

Oregon Board of Massage Therapists



The Massage Board Rules Book

Oregon Revised Statute Chapter 687
Massage Therapists, 2009 Edition

Oregon Revised Statute Chapter 676
Health Professions Generally, 2009 Edition

Oregon Administrative Rules Chapter 334
January 1, 2012

Other Related Statutes
2009 Edition

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Chapter 687

2009 EDITION

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GENERALLY

687.010 [Repealed by 1955 c.492 §15]

687.011 Definitions. As used in ORS 687.011 to 687.250, 687.895 and 687.991:

(1) “Board” means the State Board of Massage Therapists.

(2) “Certified class” means a class that is approved by the board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450;

(b) By a community college and approved by the State Board of Education; or

(c) In another state and licensed or approved by the appropriate agency in that state.

(3) “Fraud or misrepresentation” means knowingly giving misinformation or a false impression through the intentional misstatement of, concealment of or failure to make known a material fact or by other means.

(4) “Manual” means the use of the hands or the feet, or both, or any part of the body in the performance of massage.

(5) “Massage” or “massage therapy” means the use on the human body of pressure, friction, stroking, tapping or kneading, vibration or stretching by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps and external baths, and with or without lubricants such as salts, powders, liquids or creams for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.

(6) “Massage therapist” means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

(7) “Practice of massage” means the performance of massage:

(a) For purposes other than sexual contact, as defined in ORS 167.002 (5); and

(b) For compensation.

(8) “Preceptor” means a licensed massage therapist who contracts with an approved school or program of massage to provide direct on-site clinical supervision of a massage student enrolled in a certified class.

(9) “Supervision” means:

(a) The process of overseeing and directing the training of massage students as set forth in rules of the board;

(b) The process of overseeing and directing a licensee being disciplined by the board; or

(c) Voluntary consultation with, and education of, less experienced licensed massage therapists or practitioners in related fields.

(10) “Treatment” means the selection, application and practice of massage or massage therapy essential to the effective execution and management of a plan of care.

(11) “Unprofessional or dishonorable conduct” means a behavior, practice or condition that is contrary to the ethical standards adopted by the board. [1955 c.492 §1; 1977 c.507 §1; 1979 c.89 §1; 1985 c.82 §1; 1987 c.158 §144; 1989 c.841 §1; 1993 c.45 §295; 1995 c.343 §60; 1997 c.626 §2; 1999 c.39 §9; 1999 c.537 §5]

687.020 [Repealed by 1955 c.492 §15]

687.021 Practice of massage without license prohibited; injunction against violation.

(1) No person shall engage in or purport to be in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists.

(2) It is unlawful to advertise by printed publication or otherwise:

(a) The giving of massage treatments in this state by a person not licensed under ORS 687.011 to 687.250, 687.895 and 687.991; or

(b) The use of “massage” in the business name unless the person providing the massage is licensed under ORS 687.011 to 687.250, 687.895 and 687.991.

(3) The Attorney General, the prosecuting attorney of any county or the board, in its own name, may maintain an action for an injunction against any person violating this section. An injunction may be issued without proof of actual damage sustained by any person. An injunction does not relieve a person from criminal prosecution for violation of this section or from any other civil, criminal or disciplinary remedy. [1955 c.492 §2; 1971 c.650 §36; 1977 c.507 §2; 1979 c.89 §2; 1985 c.82 §2; 1989 c.841 §2; 1997 c.626 §3; 1999 c.537 §6]

687.030 [Amended by 1953 c.438 §2; repealed by 1955 c.492 §15]

687.031 Application of ORS 687.011 to 687.250, 687.895 and 687.991. (1) ORS 687.011 to 687.250, 687.895 and 687.991 do not apply to:

(a) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person.

(b) Trainers of any amateur, semiprofessional or professional athlete or athletic team.

(c) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions.

(d) Massage practiced at the athletic department of any school or college.

(e) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor if:

(A) Any charge for the massage does not exceed the cost incurred in providing the massage; and

(B) The student is not compensated.

