

Enrolled
Senate Bill 460

Sponsored by Senators DEVLIN, B STARR; Senators BATES, GEORGE, KRUSE, MONNES
ANDERSON, Representatives BARNHART, DALTO, FARR, GALIZIO, GARRARD, SHIELDS

CHAPTER

AN ACT

Relating to clinical nurse specialists; creating new provisions; and amending ORS 339.870, 676.340, 676.345, 678.370, 678.372, 678.385, 678.390, 678.410 and 689.765.

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

SECTION 1. ORS 339.870 is amended to read:

339.870. (1) A school administrator, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the administration of nonprescription medication, if the school administrator, teacher or other school employee in good faith administers nonprescription medication to a pupil pursuant to written permission and instructions of the pupil's parents or guardian.

(2) A school administrator, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the administration of prescription medication, if the school administrator, teacher or other school employee in compliance with the instructions of a physician, physician assistant, [or] nurse practitioner **or clinical nurse specialist**, in good faith administers prescription medication to a pupil pursuant to written permission and instructions of the pupil's parents or guardian.

(3) The civil and criminal immunities imposed by subsections (1) and (2) of this section do not apply to an act or omission amounting to gross negligence or willful and wanton misconduct.

SECTION 2. ORS 676.340 is amended to read:

676.340. (1) Notwithstanding any other provision of law, a health practitioner described in subsection (7) of this section who has registered under ORS 676.345 and who provides health care services without compensation is not liable for any injury, death or other loss arising out of the provision of those services, unless the injury, death or other loss results from the gross negligence of the health practitioner.

(2) A health practitioner may claim the limitation on liability provided by this section only if the patient receiving health care services, or a person who has authority under law to make health care decisions for the patient, signs a statement that notifies the patient that the health care services are provided without compensation and that the health practitioner may be held liable for death, injury or other loss only to the extent provided by this section. The statement required under this subsection must be signed before the health care services are provided.

(3) A health practitioner may claim the limitation on liability provided by this section only if the health practitioner obtains the patient's informed consent for the health care services before providing the services, or receives the informed consent of a person who has authority under law to make health care decisions for the patient.

(4) A health practitioner provides health care services without compensation for the purposes of subsection (1) of this section even though the practitioner requires payment of laboratory fees, testing services and other out-of-pocket expenses.

(5) A health practitioner provides health care services without compensation for the purposes of subsection (1) of this section even though the practitioner provides services at a health clinic that receives compensation from the patient, as long as the health practitioner does not personally receive compensation for the services.

(6) In any civil action in which a health practitioner prevails based on the limitation on liability provided by this section, the court shall award all reasonable attorney fees incurred by the health practitioner in defending the action.

(7) This section applies only to:

(a) A physician licensed under ORS 677.100 to 677.228;

(b) A nurse licensed under ORS 678.040 to 678.101;

(c) A nurse practitioner licensed under ORS 678.375 to 678.390;

(d) A clinical nurse specialist certified under ORS 678.370 and 678.372;

[(d)] (e) A physician assistant licensed under ORS 677.505 to 677.525;

[(e)] (f) A dental hygienist licensed under ORS 680.010 to 680.205; and

[(f)] (g) A dentist licensed under ORS 679.060 to 679.180.

SECTION 3. ORS 676.345 is amended to read:

676.345. (1) A health practitioner described in ORS 676.340 (7) may claim the liability limitation provided by ORS 676.340 only if the health practitioner has registered with a health professional regulatory board in the manner provided by this section. Registration under this section must be made:

(a) By a physician or physician assistant, with the Board of Medical Examiners;

(b) By a nurse, [or] nurse practitioner **or clinical nurse specialist**, with the Oregon State Board of Nursing; and

(c) By a dentist or dental hygienist, with the Oregon Board of Dentistry.

(2) The health professional regulatory boards listed in subsection (1) of this section shall establish a registration program for the health practitioners who provide health care services without compensation and who wish to be subject to the liability limitation provided by ORS 676.340. All health practitioners registering under the program must provide the health professional regulatory board with:

(a) A statement that the health practitioner will provide health care services to patients without compensation, except for reimbursement for laboratory fees, testing services and other out-of-pocket expenses;

(b) A statement that the health practitioner will provide the notice required by ORS 676.340 (2) in the manner provided by ORS 676.340 (2) before providing the services; and

(c) A statement that the health practitioner will only provide health care services without compensation that are within the scope of the health practitioner's license.

(3) Registration under this section must be made annually. The health professional regulatory boards listed in subsection (1) of this section shall charge no fee for registration under this section.

SECTION 4. ORS 678.370 is amended to read:

678.370. (1) The Oregon State Board of Nursing shall issue a certification to act as a clinical nurse specialist to any nurse who meets the requirements established by the board pursuant to ORS 678.372.

