



LC 528
83317-004

9/7/10 (MNJ/ps)

D R A F T

SUMMARY

Removes requirement that health professional regulatory board investigate all complaints received by board.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to health professional regulatory board investigations; creating new provisions; amending ORS 675.085, 675.335, 675.785, 676.165, 676.608, 678.126, 679.140, 681.495, 682.220, 683.325, 684.185, 685.205, 686.170, 687.081, 688.525, 689.405, 691.580, 692.180 and 692.230; and declaring an emergency.

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

SECTION 1. ORS 676.165 is amended to read:

676.165. (1) When a health professional regulatory board or the Oregon Health Licensing Agency receives a complaint by any person against a licensee, applicant or other person alleged to be practicing in violation of law, the board or agency [*shall*] **may** assign one or more persons to act as investigator of the complaint.

(2) **If an investigator is assigned**, the investigator shall collect evidence and interview witnesses and shall make a report to the board or agency. The investigator [*shall have*] **has** all investigatory powers possessed by the board or agency.

(3) The report to the board or agency [*shall*] **must** describe the evidence gathered, the results of witness interviews and any other information considered in preparing the report of the investigator. The investigator shall consider, and include in the report, any disciplinary history with the board

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 or agency of the licensee, applicant or other person alleged to be practicing
2 in violation of law.

3 (4) The investigator shall make the report to the board or agency not
4 later than 120 days after the board or agency receives the complaint. How-
5 ever, the board or agency may extend the time for making the report by up
6 to 30 days for just cause. The board or agency may grant more than one
7 extension of time.

8 (5) Investigatory information obtained by an investigator and the report
9 issued by the investigator [*shall be*] **are** exempt from public disclosure.

10 (6) When a health professional regulatory board reviews the investigatory
11 information and report, the public members of the board must be actively
12 involved.

13 **SECTION 2.** ORS 675.085 is amended to read:

14 675.085. (1) Upon receipt of a complaint under ORS 675.010 to 675.150, the
15 State Board of Psychologist Examiners [*shall*] **may** conduct an investigation
16 [*as described under*]. **The investigation must be conducted as provided**
17 **in ORS 676.165.**

18 (2) Where the board proposes to refuse to issue a license or to impose any
19 disciplinary action under ORS 675.070, opportunity for hearing shall be ac-
20 corded as provided in ORS chapter 183. The board shall render its decision
21 within 30 days after the hearing.

22 (3) Adoption of rules, conduct of hearings, issuance of orders and judicial
23 review of rules and orders shall be as provided in ORS chapter 183.

24 **SECTION 3.** ORS 675.335 is amended to read:

25 675.335. (1) Upon the complaint of any citizen of this state, or upon its
26 own motion, the Occupational Therapy Licensing Board may investigate any
27 alleged violation of ORS 675.210 to 675.340. [*The board shall conduct an in-*
28 *vestigation as described under*] **The investigation must be conducted as**
29 **provided in ORS 676.165.**

30 (2) In the conduct of investigations, the board may:

31 (a) Take evidence;

1 (b) Take the depositions of witnesses, including the person charged, in the
2 manner provided by law in civil cases;

3 (c) Compel the appearance of witnesses, including the person charged,
4 before the board in person the same as in civil cases;

5 (d) Require answers to interrogatories; and

6 (e) Compel the production of books, papers, accounts, documents and tes-
7 timony pertaining to the matter under investigation.

8 (3) In exercising its authority under subsection (2) of this section, the
9 board may issue subpoenas over the signature of the board chairperson and
10 the seal of the board in the name of the State of Oregon.

11 **SECTION 4.** ORS 675.785 is amended to read:

12 675.785. The Oregon Board of Licensed Professional Counselors and
13 Therapists has the following powers:

14 (1) In accordance with the applicable provisions of ORS chapter 183, the
15 board shall adopt rules necessary for the administration of the laws the
16 board is charged with administering.

17 (2) Subject to any applicable provisions of the State Personnel Relations
18 Law, the board may appoint, prescribe the duties and fix the compensation
19 of employees of the board necessary to carry out the duties of the board.

20 (3) The board may impose nonrefundable fees in an amount set by rule for
21 the following:

22 (a) License application.

23 (b) First issuance of a license.

24 (c) Renewal of a license.

25 (d) Late filing of a license renewal.

26 (e) Renewal of registration as an intern.

27 (f) Examinations. Examination fees shall not exceed the costs incurred in
28 administering the particular examination. Fees established under this sub-
29 section are subject to prior approval of the Oregon Department of Adminis-
30 trative Services and a report to the Emergency Board prior to adopting the
31 fees and shall be within the budget authorized by the Legislative Assembly

1 as that budget may be modified by the Emergency Board.

2 (4) The board shall:

3 (a) Maintain a register of all current licensed professional counselors and
4 marriage and family therapists.

5 (b) Annually publish a directory listing all current licensed professional
6 counselors and marriage and family therapists. The directory shall be avail-
7 able to the public, for which the board may collect a publication fee.

8 (5) The board shall:

9 (a) Investigate alleged violations of the provisions of ORS 675.715 to
10 675.835 or rules adopted under authority of the board.