(f) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage

school premises or program sites, under the supervision of an approved instructor or preceptor, if:

(A) The student is clearly identified as a student to any member of the public receiving massage services; and

(B) The student is not compensated.

(g) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign country and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:

(A) Presenting educational or clinical programs, lectures, seminars or workshops;

(B) Furnishing massage services during an emergency as part of a disaster response team; or

(C) Consulting with a massage therapist licensed in this state regarding massage practices or services.

(h) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling.

(i) Practitioners of reflexology who do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of reflexology through the application of pressure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the body into balance, thereby promoting the well-being of clients.

(j) Practitioners who:

(A) Do not claim expressly or implicitly to be massage therapists;

(B) Limit their work to one or more of the following practices:

(i) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement;

(ii) Using minimal touch over specific points on the body to facilitate balance in the nervous system; or

(iii) Using touch to affect the energy systems or channels of energy of the body;

(C) Are certified by a professional organization or credentialing agency that:

(i) Requires a minimum level of training, demonstration of competence and adherence to an approved scope of practice and ethical standards; and

(ii) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(D) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) The State Board of Massage Therapists has the authority to verify that a practitioner claiming to be exempt from application of ORS 687.011 to 687.250, 687.895 and 687.991 under subsection (1)(j) of this section is certified by a professional organization or credentialing agency as required by subsection (1)(j)(C) of this section.

(3) A nonresident practitioner performing massage under subsection (1)(g) of this section must obtain a temporary practice permit if practicing in this state for a total of more than 30 days in a calendar year. Applications shall be accompanied by the application fee provided for in ORS 687.071. A temporary practice permit shall allow the nonresident practitioner to practice massage in this state for a maximum of 180 days in a calendar year. [1955 c.492 §12; 1985 c.82 §3; 1993 c.564 §1; 1997 c.626 §4; 1999 c.537 §7; 2007 c.332 §1]

687.040 [Repealed by 1955 c.492 §15]

LICENSING

687.041 Applications for licenses. (1) Applications to the State Board of Massage Therapists for a massage therapist license shall be made on forms provided by the board and shall contain the information required to assure the board of the applicant's eligibility for a license. The application fee provided for in ORS 687.071 shall accompany the application.

(2) An applicant shall state on the application whether the applicant has ever been arrested for or convicted of a crime exclusive of minor traffic offenses and if so, where and when.

(3) The board may require that an applicant submit to fingerprinting and may use the fingerprints to request a criminal records check of the applicant under ORS 181.534. It may also require the photograph of the applicant.

(4) All law enforcement agencies in this state shall cooperate with the board in the administration of ORS 687.011 to 687.250, 687.895 and 687.991 and shall, when requested, investigate and report to the board their findings regarding the arrest or conviction of the applicant for crimes within or outside this state. [1955 c.492 §3; 1957 c.166 §1; 1977 c.507 §6; 1979 c.89 §3; 1989 c.841 §3; 1997 c.626 §5; 1999 c.537 §8; 2005 c.730 §36]

687.050 [Repealed by 1955 c.492 §15]

687.051 Qualifications of applicants; continuing education; license renewal; inactive status; rules. (1) To be eligible for issuance of an initial license in this state as a massage therapist, the applicant shall:

(a) Furnish the State Board of Massage Therapists with personal references required by rule of the board.

(b) Have attained the age of 18 years.

(c) Furnish the board with educational certificates or transcripts required by law or rule of the board including but not limited to proof of certification in cardiopulmonary resuscitation.

(d) (A) Have completed a minimum of 500 contact hours of certified classes in the following subjects:

(i) Anatomy and physiology;

(ii) Kinesiology;

(iii) Pathology;

(iv) Theory; and

(v) Hands-on practice of massage and bodywork techniques and professional practices, including client communication and boundaries, professional and business ethics and sanitation; or

(B) Obtain the approval of the board after the board performs a credentialing review, including but not limited to a review of the classes completed by the applicant and the applicant's professional experience, to determine the applicant's proficiency in the field of massage.

