties under this section may be imposed as provided in ORS 183.745.

16 (6) If the director takes disciplinary action under this section, the director may send a notice
17 of the action to the State Mortuary and Cemetery Board and to the Attorney General.

18 **SECTION 12.** ORS 677.205 is amended to read:

19 677.205. (1) The Board of Medical Examiners for the State of Oregon may discipline as provided
20 in this section any person licensed, registered or certified under this chapter who has:

21 (a) Admitted the facts of a complaint filed in accordance with ORS 677.200 (1) alleging facts
22 which establish that such person is in violation of one or more of the grounds for suspension or
23 revocation of a license as set forth in ORS 677.190;

24 (b) Been found to be in violation of one or more of the grounds for disciplinary action of a
25 licensee as set forth in this chapter; or

26 (c) Had an automatic license suspension as provided in ORS 677.225.

27 (2) In disciplining a licensee as authorized by subsection (1) of this section, the board may use
28 any or all of the following methods:

29 (a) Suspend judgment.

30 (b) Place the licensee on probation.

31 (c) Suspend the license.

32 (d) Revoke the license.

33 (e) Place limitations on the license.

34 (f) Take such other disciplinary action as the board in its discretion finds proper, including
35 *[assessment of the costs of the disciplinary proceedings as a civil penalty or]* assessment of a civil
36 penalty not to exceed \$5,000^[, or both]. **The board may not require the payment of costs of a
37 proceeding or other monetary penalties except as specifically authorized by law.**

38 (3) In addition to the action authorized by subsection (2) of this section, the board may tempo-
39 rarily suspend a license without a hearing, simultaneously with the commencement of proceedings
40 under ORS 677.200 if the board finds that evidence in its possession indicates that a continuation
41 in practice of the licensee constitutes an immediate danger to the public.

42 (4) If the board places any licensee on probation as set forth in subsection (2)(b) of this section,
43 the board may determine, and may at any time modify, the conditions of the probation and may in-
44 clude among them any reasonable condition for the purpose of protection of the public or for the
45 purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation,

1 further proceedings shall be abated if the licensee has complied with the terms of the probation.

2 (5) If a license issued under this chapter is suspended, the holder of the license may not practice
 3 during the term of suspension. Upon the expiration of the term of suspension, the license shall be
 4 reinstated by the board if the conditions for which the license was suspended no longer exist.

5 (6) The board shall enter each case of disciplinary action on its records.

6 (7) Civil penalties under this section shall be imposed as provided in ORS 183.745.

7 **SECTION 13.** ORS 682.224 is amended to read:

8 682.224. (1) The Department of Human Services may discipline, as provided in this section, an
 9 ambulance service or any person certified as an emergency medical technician or first responder in
 10 this state who has:

11 (a) Admitted the facts of a complaint which alleges facts which establish that such person is
 12 guilty of violation of one or more of the grounds for suspension or revocation of a certificate as set
 13 forth in ORS 682.220 or that an ambulance service has violated the provisions of this chapter or the
 14 rules adopted thereunder.

15 (b) Been found guilty in accordance with ORS chapter 183 of violation of one or more of the
 16 grounds for suspension or revocation of certification as set forth in ORS 682.220 or that an ambu-
 17 lance service has violated the provisions of this chapter or the rules adopted thereunder.

18 (2) The purpose of disciplining an EMT under this section is to ensure that the EMT will pro-
 19 vide services that are consistent with the obligations of this chapter. Prior to taking final discipli-
 20 nary action, the department shall determine if the EMT has been disciplined for the questioned
 21 conduct by the EMT's employer or supervising physician. The department shall consider any such
 22 discipline or any other corrective action in deciding whether additional discipline or corrective
 23 action by the department is appropriate.

24 (3) In disciplining an EMT or ambulance service as authorized by subsection (1) of this section,
 25 the department may use any or all of the following methods:

26 (a) Suspend judgment.

27 (b) Issue a letter of reprimand.

28 (c) Issue a letter of instruction.

29 (d) Place the EMT or ambulance service on probation.

30 (e) Suspend the EMT certificate or ambulance service license.

31 (f) Revoke the EMT certificate or ambulance service license.

32 (g) Place limitations on the certificate of the EMT to practice emergency or nonemergency care
 33 in this state or place limitations on the license of the ambulance service.