11 (b) Establish procedures to review the complaints of clients of licensees
12 of the board. [*Upon receipt of a complaint under ORS 675.715 to 675.835*
13 *against any licensed or unlicensed person, the board shall conduct an investi-*
14 *gation as described under*] **Any investigation conducted as a result of a**
15 **complaint must be conducted as provided in ORS 676.165.**

16 (6) The board shall report to the Legislative Assembly concerning the
17 activities of the board during the preceding biennium.

18 (7) The board shall form standards committees to establish, examine and
19 pass on the qualifications of applicants to practice professional counseling
20 or marriage and family therapy in this state. The standards committee for
21 professional counselors shall be made up of the professional counselors on
22 the board, the faculty member and the public member. The standards com-
23 mittee for marriage and family therapists shall be made up of the marriage
24 and family members of the board, the faculty member and the public member.

25 (8) The board shall grant licenses to applicants who qualify to practice
26 professional counseling or marriage and family therapy in this state upon
27 compliance with ORS 675.715 to 675.835 and the rules of the board.

28 (9) The board may administer oaths, take depositions, defray legal ex-
29 penses and issue subpoenas to compel the attendance of witnesses and the
30 production of documents or written information necessary to carry out ORS
31 675.715 to 675.835.

1 (10) The board may adopt a seal to be affixed to all licenses.

2 (11) The board shall adopt a code of ethics for licensees. The board may
3 use the ethical codes of professional counseling and marriage and family
4 therapy associations as models for the code established by the board.

5 (12) The board may set academic and training standards necessary under
6 ORS 675.715 to 675.835, including, but not limited to, the adoption of rules
7 to establish semester hour equivalents for qualification for licensing where
8 quarter hours are required under ORS 675.715 to 675.835.

9 (13) The board shall require the applicant for a professional counselor
10 license or a marriage and family therapy license to receive a passing score
11 on an examination of competency in counseling or marriage and family
12 therapy. The examination may be the examination given nationally to certify
13 counselors, or in the case of marriage and family therapy, the examination
14 approved by the Association of Marital and Family Therapy Regulatory
15 Boards.

16 (14) The standards committee shall establish standards and requirements
17 for continuing education and supervision, as appropriate.

18 (15) For the purpose of requesting a state or nationwide criminal records
19 check under ORS 181.534, the board may require the fingerprints of a person
20 who is:

21 (a) Applying for a license that is issued by the board;

22 (b) Applying for renewal of a license that is issued by the board; or

23 (c) Under investigation by the board.

24 **SECTION 5.** ORS 676.608 is amended to read:

25 676.608. (1) As used in this section:

26 (a) "Holder" means a person who holds a certificate, license, permit or
27 registration to practice issued by the Oregon Health Licensing Agency.

28 (b) "Public entity" has the meaning given that term in ORS 676.177.

29 (2)(a) The agency shall carry out all investigatory duties.

30 (b) Upon its own motion, the agency may initiate and conduct investi-
31 gations of matters relating to the practice of occupations or professions

1 subject to the authority of the boards, councils and programs listed in ORS
2 676.606.

3 (b) When the agency receives a complaint by any person against a holder,
4 the agency [*shall*] **may** investigate the complaint. **The investigation must**
5 **be conducted** as provided in ORS 676.165.

6 (3) While conducting an investigation authorized under subsection (2) of
7 this section or a hearing related to an investigation, the agency may:

8 (a) Take evidence;

9 (b) Administer oaths;

10 (c) Take the depositions of witnesses, including the person charged;

11 (d) Compel the appearance of witnesses, including the person charged;

12 (e) Require answers to interrogatories;

13 (f) Compel the production of books, papers, accounts, documents and tes-
14 timony pertaining to the matter under investigation; and

15 (g) Conduct criminal and civil background checks to determine conviction
16 of a crime that bears a demonstrable relationship to the field of practice.

17 (4) In exercising its authority under this section, the agency may issue
18 subpoenas over the signature of the Director of the Oregon Health Licensing
19 Agency or designated employee thereof and in the name of the State of
20 Oregon.

21 (5) If a person fails to comply with a subpoena issued under this section,
22 the judge of the Circuit Court for Marion County may compel obedience by
23 initiating proceedings for contempt as in the case of disobedience of the re-
24 quirements of a subpoena issued from the court.

25 (6) If necessary, the director, or an employee designated by the director,
26 may appear before a magistrate empowered to issue warrants in criminal
27 cases to request that the magistrate issue a warrant. The magistrate shall
28 issue a warrant, directing it to any sheriff or deputy or police officer, to
29 enter the described property, to remove any person or obstacle, to defend any
30 threatened violence to the director or a designee of the director or an officer,
31 upon entering private property, or to assist the director in enforcing the

1 agency's authority in any way.

2 (7) In all investigations and hearings, the agency and any person affected
3 thereby may have the benefit of counsel.

4 (8) If a holder who is the subject of a complaint or an investigation is to
5 appear before the agency, the agency shall provide the holder with a current
6 summary of the complaint or the matter being investigated not less than 10
7 days before the date that the holder is to appear. At the time the summary
8 of the complaint or the matter being investigated is provided, the agency
9 shall provide the holder with a current summary of documents or alleged
10 facts that the agency has acquired as a result of the investigation. The name
11 of the complainant may be withheld from the holder.