(e) Pass an examination prepared and conducted by the board or its authorized representative establishing competency and ability to engage in the practice of massage. The examination must be administered in the English language or another language approved by the board and may be in written, oral or practical form and may test the applicant for the required level of knowledge and skill in any subject related to massage and bodywork. The board shall accept passage of the National Certification Board for Therapeutic Massage and Bodywork examination or another board-approved national standardized examination as meeting the written examination requirement contained in this paragraph.

(f) Submit the application with payment for licensing within one year after notification of having passed the qualifying examination.

(2) An applicant must be a person of good moral character. For purposes of this

section, the lack of good moral character may be established by reference to acts or conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to have substantial doubts about the applicant's ability to practice massage in accordance with ORS 687.011 to 687.250, 687.895 and 687.991 and rules of the board.

(3) The board may require that an applicant furnish evidence satisfactory to the board that the applicant can safely and competently practice the profession of massage. The board may consider evidence including, but not limited to, indications of impairment as defined in ORS 676.303 or of behavior, practices or conduct that would be considered unprofessional or dishonorable conduct if engaged in by a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991.

(4) The board shall adopt rules establishing the required hours for each subject listed in subsection (1)(d)(A) of this section.

(5) To be eligible for biennial renewal, a renewal applicant shall submit evidence to the board, as determined by the board by rule, that the applicant has completed a minimum of 12 hours of board-approved continuing education.

(6) To be eligible for inactive status, a licensed massage therapist must not be practicing massage in this state. [1955 c.492 §4; 1957 c.166 §2; 1977 c.507 §7; 1979 c.89 §4; 1985 c.82 §4; 1989 c.841 §4; 1995 c.23 §1; 1997 c.32 §1; 1997 c.176 §1; 1997 c.626 §§6,6a; 1999 c.537 §9; 2009 c.536 §36; 2009 c.756 §62; 2011 c.44]

687.055 [1977 c.507 §5; 1985 c.82 §6; repealed by 1989 c.841 §14]

687.057 License by indorsement or reciprocity; rules. (1) The State Board of Massage Therapists may license by indorsement or reciprocity any individual who applies, meets the requirements

established by the board and, on the date of making application, is a massage therapist licensed under the laws of any other state or territory of the United States or by a foreign country if the requirements in the state, territory or country where the applicant is licensed are not less than those required in ORS 687.011 to 687.250, 687.895 and 687.991. The board shall adopt rules for determining the necessity of an examination based on educational preparation, successful completion of other examinations, work experience and the number of years in active practice of massage.

(2) The board may license by indorsement any individual who applies and successfully completes a practical examination if the individual is already licensed under a law of this state to do an act included in the definition of massage in ORS 687.011.

(3) The board may enter into an agreement with the appropriate regulatory body of any other state, territory or foreign country for reciprocal licensing if the board determines that the qualifications and standards of the other state, territory or foreign country are not less than those required in ORS 687.011 to 687.250, 687.895 and 687.991. [1977 c.507 §18; 1985 c.82 §7; 1989 c.841 §5; 1997 c.626 §7; 1999 c.326 §1; 1999 c.537 §10]

687.060 [Repealed by 1955 c.492 §15]

687.061 Expiration and renewal of license; rules; fees; sanctions for practicing without valid license. (1) Licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991 expire on the date established by the State Board of Massage Therapists by rule and may be renewed after payment of the renewal fee established by the board. If the renewal fee is not paid by the expiration date established by the board, a delinquency fee must be paid prior to renewal. Licenses may be renewed

within three years after the date of expiration upon payment of the renewal fee and the delinquency fee established by the board.