(2) A person may not act as a clinical nurse specialist, use the name, title, designation, initial or abbreviation of clinical nurse specialist or otherwise hold oneself out as a clinical nurse specialist unless the person is certified as a clinical nurse specialist pursuant to subsection (1) of this section.

(3) A certified clinical nurse specialist is authorized to prescribe drugs for the use of and administration to other persons if approval has been given under ORS 678.390. The authority

to prescribe and dispense prescription drugs shall be included within the scope of practice of certified clinical nurse specialists as defined by rules of the board subject to ORS 678.385.

SECTION 5. ORS 678.372 is amended to read:

678.372. The Oregon State Board of Nursing shall adopt rules to implement ORS 678.370, including but not limited to rules establishing:

(1) Procedures and requirements for initial issuance and continuation of certification to act as a clinical nurse specialist, including but not limited to educational requirements;

(2) The scope of practice of clinical nurse specialists, **including the authority to prescribe and dispense prescription drugs after approval of an application to do so by the board;**

(3) **Educational requirements for clinical nurse specialists applying for prescriptive authority that include but are not limited to:**

(a) **At least 45 contact hours in pharmacology; and**

(b) **Clinical education in patient management, including pharmacotherapeutics, that is comparable to the requirements for completion of a nurse practitioner program;**

[3] (4) The amount of any fees necessary for issuance of the [certification] **initial certification, renewal of certification, initial application for prescriptive authority and renewal of application for prescriptive authority;** and

[4] (5) Such other rules as may be necessary to implement and administer ORS 678.370.

SECTION 6. ORS 678.390 is amended to read:

678.390. (1) The Oregon State Board of Nursing may grant to a certified nurse practitioner **or certified clinical nurse specialist** the privilege of writing prescriptions described in the formulary under ORS 678.385.

(2) A certified nurse practitioner **or certified clinical nurse specialist** may submit an application to the Oregon State Board of Nursing to dispense prescription drugs. The Oregon State Board of Nursing shall provide immediate notice to the State Board of Pharmacy upon receipt and upon approval of an application from a certified nurse practitioner **or certified clinical nurse specialist** for authority to dispense prescription drugs to the patients of the applicant.

(3) An application for the authority to dispense prescription drugs as authorized under subsection (1) of this section must include:

(a) Evidence of completion of a prescription drug dispensing training program jointly developed and adopted by rule by the Oregon State Board of Nursing and the State Board of Pharmacy.

(b) Demonstration of a lack of readily available access to pharmacy services in the practice area of the applicant and that the lack of access would be corrected by granting authority to dispense prescription drugs by the applicant. Lack of readily available access to pharmacy services for patients may be established by evidence:

(A) That the patients of the applicant are located:

(i) Outside the boundaries of a metropolitan statistical area;

(ii) Thirty or more highway miles from the closest hospital within the major population center in a metropolitan statistical area; or

(iii) In a county with a population of less than 75,000; or

(B) Of financial barrier to access, including but not limited to receiving services from a health care safety net clinic or eligibility for participation in a patient assistance program of a pharmaceutical company.

(c) Any other information required by the Oregon State Board of Nursing.

(4) The Oregon State Board of Nursing shall adopt rules requiring:

(a) Drugs dispensed by certified nurse practitioners **and certified clinical nurse specialists** to be in the formulary established under ORS 678.385 and be either prepackaged by a manufacturer registered with the State Board of Pharmacy or repackaged by a pharmacist licensed by the State Board of Pharmacy under ORS chapter 689;

(b) Labeling requirements for drugs dispensed by certified nurse practitioners **and certified clinical nurse specialists** that are the same as labeling requirements required of pharmacies licensed under ORS chapter 689;

(c) Record keeping requirements for prescriptions and drug dispensing by a certified nurse practitioner **and a certified clinical nurse specialist** that are the same as the record keeping requirements required of pharmacies licensed under ORS chapter 689;

(d) A dispensing certified nurse practitioner **and a dispensing certified clinical nurse specialist** to have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications; and

(e) A dispensing certified nurse practitioner **and a dispensing certified clinical nurse specialist** to allow representatives of the State Board of Pharmacy, upon receipt of a complaint, to inspect a dispensing site after prior notice to the Oregon State Board of Nursing.

(5) The Oregon State Board of Nursing has sole disciplinary authority regarding certified nurse practitioners **and certified clinical nurse specialists** who have drug dispensing authority.

(6) The privilege of writing prescriptions and dispensing drugs may be denied, suspended or revoked by the Oregon State Board of Nursing upon proof that the privilege has been abused. The procedure shall be a contested case under ORS chapter 183. Disciplinary action under this subsection is grounds for discipline of the nurse practitioner **or certified clinical nurse specialist** in the same manner as a licensee may be disciplined under ORS 678.111.