12 (9) A holder who is the subject of an investigation, and any person acting
13 on behalf of the holder, may not contact the complainant until the holder
14 has requested a contested case hearing and the agency has authorized the
15 taking of the complainant's deposition pursuant to ORS 183.425.

16 (10) Except in an investigation or proceeding conducted by the agency or
17 another public entity, or in an action, suit or proceeding in which a public
18 entity is a party, a holder may not be questioned or examined regarding any
19 communication with the agency made in an appearance before the agency
20 as part of an investigation.

21 (11) This section does not prohibit examination or questioning of a holder
22 regarding records about the holder's care and treatment of a patient or affect
23 the admissibility of those records.

24 **SECTION 6.** ORS 678.126 is amended to read:

25 678.126. (1) Any information that the Oregon State Board of Nursing ob-
26 tains pursuant to ORS 678.021, 678.111, 678.113, 678.123, 678.135 or 678.442 is
27 confidential as provided under ORS 676.175.

28 (2) Upon receipt of a complaint under ORS 678.010 to 678.410 or 678.442,
29 the Oregon State Board of Nursing [*shall*] **may** conduct an investigation
30 [*as described under*]. **The investigation must be conducted as provided**
31 **in** ORS 676.165.

1 (3) Any person, facility, licensee or association that reports or provides
2 information to the board under ORS 678.021, 678.111, 678.113, 678.123, 678.135
3 or 678.442 in good faith shall not be subject to an action for civil damages
4 as a result thereof.

5 **SECTION 7.** ORS 679.140 is amended to read:

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

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

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

16 (c) Unprofessional conduct.

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

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

24 (f) Incapacity to practice safely.

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

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

28 (b) Willfully betraying confidences involved in the patient-dentist re-
29 lationship.

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

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

3 (e) Impairment as defined in ORS 676.303.

4 (f) Obtaining or attempting to obtain a controlled substance in any man-
5 ner proscribed by the rules of the board.

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

8 (h) Disciplinary action by a state licensing or regulatory agency of this
9 or another state regarding a license to practice dentistry, dental hygiene or
10 any other health care profession when, in the judgment of the board, the act
11 or conduct resulting in the disciplinary action bears a demonstrable re-
12 lationship to the ability of the licensee or applicant to practice dentistry or
13 dental hygiene in accordance with the provisions of this chapter. A certified
14 copy of the record of the disciplinary action is conclusive evidence of the
15 disciplinary action.

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

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

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

30 (a) Suspend judgment.

31 (b) Place a licensee on probation.

- 1 (c) Suspend a license to practice dentistry in this state.
 - 2 (d) Revoke a license to practice dentistry in this state.
 - 3 (e) Place limitations on a license to practice dentistry in this state.
 - 4 (f) Refuse to renew a license to practice dentistry in this state.
 - 5 (g) Accept the resignation of a licensee to practice dentistry in this state.
 - 6 (h) Assess a civil penalty.
 - 7 (i) Reprimand a licensee.
 - 8 (j) Impose any other disciplinary action the board in its discretion finds
9 proper, including assessment of the costs of the disciplinary proceedings as
10 a civil penalty.
- 11 (6) If the board places any person upon probation as set forth in sub-
12 section (5)(b) of this section, the board may determine and may at any time
13 modify the conditions of the probation and may include among them any
14 reasonable condition for the purpose of protection of the public and for the
15 purpose of the rehabilitation of the probationer or both. Upon expiration of
16 the term of probation, further proceedings shall be abated by the board if the
17 person holding the license furnishes the board with evidence that the person
18 is competent to practice dentistry and has complied with the terms of pro-
19 bation. If the evidence fails to establish competence to the satisfaction of the
20 board or if the evidence shows failure to comply with the terms of the pro-
21 bation, the board may revoke or suspend the license.
- 22 (7) If a license to practice dentistry in this state is suspended, the person
23 holding the license may not practice during the term of suspension. Upon the
24 expiration of the term of suspension, the license shall be reinstated by the
25 board if the board finds, based upon evidence furnished by the person, that
26 the person is competent to practice dentistry and has not practiced dentistry
27 in this state during the term of suspension. If the evidence fails to establish
28 to the satisfaction of the board that the person is competent or if any evi-
29 dence shows the person has practiced dentistry in this state during the term
30 of suspension, the board may revoke the license after notice and hearing.
- 31 (8) Upon receipt of a complaint under this chapter or ORS 680.010 to

1 680.205, the board [*shall*] **may** conduct an investigation [*as described*
2 *under*]. **The investigation must be conducted as provided in** ORS 676.165.

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

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

15 (11) Notwithstanding the expiration, suspension, revocation or surrender
16 of the license, or the resignation or retirement of the licensee, the board
17 may:

18 (a) Proceed with any investigation of, or any action or disciplinary pro-
19 ceedings against, the dentist or dental hygienist; or

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

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

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

28 (13) Withdrawing the application for license does not close any investi-
29 gation, action or proceeding against an applicant.