(2) An individual who practices massage without holding a valid unexpired license issued under ORS 687.011 to 687.250, 687.895 and 687.991 is subject to disciplinary action and civil penalty by the board, injunction and criminal prosecution. No disciplinary action, civil penalty or criminal proceeding shall be initiated under this section after the date that a renewal and delinquency fee is paid. However, payment of a renewal and delinquency fee does not stay any disciplinary action, civil penalty or criminal proceeding already assessed or initiated. [1955 c.492 §5; 1977 c.507 §8; 1979 c.89 §5; 1985 c.82 §8; 1989 c.841 §6; 1997 c.626 §8; 1999 c.537 §11; 2005 c.148 §1]

687.070 [Repealed by 1955 c.492 §15]

687.071 Fees; rules; examinations; disposition and use of moneys. (1) The State Board of Massage Therapists shall impose fees for the following:

- (a) Massage therapist license issuance or renewal.
- (b) Examinations and reexaminations.
- (c) Inactive status.
- (d) Delinquency in renewal of a license.
- (e) Temporary practice permit.
- (f) Application for massage license examination.

(2) If the effective period of the initial massage therapist license is to be less than 12 months by reason of the expiration date established by rule of the board, the required license fee shall be prorated to represent one-half of the biennial rate.

(3) The board shall examine or reexamine any applicant for a massage therapist license who pays a fee for each examination and

who meets the requirements of ORS 687.051.

(4) All moneys received by the board shall be paid into the account created by the board under ORS 182.470 and are appropriated continuously to the board and shall be used only for the administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991. [1955 c.492 §6; 1957 c.166 §3; 1973 c.427 §32; 1977 c.217 §1; 1977 c.507 §9; 1979 c.89 §6; 1983 c.227 §1; 1989 c.841 §7; 1991 c.703 §30; 1993 c.18 §148; 1997 c.626 §9; 1999 c.326 §2; 1999 c.537 §12; 1999 c.1084 §14; 2005 c.148 §2]

687.075 [1997 c.626 §1; 1999 c.537 §13; repealed by 2005 c.730 §77]

687.080 [Repealed by 1955 c.492 §15]

687.081 Grounds for denial, suspension or revocation of license or refusal to renew license; probation; civil penalties; complaint investigation. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on probation if the licensee:

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

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

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

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

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

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

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

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

(i) Engages in unprofessional or dishonorable conduct.

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

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

(a) Limitation on the allowed scope of practice.

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

(c) Individual or peer supervision.

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

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

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

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

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

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

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

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

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

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

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

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

(9) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175. [1955 c.492 §9; 1977 c.507 §10; 1979 c.89 §7; 1979 c.744 §58; 1985 c.82 §9; 1989 c.841 §8; 1997 c.627 §§1,1a;

1997 c.791 §42a; 1999 c.537 §14; 2009 c.697 §10]

687.086 License denial procedure; review of rules and board orders. (1) If the State Board of Massage Therapists proposes to impose any of the sanctions authorized in ORS 687.081 or take other disciplinary action, opportunity for hearing shall be accorded as provided in ORS chapter 183. Hearings under this section must be conducted by an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS chapter 183. [1971 c.734 §138; 1977 c.507 §11; 1997 c.626 §11; 1997 c.627 §2; 1999 c.537 §15; 1999 c.849 §§166,167; 1999 c.1084 §§15,15a; 2003 c.75 §59]

687.087 [1989 c.841 §§9,12; 1991 c.734 §74; renumbered 687.895 in 1991]

687.090 [Repealed by 1955 c.492 §15]

687.091 [1955 c.492 §10; repealed by 1971 c.734 §21]

REPORTING OBLIGATIONS

687.095 Duty to report prohibited conduct. Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a massage therapist who has reasonable cause to believe that a licensee of another board has engaged in prohibited conduct as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS 676.150. [2009 c.536 §11]

687.100 [Repealed by 1955 c.492 §15]

687.101 [1955 c.492 §11; repealed by 1971 c.734 §21]

687.110 [Repealed by 1955 c.492 §15]

687.111 [1955 c.492 §8; 1977 c.507 §12; 1979 c.89 §8; 1981 c.398 §1; 1985 c.82 §10; repealed by 1989 c.841 §14]

STATE BOARD

687.115 State Board of Massage Therapists; members; appointment; terms; meetings; compensation; administrator.

(1) The State Board of Massage Therapists operates as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The board consists of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Four must be licensed massage therapists.