SECTION 7. ORS 678.385 is amended to read:

678.385. The Oregon State Board of Nursing by rule shall determine the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375 **or a clinical nurse specialist acting under ORS 678.370 and 678.372**, including controlled substances listed in schedules II, III, III N, IV and V. The board shall revise the formulary periodically.

SECTION 8. The Oregon State Board of Nursing shall report to the Seventy-fourth Legislative Assembly in the manner provided in ORS 192.245 on the results of the implementation of drug prescribing and dispensing authority for certified clinical nurse specialists provided for by the amendments to ORS 678.390 by section 6 of this 2005 Act. The report must include, but is not limited to, the number of applications submitted to and the number of applications approved by the board.

SECTION 9. ORS 689.765 is amended to read:

689.765. (1) No drugs shall be dispensed to the public by means of automatic vending machines.

(2) As used in this section, "automatic vending machine" means any mechanical device or contrivance whereby the purchaser is able to secure drugs.

(3) No person shall adulterate for the purpose of sale any drug in such manner as to render it injurious to health, or knowingly sell or offer for sale any adulterated drug.

(4) No person shall manufacture, compound or sell or offer for sale or cause to be manufactured, compounded, sold or offered for sale any drug, compound or preparation for internal or external use under or by a name recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia or National Formulary which differs from the standard of strength and purity specified therein as official at the time of manufacture, compounding, sale or offering for sale.

(5) No person shall manufacture, compound, sell or offer for sale, or cause to be manufactured, sold or offered for sale, any drug, the strength and purity of which falls below the professed standard of strength and purity under which it is sold.

(6) No person shall sell, give away, barter, dispense, distribute, buy, receive or possess any prescription drug except as authorized by law.

(7) No manufacturer or wholesaler shall sell or otherwise distribute, or offer to sell or otherwise distribute, any drug or device except to a person legally authorized to resell, dispense or otherwise redistribute such drug or device. The board may grant an exemption from the requirement of this subsection in the form of a special permit if the board finds that an exemption is in the best interest of the public health and safety.

(8) Any practitioner who receives any complimentary samples of any controlled substance, as defined in ORS 475.005, shall keep the samples in a securely locked, substantially constructed cabi-

net and shall maintain a record of receipts and withdrawals from each inventory of samples. The record requirements shall be specified by rule of the licensing board that has jurisdiction over the practitioner's license. The licensing board may inspect the records and the inventory of samples.

(9)(a) No person may sell, purchase or trade or offer to sell, purchase or trade any drug sample.

(b) As used in paragraph (a) of this subsection, "drug sample" means a unit of a drug, subject to this chapter, that is not intended to be sold and is intended to promote the sale of the drug, and includes a coupon or other form which may be redeemed for a drug.

(10) For purposes of this section and ORS 678.375, distribution of prepackaged complimentary samples of medications by a nurse practitioner **or clinical nurse specialist** with prescription writing authority shall not constitute dispensing when the sample medication is within the established formulary for that **nurse practitioner or clinical nurse specialist**.

SECTION 10. ORS 678.410 is amended to read:

678.410. (1) The Oregon State Board of Nursing may impose fees for the following:

- (a) License renewal.
- (b) Examination.
- (c) License by indorsement.
- (d) Limited license.
- (e) Examination proctor service.
- (f) Duplicate license.
- (g) Extension of limited license.
- (h) Nurse practitioner certificate.
- (i) Reexamination for licensure.
- (j) Delinquent fee.
- (k) Renewal fee nurse practitioner.
- (L) Verification of a license of a nurse applying for license by indorsement in another state.
- (m) Certified nurse practitioner's initial application and registration for writing prescriptions.
- (n) Renewal of certified nurse practitioner's application for writing prescriptions.
- (o) Approval of training program for nursing assistants.
- (p) Issuance, renewal and delinquency of a nursing assistant certificate.
- (q) Voluntary monitoring program for chemical dependency or an emotional or physical problem.
- (r) Clinical nurse specialist certification established pursuant to ORS 678.370.
- (s) Clinical nurse specialist's initial application for prescriptive authority.**
- (t) Renewal of clinical nurse specialist's application for prescriptive authority.**
- [(s)] **(u)** Inactive license or certificate.
- [(t)] **(v)** Retired license or certificate.

(2) Fees are nonrefundable.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board. If federal or other funds are available to offset costs of administering the program, fees shall be established based on net costs to the state but not to exceed \$40 per biennium for the certification fee under subsection (1)(p) of this section.

Passed by Senate March 10, 2005

Repassed by Senate June 20, 2005

.....
Secretary of Senate

.....
President of Senate

Passed by House June 13, 2005

.....
Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State