30 **SECTION 8.** ORS 681.495 is amended to read:

31 681.495. Upon receipt of a complaint under this chapter, the State Board

1 of Examiners for Speech-Language Pathology and Audiology [*shall*] **may**
 2 conduct an investigation [*as described under*]. **The investigation must be**
 3 **conducted as provided in ORS 676.165.**

4 **SECTION 9.** ORS 682.220 is amended to read:

5 682.220. (1) The Oregon Health Authority may deny, suspend or revoke
 6 licenses for ambulances and ambulance services in accordance with the pro-
 7 visions of ORS chapter 183 for a failure to comply with any of the require-
 8 ments of ORS 820.350 to 820.380 and this chapter or the rules adopted
 9 thereunder.

10 (2) The certification of an emergency medical technician may be denied,
 11 suspended or revoked in accordance with the provisions of ORS chapter 183
 12 for any of the following reasons:

13 (a) A failure to have completed successfully an authority approved course.

14 (b) In the case of provisional certifications, failure to have completed
 15 successfully an authority approved course.

16 (c) Failure to meet or continue to meet the physical and mental quali-
 17 fications required to be certified under ORS 682.208.

18 (d) The use of fraud or deception in receiving a certificate.

19 (e) Practicing skills beyond the scope of practice established by the
 20 Oregon Medical Board under ORS 682.245.

21 (f) Rendering emergency or nonemergency care under an assumed name.

22 (g) The impersonation of another EMT.

23 (h) Unprofessional conduct.

24 (i) Obtaining a fee by fraud or misrepresentation.

25 (j) Habitual or excessive use of intoxicants or drugs.

26 (k) The presence of a mental disorder that demonstrably affects an EMT's
 27 performance, as certified by two psychiatrists retained by the authority.

28 (L) Subject to ORS 670.280, conviction of any criminal offense that rea-
 29 sonably raises questions about the ability of the EMT to perform the duties
 30 of an EMT in accordance with the standards established by this chapter. A
 31 copy of the record of conviction, certified to by the clerk of the court en-

1 tering the conviction, shall be conclusive evidence of the conviction.

2 (m) Suspension or revocation of an emergency medical technician certif-
3 icate issued by another state:

4 (A) For a reason that would permit the authority to suspend or revoke a
5 certificate issued under this chapter; and

6 (B) Evidenced by a certified copy of the order of suspension or revocation.

7 (n) Gross negligence or repeated negligence in rendering emergency med-
8 ical assistance.

9 (o) Rendering emergency or nonemergency care without being certified
10 except as provided in ORS 30.800.

11 (p) Rendering emergency or nonemergency care as an EMT without writ-
12 ten authorization and standing orders from a supervising physician who has
13 been approved by the board in accordance with ORS 682.245.

14 (q) Refusing an invitation for an interview with the authority as specified
15 in this section.

16 (3)(a) The authority may investigate any evidence that appears to show
17 that an EMT certified by the authority is or may be medically incompetent,
18 guilty of unprofessional or dishonorable conduct or mentally or physically
19 unable to safely function as an EMT. The authority may investigate the
20 off-duty conduct of an EMT to the extent that such conduct may reasonably
21 raise questions about the ability of the EMT to perform the duties of an
22 EMT in accordance with the standards established by this chapter.

23 (b) Upon receipt of a complaint about an EMT or applicant, the authority
24 [*shall*] **may** conduct an investigation [*as described under*]. **Any investi-**
25 **gation conducted as a result of a complaint must be conducted as**
26 **provided in ORS 676.165.** [*An investigation shall be conducted in accordance*
27 *with ORS 676.175.*]

28 (4)(a) Unless state or federal laws relating to confidentiality or the pro-
29 tection of health information prohibit disclosure, any health care facility li-
30 censed under ORS 441.015 to 441.087 and 441.820, any medical or osteopathic
31 physician licensed under ORS chapter 677, any owner of an ambulance li-

1 censed under this chapter or any EMT certified under this chapter shall re-
2 port to the authority any information the person may have that appears to
3 show that an EMT is or may be medically incompetent, guilty of unprofes-
4 sional or dishonorable conduct or mentally or physically unable to safely
5 function as an EMT.

6 (b) Unless state or federal laws relating to confidentiality or the pro-
7 tection of health information prohibit disclosure, an EMT certified under
8 this chapter who has reasonable cause to believe that a licensee of another
9 board has engaged in prohibited conduct as defined in ORS 676.150 shall re-
10 port the prohibited conduct in the manner provided in ORS 676.150.

11 (5) If, in the opinion of the authority, it appears that the information
12 provided to it under provisions of this section is or may be true, the au-
13 thority may request an interview with the EMT. At the time the authority
14 requests an interview, the EMT shall be provided with a general statement
15 of the issue or issues of concern to the authority. The request shall include
16 a statement of the procedural safeguards available to the EMT, including the
17 right to end the interview on request, the right to have counsel present and
18 the following statement: "Any action proposed by the Oregon Health Au-
19 thority shall provide for a contested case hearing."