(b) Three must be members of the public, including one public member selected from a health related field. Public members may not be:

(A) Massage therapists; or

(B) A spouse, domestic partner, child, parent or sibling of a massage therapist.

(2)(a) Board members required to be licensed massage therapists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing massage therapists.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3)(a) The term of office of each member is four years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. A member is eligible for

reappointment. If there is a vacancy in the membership of the board for any reason, the Governor shall make an appointment to become immediately effective for the remainder of the unexpired term.

(b) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused; or

(C) Is not a licensed massage therapist or a retired massage therapist who was a licensed massage therapist in good standing at the time of retirement, if the board member was appointed to serve on the board as a massage therapist.

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(5) The board may:

(a) Hold meetings at times and locations determined by the board.

(b) Hire, define the duties and fix the salary of an administrator who may hire and define the duties and provide supervision and evaluation of other employees as necessary to carry out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The administrator, with approval of the board, may also employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board. [1971 c.650 §37; 1973 c.792 §42; 1977 c.217 §2; 1977 c.507 §13; 1985 c.82 §11; 1989 c.69 §2; 1997 c.177 §1; 1997 c.626 §12; 1997 c.632 §11; 1999 c.537 §16; 1999 c.1084 §16; 2009 c.535 §23; 2009 c.756 §64]

687.120 [Repealed by 1955 c.492 §15]

687.121 Rules. The State Board of Massage Therapists may adopt rules:

- (1) Establishing reasonable standards concerning the sanitary, hygienic and healthful conditions of premises and facilities used by massage therapists.
- (2) Relating to the methods and procedures used in the practice of massage.
- (3) Governing the examination and investigation of applicants for the licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991 and the issuance, renewal, suspension and revocation of such licenses.
- (4) Setting standards for certifying classes under ORS 687.051.
- (5) Requiring that massage therapists supply the board with the accurate, current address or addresses where they practice massage.
- (6) Fixing the educational, training and experience requirements for licensing by indorsement or reciprocity.
- (7) Establishing requirements for issuance and retention of an inactive license.
- (8) Regarding any matter that the board reasonably considers necessary and proper for the administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991. [1955 c.492 §7; 1977 c.507 §14; 1985 c.82 §12; 1989 c.841 §13; 1997 c.626 §13; 1999 c.537 §17]

687.122 Investigation of violations; power of board; subpoenas. (1) Upon the complaint of any citizen of this state, or upon its own motion, the State Board of Massage Therapists may investigate any alleged violation of ORS 687.011 to 687.250, 687.895 and 687.991.

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

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

- (c) Compel the appearance of witnesses, including the person charged, before the board in person the same as in civil cases;
 - (d) Require answers to interrogatories; and
 - (e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.
- (3) In exercising its authority under subsection (2) of this section, the board may issue subpoenas over the signature of the board chairperson and the seal of the board in the name of the State of Oregon.
- (4) If a person fails to comply with a subpoena issued under this section, the judge of the circuit court shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court. [1989 c.843 §8; 1997 c.626 §14; 1999 c.537 §18]

687.123 Inspection of premises. Upon complaint about the premises on which a massage therapist practices massage, the State Board of Massage Therapists or its authorized representative may inspect such premises in order to determine whether the premises meet the standards set by order of the board under ORS 687.121 (1). [1989 c.841 §17; 1999 c.537 §19]

687.125 [1977 c.507 §17; 1997 c.626 §15; renumbered 687.890 in 1997]

687.130 [Repealed by 1955 c.492 §15]

687.135 [1977 c.507 §4; repealed by 1989 c.841 §14]

687.140 [Repealed by 1955 c.492 §15]

687.150 [Repealed by 1955 c.492 §15]

687.160 [Repealed by 1955 c.492 §15]

687.170 [Repealed by 1955 c.492 §15]

687.180 [Repealed by 1955 c.492 §15]

687.190 [Repealed by 1955 c.492 §15]

687.200 [Repealed by 1955 c.492 §15]

687.210 [Repealed by 1955 c.492 §15]

687.220 [Repealed by 1955 c.492 §15]

687.230 [Repealed by 1955 c.492 §15]

687.240 [Repealed by 1955 c.492 §15]

687.250 Enforcement; civil penalty. (1) The State Board of Massage Therapists shall report to the proper district attorney all cases that in the judgment of the board warrant criminal prosecution under ORS 687.991.