34 (h) Take such other disciplinary action as the department in its discretion finds proper, includ-
 35 ing *[assessment of the costs of the disciplinary proceedings as a civil penalty or]* assessment of a civil
 36 penalty not to exceed \$5,000[, *or both*]. **The department may not require the payment of costs
 37 of a proceeding or other monetary penalties except as specifically authorized by law.**

38 (4) In addition to the action authorized by subsection (3) of this section, the department may
 39 temporarily suspend a certificate or license without a hearing, simultaneously with the commence-
 40 ment of proceedings under ORS chapter 183 if the department finds that evidence in its possession
 41 indicates that a continuation in practice of the EMT or operation of the ambulance service consti-
 42 tutes an immediate danger to the public.

43 (5) If the department places any EMT or ambulance service on probation as set forth in sub-
 44 section (3)(d) of this section, the department may determine, and may at any time modify, the con-
 45 ditions of the probation and may include among them any reasonable condition for the purpose of

1 protection of the public and for the purpose of the rehabilitation of the EMT or ambulance service,
 2 or both. Upon expiration of the term of probation, further proceedings shall be abated if the EMT
 3 or ambulance service has complied with the terms of the probation.

4 (6) If an EMT certified in this state is suspended, the holder of the certificate may not practice
 5 during the term of suspension.

6 (7) If an ambulance service licensed in this state is suspended, the ambulance service may not
 7 operate in this state during the term of the suspension, provided that the department shall condition
 8 such suspension upon such arrangements as may be necessary to assure the continued availability
 9 of ambulance service in the area served by that ambulance service. Upon expiration of the term of
 10 suspension, the certificate or license shall be reinstated by the department if the conditions for
 11 which the certificate or license was suspended no longer exist.

12 (8) Whenever an EMT certificate or ambulance service license is denied or revoked for any
 13 cause, the department may, in its discretion, after the lapse of two years from the date of such re-
 14 vocation, upon written application by the person formerly certified or licensed and after a hearing,
 15 issue or restore the EMT certificate or ambulance service license.

16 (9) Civil penalties under this section shall be imposed as provided in ORS 183.745.

17 **SECTION 14.** ORS 688.660 is amended to read:

18 688.660. (1) The Department of Human Services may discipline a person certified as a
 19 hemodialysis technician who has:

20 (a) Admitted the facts of a complaint alleging the person is guilty of violation of one or more
 21 of the grounds for suspension or revocation of a certificate as set forth in ORS 688.655.

22 (b) Been found guilty in accordance with ORS chapter 183 of violation of one or more of the
 23 grounds for suspension or revocation of certification as set forth in ORS 688.655.

24 (2) In disciplining a technician, the department may use any or all of the following methods:

25 (a) Suspend judgment.

26 (b) Place the technician on probation.

27 (c) Suspend the technician's certificate.

28 (d) Revoke the technician's certificate.

29 (e) Place limitations on the ability of the technician to practice hemodialysis in this state.

30 (f) Take such other disciplinary action as the department in its discretion finds proper, including
 31 *[assessment of the costs of the disciplinary proceedings, not to exceed \$1,000, as a civil penalty or]* as-
 32 *assessment of a civil penalty not to exceed \$1,000. **The department may not require the payment***
 33 ***of costs of a proceeding or other monetary penalties except as specifically authorized by law.***

34 (3) In addition to the action authorized by subsection (2) of this section, the department may
 35 temporarily suspend a certificate or license without a hearing, simultaneously with the commence-
 36 ment of proceedings under ORS chapter 183, if the department finds that evidence in its possession
 37 indicates that a continuation in practice of the technician constitutes an immediate danger to the
 38 public.

39 (4) If the department places a technician on probation, the department may determine, and may
 40 at any time modify, the conditions of the probation and may include among them any reasonable
 41 condition for the purpose of protection of the public and for the purpose of the rehabilitation of the
 42 technician. Upon expiration of the term of probation, further proceedings shall be abated if the
 43 technician has complied with the terms of the probation.

44 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

45 **SECTION 15.** The amendments to ORS 97.948, 673.730, 675.595, 675.745, 676.992, 677.205,

1 **677.265, 679.140, 682.224, 684.100, 684.155, 686.150, 687.081 and 688.660 by sections 1 to 14 of this**
2 **2005 Act apply only to disciplinary proceedings for which notice is served under ORS 183.415**
3 **on or after the effective date of this 2005 Act.**

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