20 (6) Information regarding an ambulance service provided to the authority
21 pursuant to this section is confidential and shall not be subject to public
22 disclosure, nor shall it be admissible as evidence in any judicial proceeding.
23 Information that the authority obtains as part of an investigation into
24 emergency medical technician or applicant conduct or as part of a contested
25 case proceeding, consent order or stipulated agreement involving emergency
26 medical technician or applicant conduct is confidential as provided under
27 ORS 676.175. Information regarding an ambulance service does not become
28 confidential due to its use in a disciplinary proceeding against an emergency
29 medical technician.

30 (7) Any person who reports or provides information to the authority under
31 this section and who provides information in good faith shall not be subject

1 to an action for civil damage as a result thereof.

2 (8) In conducting an investigation under subsection (3) of this section, the
3 authority may:

4 (a) Take evidence;

5 (b) Take depositions of witnesses, including the person under investi-
6 gation, in the manner provided by law in civil cases;

7 (c) Compel the appearance of witnesses, including the person under in-
8 vestigation, in the manner provided by law in civil cases;

9 (d) Require answers to interrogatories; and

10 (e) Compel the production of books, papers, accounts, documents and tes-
11 timony pertaining to the matter under investigation.

12 (9) The authority may issue subpoenas to compel compliance with the
13 provisions of subsection (8) of this section. If any person fails to comply with
14 a subpoena issued under this subsection, or refuses to testify on matters on
15 which the person may lawfully be interrogated, a court may compel obedi-
16 ence as provided in ORS 183.440.

17 **SECTION 10.** ORS 683.325 is amended to read:

18 683.325. (1)(a) [*Upon the complaint of any citizen of this state, or*] Upon its
19 own motion, the Oregon Board of Optometry may investigate any alleged
20 violation of ORS 683.010 to 683.340.

21 **(b) Upon receipt of a complaint under ORS 683.010 to 683.340, the**
22 **board may conduct an investigation. Any investigation conducted as**
23 **a result of a complaint must be conducted as provided in ORS 676.165.**

24 (2) In the conduct of investigations, the board may:

25 (a) Take evidence;

26 (b) Take the depositions of witnesses, including the person charged, in the
27 manner provided by law in civil cases;

28 (c) Compel the appearance of witnesses, including the person charged,
29 before the board in person the same as in civil cases;

30 (d) Require answers to interrogatories; and

31 (e) Compel the production of books, papers, accounts, documents and tes-

1 timony pertaining to the matter under investigation.

2 (3) In exercising its authority under subsection (2) of this section, the
3 board may issue subpoenas over the signature of the board chairperson and
4 the seal of the board in the name of the State of Oregon.

5 [(4) Upon receipt of a complaint under ORS 683.010 to 683.340, the board
6 shall conduct an investigation as described under ORS 676.165.]

7 **SECTION 11.** ORS 684.185 is amended to read:

8 684.185. (1) The State Board of Chiropractic Examiners shall appoint and
9 form peer review committees. The peer review committee shall evaluate
10 complaints against chiropractic physicians that are referred to it by the
11 board and report to the board regarding those complaints.

12 (2) The members of a peer review committee shall be appointed from
13 among those in the profession who are in active practice with five or more
14 years of practice representing various geographic areas in this state. Mem-
15 bers shall be representative of affiliated and nonaffiliated chiropractic phy-
16 sicians and representative of various aspects of the practice of chiropractic.
17 To be appointed a member must receive at least four votes from members of
18 the state board. Members shall serve three-year terms. No member may serve
19 more than two consecutive terms.

20 (3) The peer review process shall be governed by rules of the state board
21 adopted pursuant to ORS chapter 183. The state board shall provide appro-
22 priate training for members of peer review committees.

23 (4) Members of a peer review committee acting pursuant to this section
24 are agents of the state board and are subject to provisions of ORS 30.260 to
25 30.300.

26 (5) Peer review shall not be used to replace independent medical exam-
27 inations.

28 (6) Upon receipt of a complaint under this chapter, the peer review com-
29 mittee [*shall*] **may** conduct an investigation [*as described under*]. **The in-**
30 **vestigation must be conducted as provided in ORS 676.165.**

31 (7) Any information provided to a peer review committee in the perform-

1 ance of its duties is confidential and shall not be subject to public disclosure
2 or admissible as evidence in any judicial proceeding, except that as a part
3 of a peer review report, this information may be disclosed to the state board
4 and the person being reviewed who may then use the information in any
5 disciplinary or court proceeding brought by the board. Peer review commit-
6 tee information that becomes part of the record of a board investigation into
7 licensee or applicant conduct or part of a contested case proceeding, consent
8 order or stipulated agreement involving licensee or applicant conduct is
9 confidential as provided under ORS 676.175.

10 (8) Any person who reports or provides information to a peer review
11 committee in the performance of its duties and who provides information in
12 good faith shall not be subject to an action for civil damages as a result
13 thereof.

14 **SECTION 12.** ORS 685.205 is amended to read:

15 685.205. (1) The Oregon Board of Naturopathic Medicine shall appoint a
16 peer review committee consisting of five members. The peer review commit-
17 tee shall evaluate complaints against naturopathic physicians which are re-
18 ferred to it by the board, and make recommendations to the board regarding
19 those complaints. The board exercises ultimate authority and control over
20 all complaints considered by the committee, approving or disapproving the
21 recommendations of the committee.