(2) The board may, in its own name, assess a civil penalty against any licensed or unlicensed person violating a provision of ORS 687.011 to 687.250, 687.895 and 687.991. The board may assess the civil penalty instead of or in addition to disciplinary action under ORS 687.081, an injunction issued under ORS 687.021 or criminal prosecution by the district attorney under this section. The amount of the civil penalty may not exceed \$1,000 for any single violation. Except as the board may otherwise provide under ORS 182.462 (5), moneys collected through the assessment of civil penalties by the board under this subsection or ORS 687.081 shall be deposited into the account created by the board pursuant to ORS 182.470 and are continuously appropriated to the board for carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. [Formerly 687.890]

PENALTIES

687.895 Procedure for civil penalties. Any civil penalty under ORS 687.011 to 687.250, 687.895 and 687.991 shall be imposed as provided in ORS 183.745. [Formerly 687.087; 1997 c.626 §16]

687.990 [Repealed by 1955 c.492 §15]

687.991 Criminal penalties. (1) Violation of ORS 687.021 or of any rule adopted under ORS 687.121 is a Class A misdemeanor.

(2) Violation of ORS 687.410 is a Class A misdemeanor. [1955 c.492 §14; 1977 c.507 §15; 2003 c.547 §27]

Chapter 676

2009 EDITION

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REPORTING OBLIGATIONS

676.150 Duty to report prohibited or unprofessional conduct, arrests and convictions; investigation; confidentiality; immunity from liability. (1) As used in this section:

- (a) “Board” means the:
- (A) State Board of Examiners for Speech-Language Pathology and Audiology;
 - (B) State Board of Chiropractic Examiners;
 - (C) State Board of Licensed Social Workers;
 - (D) Oregon Board of Licensed Professional Counselors and Therapists;
 - (E) Oregon Board of Dentistry;
 - (F) Board of Examiners of Licensed Dietitians;
 - (G) State Board of Massage Therapists;
 - (H) Oregon Board of Naturopathic Medicine;
 - (I) Oregon State Board of Nursing;
 - (J) Nursing Home Administrators Board;
 - (K) Oregon Board of Optometry;
 - (L) State Board of Pharmacy;
 - (M) Oregon Medical Board;
 - (N) Occupational Therapy Licensing Board;
 - (O) Physical Therapist Licensing Board;
 - (P) State Board of Psychologist Examiners;
 - (Q) Board of Radiologic Technology;
 - (R) State Board of Direct Entry Midwifery;
 - (S) State Board of Denture Technology;
 - (T) Respiratory Therapist Licensing Board;
 - (U) Department of Human Services, to the extent that the department certifies emergency medical technicians;
 - (V) Oregon State Veterinary Medical Examining Board; or
 - (W) State Mortuary and Cemetery Board.
- (b) “Licensee” means a health professional licensed or certified by or registered with a board.
- (c) “Prohibited conduct” means conduct by a licensee that:
- (A) Constitutes a criminal act against a patient or client; or

(B) Constitutes a criminal act that creates a risk of harm to a patient or client.

(d) “Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee’s profession or conduct that endangers the health, safety or welfare of a patient or client.

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

(3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime shall report the conviction or arrest to the licensee’s board within 10 days after the conviction or arrest.

(4) The board responsible for a licensee who is reported to have engaged in prohibited or unprofessional conduct shall investigate in accordance with the board’s rules. If the board has reasonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present the facts to an appropriate law enforcement agency without undue delay, but in no event later than 10 working days after the board finds reasonable cause to believe that the licensee engaged in prohibited conduct.