22 (2) The members of a peer review committee shall be appointed from
23 among those in the profession who are in active practice with five or more
24 years of practice experience. Members must be representative of affiliated
25 and nonaffiliated naturopathic physicians and representative of various as-
26 pects of the practice of naturopathic medicine. To be appointed a member
27 must receive at least four votes from members of the state board. Members
28 shall each serve two-year terms. No member may serve more than two con-
29 secutive terms.

30 (3) The peer review process shall be governed by rules of the board
31 adopted pursuant to ORS chapter 183. The board shall provide appropriate

1 training for members of peer review committees. The board by rule shall
2 provide for a program of active supervision by the board over the conduct
3 of the peer review committee to determine whether it comports with state
4 regulatory policy and to correct abuses, if any.

5 (4) Members of a peer review committee acting pursuant to this section
6 are agents of the board for purposes of ORS 30.260 to 30.300.

7 (5) Peer review may not be used to replace independent medical exam-
8 inations.

9 (6) Any information provided to a peer review committee in the perform-
10 ance of its duties is confidential and is not subject to public disclosure or
11 admissible as evidence in any judicial proceeding, except that as a part of
12 a peer review report, this information may be disclosed to the board and the
13 person being reviewed.

14 (7) Any person who reports or provides information to a peer review
15 committee in the performance of its duties and who provides information in
16 good faith is not subject to an action for civil damages as a result thereof.

17 (8) Upon receipt of a complaint under this chapter, the peer review com-
18 mittee [*shall*] **may** conduct an investigation [*as described under*]. **The in-**
19 **vestigation must be conducted as provided in ORS 676.165.**

20 **SECTION 13.** ORS 686.170 is amended to read:

21 686.170. (1) The Oregon State Veterinary Medical Examining Board is
22 authorized to appoint a committee of not less than three licensed, practicing
23 veterinarians to investigate any charge made accusing any person of violat-
24 ing any of the provisions of this chapter, and to report to the board any facts
25 concerning the charge, together with any recommendations the committee
26 sees fit to make. No member of the committee shall reside in the same ter-
27 ritory served by the accused person. The expenses of the committee shall be
28 paid out of the Oregon State Veterinary Medical Examining Board Account
29 established in ORS 686.246.

30 (2) Upon receipt of a complaint under this chapter, the board and any
31 committee [*shall*] **may** conduct an investigation [*as described under*]. **The**

1 investigation must be conducted as provided in ORS 676.165.

2 **SECTION 14.** ORS 687.081 is amended to read:

3 687.081. (1) The State Board of Massage Therapists may discipline a
4 licensee, deny, suspend, revoke or refuse to renew a license, issue a
5 reprimand, censure a licensee or place a licensee on probation if the licensee:

6 (a) Has violated any provision of ORS 687.011 to 687.250, 687.895 and
7 687.991 or any rule of the board adopted under ORS 687.121.

8 (b) Has made any false representation or statement to the board in order
9 to induce or prevent action by the board.

10 (c) Has a physical or mental condition that makes the licensee unable to
11 conduct safely the practice of massage.

12 (d) Is habitually intemperate in the use of alcoholic beverages or is ad-
13 dicted to the use of habit-forming drugs or controlled substances.

14 (e) Has misrepresented to any patron any services rendered.

15 (f) Has been convicted of a crime that bears a demonstrable relationship
16 to the practice of massage.

17 (g) Fails to meet with any requirement under ORS 687.051.

18 (h) Violates any provision of ORS 167.002 to 167.027.

19 (i) Engages in unprofessional or dishonorable conduct.

20 (j) Has been the subject of disciplinary action as a massage therapist by
21 any other state or territory of the United States or by a foreign country and
22 the board determines that the cause of the disciplinary action would be a
23 violation under ORS 687.011 to 687.250, 687.895 and 687.991 or rules of the
24 board if it occurred in this state.

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

28 (a) Limitation on the allowed scope of practice.

29 (b) Referral to the impaired health professional program established under
30 ORS 676.190.

31 (c) Individual or peer supervision.

1 (d) Such other conditions as the board may consider necessary for the
2 protection of the public and the rehabilitation of the licensee.

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

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

14 (5) Prior to imposing any of the sanctions authorized under this section,
15 the board shall consider, but is not limited to, the following factors:

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

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

19 (c) The degree to which the action subject to sanction violates profes-
20 sional ethics and standards of practice;

21 (d) The economic and financial condition of the person subject to sanc-
22 tion; and

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

24 (6) In addition to the sanctions authorized by this section, the board may
25 assess against a licensee the costs associated with the disciplinary action
26 taken against the licensee.

27 (7) The board shall adopt a code of ethical standards for practitioners of
28 massage and shall take appropriate measures to ensure that all applicants
29 and practitioners of massage are aware of those standards.

30 (8) Upon receipt of a complaint under ORS 687.011 to 687.250, 687.895 and
31 687.991, the board [*shall*] **may** conduct an investigation [*as described*

1 *under*]. **The investigation must be conducted as provided in ORS 676.165.**

2 (9) Information that the board obtains as part of an investigation into
3 licensee or applicant conduct or as part of a contested case proceeding,
4 consent order or stipulated agreement involving licensee or applicant con-
5 duct is confidential as provided under ORS 676.175.

6 **SECTION 15.** ORS 688.525 is amended to read:

7 688.525. (1) The Board of Medical Imaging, after notice of and hearing as
8 required under the contested case procedures of ORS chapter 183, may refuse
9 to issue a license or permit to any applicant, may refuse to renew the license
10 of any medical imaging licensee or the permit of a limited X-ray machine
11 operator or may suspend or revoke the license or permit of a person who:

12 (a) Has been disciplined by a credentialing organization or a licensing
13 board in this state or in another state, territory of the United States or na-
14 tion for acts by the holder of a license or a permit that are similar to acts
15 described in this subsection. A certified copy of the order of discipline con-
16 stitutes conclusive evidence of the discipline.

17 (b) Has an impairment as defined in ORS 676.303.

18 (c) In the judgment of the board is guilty of unethical or unprofessional
19 conduct in the practice of a medical imaging modality or as a limited X-ray
20 machine operator.

21 (d) Has been convicted of any crime that bears a demonstrable relation-
22 ship to the practice of a medical imaging modality or as a limited X-ray
23 machine operator, or otherwise reflects adversely on fitness to practice.

24 (e) In the judgment of the board, has acted with gross negligence in the
25 practice of a medical imaging modality or as a limited X-ray machine oper-
26 ator.

27 (f) Has undertaken to act as a medical imaging licensee or a limited X-ray
28 machine operator independently of the supervision of a licensed physician.

29 (g) Has obtained or attempted to obtain a license or permit under ORS
30 688.405 to 688.605 by fraud or material misrepresentation.

31 (2) Upon receipt of a complaint under ORS 688.405 to 688.605, the board

1 [shall] may conduct an investigation [as described under]. The investi-
2 gation must be conducted as provided in ORS 676.165.

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

7 **SECTION 16.** ORS 689.405 is amended to read:

8 689.405. (1) The State Board of Pharmacy may refuse to issue or renew,
9 or may suspend, revoke or restrict the license of any person or the certificate
10 of registration of any drug outlet upon one or more of the following grounds:

11 (a) Unprofessional conduct as that term is defined by the rules of the
12 board.

13 (b) Repeated or gross negligence.

14 (c) Incapacity of a nature that prevents a person from engaging in the
15 activity for which the person is licensed with reasonable skill, competence
16 and safety to the public.

17 (d) Impairment as defined in ORS 676.303.

18 (e) Being found guilty by the board of a violation of subparagraph (B) of
19 this paragraph, or by a court of competent jurisdiction of one or more of the
20 following:

21 (A) A felony, as defined by the laws of this state; or

22 (B) Violations of the pharmacy or drug laws of this state or rules per-
23 taining thereto, or of statutes, rules or regulations of any other state, or of
24 the federal government.

25 (f) Fraud or intentional misrepresentation by a licensee or registrant in
26 securing or attempting to secure the issuance or renewal of a license.

27 (g) Engaging or aiding and abetting an individual to engage in the prac-
28 tice of pharmacy without a license, or falsely using the title of pharmacist.

29 (h) Aiding and abetting an individual in performing the duties of a phar-
30 macy technician without licensing.

31 (i) Being found by the board to be in violation of any of the provisions

1 of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805, 475.840
2 to 475.980 or this chapter or rules adopted pursuant to ORS 435.010 to
3 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805, 475.840 to 475.980 and this
4 chapter.

5 (j) Disciplinary action by another state regarding a license, based upon
6 acts by the licensee similar to acts described in this subsection. A certified
7 copy of the record of disciplinary action of the state taking the disciplinary
8 action is conclusive evidence thereof.

9 (2) Upon receipt of a complaint under this chapter, the board [*shall*] **may**
10 conduct an investigation [*as described under*]. **The investigation must be**
11 **conducted as provided in ORS 676.165.**

12 (3) Actions taken under subsection (1) of this section shall be considered
13 a contested case under ORS chapter 183.

14 **SECTION 17.** ORS 691.580 is amended to read:

15 691.580. Upon receipt of a complaint under ORS 691.405 to 691.585, the
16 Board of Examiners of Licensed Dietitians [*shall*] **may** conduct an investi-
17 gation [*as described under*]. **The investigation must be conducted as**
18 **provided in ORS 676.165.**

19 **SECTION 18.** ORS 692.180 is amended to read:

20 692.180. (1) Upon complaint or upon its own motion, the State Mortuary
21 and Cemetery Board may investigate a complaint made by any person or by
22 the board. **Any investigation conducted as a result of a complaint must**
23 **be conducted as provided in ORS 676.165.** If the board finds any of the
24 causes described in this section in regard to any person, licensee or applicant
25 or the holder of a certificate of authority, the board may impose a civil
26 penalty of not more than \$1,000 for each violation, suspend or revoke a li-
27 cense to practice or to operate under this chapter or refuse to grant or renew
28 a license. The causes are as follows:

29 (a) Misrepresentation in the conduct of business or in obtaining a license.