(5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection (2) of this section or the licensee’s conviction or arrest as required by subsection (3) of this section is subject to discipline by the board responsible for the licensee.

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(6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section commits a Class A violation.

(7) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this section is confidential under ORS 676.175. A board may disclose a report as provided in ORS 676.177.

(8) Except as part of an application for a license or for renewal of a license and except as provided in subsection (3) of this section, a board may not require a licensee to report the licensee's criminal conduct.

(9) The obligations imposed by this section are in addition to and not in lieu of other obligations to report unprofessional conduct as provided by statute.

(10) A licensee who reports to a board in good faith as required by subsection (2) of this section is immune from civil liability for making the report.

(11) A board and the members, employees and contractors of the board are immune from civil liability for actions taken in good faith as a result of a report received under subsection (2) or (3) of this section. [2009 c.536 §1]

PROCESSING OF COMPLAINTS AGAINST HEALTH PROFESSIONALS

676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) Board of Examiners of Licensed Dietitians;
- (7) State Board of Massage Therapists;
- (8) State Mortuary and Cemetery Board;
- (9) Oregon Board of Naturopathic Medicine;

(10) Oregon State Board of Nursing;

(11) Nursing Home Administrators Board;

(12) Oregon Board of Optometry;

(13) State Board of Pharmacy;

(14) Oregon Medical Board;

(15) Occupational Therapy Licensing Board;

(16) Physical Therapist Licensing Board;

(17) State Board of Psychologist Examiners;

(18) Board of Radiologic Technology;

(19) Oregon State Veterinary Medical Examining Board; and

(20) Oregon Health Authority to the extent that the authority certifies emergency medical technicians. [1997 c.791 §1; 1999 c.537 §4; 2001 c.274 §4; 2009 c.43 §9; 2009 c.442 §44; 2009 c.595 §1051; 2009 c.768 §33; 2009 c.833 §25]

676.165 Complaint investigation. (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 assign one or more persons to act as investigator of the complaint.

(2) The investigator shall collect evidence and interview witnesses and shall make a report to the board or agency. The investigator shall have all investigatory powers possessed by the board or agency.

(3) The report to the board or agency shall 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 or agency of the licensee, applicant or other person alleged to be practicing in violation of law.

(4) The investigator shall make the report to the board or agency not later than 120 days after the board or agency receives the complaint. However, the board or agency may extend the time for making the report by up to 30 days for just cause. The board or

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agency may grant more than one extension of time.

(5) Investigatory information obtained by an investigator and the report issued by the investigator shall be exempt from public disclosure.

(6) When a health professional regulatory board reviews the investigatory information and report, the public members of the board must be actively involved. [1997 c.791 §5; 2009 c.756 §5]

676.170 Immunity of information providers. A person who reports or supplies information in good faith to a health professional regulatory board or to a committee reporting to a health professional regulatory board shall be immune from an action for civil damages as a result thereof. [1997 c.791 §4]

676.175 Complaints and investigations confidential; exceptions; fees. (1) A health professional regulatory board shall keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants. However, the board may disclose information obtained in the course of an investigation of a licensee or applicant to the extent necessary to conduct a full and proper investigation.

(2) Notwithstanding subsection (1) of this section, if a health professional regulatory board votes not to issue a notice of intent to impose a disciplinary sanction:

(a) The board shall disclose information obtained as part of an investigation of an applicant or licensee if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in

nondisclosure, including but not limited to the public interest in nondisclosure.

(b) The board may disclose to a complainant a written summary of information obtained as part of an investigation of an applicant or licensee resulting from the complaint to the extent the board determines necessary to explain the reasons for the board's decision. An applicant or licensee may review and obtain a copy of any written summary of information disclosed to a complainant by the board after the board has deleted any information that could reasonably be used to identify the complainant.