30 (b) Fraudulent or dishonest conduct, when the conduct bears a demon-
31 strable relationship to funeral service practice, embalming practice or the

1 operation of cemeteries, crematoriums or other facilities for final disposition
2 of human remains.

3 (c) Except as provided in this paragraph, solicitation of human remains
4 by the licensee or any agent, assistant or employee of the licensee, either
5 before or after death. This paragraph does not apply to:

6 (A) Activities permissible under ORS 97.923 to 97.949; or

7 (B) The sale, in accordance with provisions of the Insurance Code, of
8 prearranged funeral or cemetery merchandise or services, or any combination
9 thereof, to be funded by the contemporaneous or subsequent assignment of
10 a life insurance policy or an annuity contract.

11 (d) Offensive treatment of dead human bodies or evidence that a body in
12 the person's custody has been disposed of in violation of ORS chapter 432
13 or rules adopted pursuant thereto.

14 (e) Aiding or abetting a person who is not a licensee or an apprentice in
15 any act involving the disposition of dead human bodies before the bodies
16 undergo final disposition or before the bodies are transported out of the
17 State of Oregon.

18 (f) Sale or reuse of any casket or body container that has been previously
19 utilized for the placement of a deceased human body. This does not include
20 use of a rental cover as defined in ORS 692.010.

21 (g) Violation of any of the provisions of this chapter or any rules adopted
22 under this chapter.

23 (h) Violation of any provision of ORS 97.929 or 97.937 or regulations
24 adopted by the Federal Trade Commission regulating funeral industry prac-
25 tices.

26 (i) Conviction of a crime, when the crime bears a demonstrable relation-
27 ship to funeral service practice, embalming practice, death care consultant
28 practice or the operation of cemeteries, crematoriums or other facilities for
29 final disposition of human remains. A certified copy of the conviction is
30 conclusive evidence of the conviction.

31 (j) Violation of ORS chapter 97 as it relates to disposition of human

1 bodies and to cemeteries.

2 (k) Refusing to surrender promptly the custody of a dead human body,
3 upon the express order of the person lawfully entitled to the custody of the
4 body.

5 (L) Acting as the legal representative of any deceased person for whom
6 the licensee has rendered services governed by this chapter. This subsection
7 does not prohibit a licensee from acting as the legal representative of a de-
8 ceased relative or a deceased licensee if the deceased licensee was a partner,
9 employee or employer in the licensee's practice.

10 (m) Failure to pay any civil penalty imposed by the board within 10 days
11 after the order is entered or, if appealed, within 10 days after the order is
12 sustained on appeal.

13 (n) Impairment as defined in ORS 676.303.

14 (2) All amounts recovered under this section shall be deposited in the
15 State Mortuary and Cemetery Board Account established under ORS 692.375.

16 (3) Civil penalties under this section shall be imposed as provided in ORS
17 183.745.

18 *[(4) Upon receipt of a complaint, the board shall conduct an investigation*
19 *as described under ORS 676.165.]*

20 *[(5)]* (4) Information that the board obtains as part of an investigation
21 into licensee or applicant conduct or as part of a contested case proceeding,
22 consent order or stipulated agreement involving licensee or applicant con-
23 duct is confidential as provided under ORS 676.175.

24 **SECTION 19.** ORS 692.230 is amended to read:

25 692.230. (1) The State Mortuary and Cemetery Board may suspend or re-
26 voke a certificate of apprenticeship, after notice and upon hearing, if the
27 board finds any of the causes specified in ORS 692.180 in regard to the ap-
28 prentice.

29 (2) An apprentice who has had a certificate of apprenticeship suspended
30 or revoked may apply for reregistration within one year after the suspension
31 or revocation, but the board shall not allow more than two reregistrations.

1 When the circumstances warrant, the board may allow an apprentice credit
2 under a reregistration for time actually served under a previous registration.
3 However, if the previous registration has been suspended or revoked under
4 subsection (1) of this section, the board shall not credit on the registration
5 more than 75 percent of the time previously served.

6 (3) Upon receipt of a complaint, the board [*shall*] **may** conduct an inves-
7 tigation [*as described under*]. **The investigation must be conducted as**
8 **provided in ORS 676.165.**

9 (4) Information that the board obtains as part of an investigation into
10 licensee or applicant conduct or as part of a contested case proceeding,
11 consent order or stipulated agreement involving licensee or applicant con-
12 duct is confidential as provided under ORS 676.175.

13 **SECTION 20. The amendments to ORS 675.085, 675.335, 675.785,**
14 **676.165, 676.608, 678.126, 679.140, 681.495, 682.220, 683.325, 684.185, 685.205,**
15 **686.170, 687.081, 688.525, 689.405, 691.580, 692.180 and 692.230 by sections**
16 **1 to 19 of this 2011 Act apply to complaints received by a health pro-**
17 **fessional regulatory board or the Oregon Health Licensing Agency on**
18 **or after the effective date of this 2011 Act.**

19 **SECTION 21. This 2011 Act being necessary for the immediate**
20 **preservation of the public peace, health and safety, an emergency is**
21 **declared to exist, and this 2011 Act takes effect on its passage.**

22