(3) If a health professional regulatory board votes to issue a notice of intent to impose a disciplinary sanction, upon written request by the licensee or applicant, the board shall disclose to the licensee or applicant all information obtained by the board in the investigation of the allegations in the notice except:

(a) Information that is privileged or confidential under a law other than this section.

(b) Information that would permit the identification of any person who provided information that led to the filing of the notice and who will not provide testimony at a hearing arising out of the investigation.

(c) Information that would permit the identification of any person as a person who made a complaint to the board about a licensee or applicant.

(d) Reports of expert witnesses.

(4) Information disclosed to a licensee or applicant under subsection (3) of this section may be further disclosed by the licensee or applicant only to the extent necessary to prepare for a hearing on the notice of intent to impose a disciplinary sanction.

(5)(a) A health professional regulatory board shall disclose:

(A) A notice of intent to impose a disciplinary sanction against a licensee or

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applicant that has been issued by vote of the board;

(B) A final order that results from the board's notice of intent to impose a disciplinary sanction;

(C) An emergency suspension order;

(D) A consent order or stipulated agreement that involves licensee or applicant conduct; and

(E) Information to further an investigation into board conduct under ORS 192.685.

(b) A health professional regulatory board may make the information required to be disclosed under paragraph (a)(A) to (D) of this subsection available in electronic form, accessible by use of a personal computer or similar technology that provides direct electronic access to the information.

(6) If a notice of intent to impose a disciplinary sanction has been issued by vote of a health professional regulatory board, a final order that results from the board's notice of intent to impose a disciplinary sanction, an emergency suspension order or a consent order or stipulated agreement that involves licensee or applicant conduct shall summarize the factual basis for the board's disposition of the matter.

(7) A health professional regulatory board record or order, or any part thereof, obtained as part of or resulting from an investigation, contested case proceeding, consent order or stipulated agreement, is not admissible as evidence and may not preclude an issue or claim in any civil proceeding except in a proceeding between the board and the licensee or applicant as otherwise allowed by law.

(8)(a) Notwithstanding subsection (1) of this section, it is not disclosure to the public for a board to permit other public officials and members of the press to attend executive sessions where information obtained as part of an investigation is discussed. Public officials and members of the press attending such executive sessions shall not disclose

information obtained as part of an investigation to any other member of the public.

(b) For purposes of this subsection, "public official" means a member or member-elect, or any member of the staff or an employee, of a public entity as defined by ORS 676.177.

(9) A health professional regulatory board may establish fees reasonably calculated to reimburse the actual cost of disclosing information to licensees or applicants as required by subsection (3) of this section. [1997 c.791 §2; 1999 c.751 §3; 2005 c.801 §1]

676.177 Disclosure of confidential information to another public entity; criteria.

(1) Notwithstanding any other provision of ORS 676.165 to 676.180, a health professional regulatory board, upon a determination by the board that it possesses otherwise confidential information that reasonably relates to the regulatory or enforcement function of another public entity, may disclose that information to the other public entity.

(2) Any public entity that receives information pursuant to subsection (1) of this section shall agree to take all reasonable steps to maintain the confidentiality of the information, except that the public entity may use or disclose the information to the extent necessary to carry out the regulatory or enforcement functions of the public entity.

(3) For purposes of this section, "public entity" means:

(a) A board or agency of this state, or a board or agency of another state with regulatory or enforcement functions similar to the functions of a health professional regulatory board of this state;

(b) A district attorney;

(c) The Department of Justice;

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(d) A state or local public body of this state that licenses, franchises or provides emergency medical services; or

(e) A law enforcement agency of this state, another state or the federal government. [1999 c.751 §2]

676.180 Notice prior to disclosure. If a health professional regulatory board intends to disclose a record pursuant to ORS 676.175 (2), the board shall provide the licensee or applicant seven days' prior written notice by first class mail. The notice shall describe the record that the board intends to disclose in sufficient detail to permit the licensee or applicant to know the contents of the record. In any subsequent action for injunctive or declaratory relief, the burden shall be on the person seeking disclosure to demonstrate by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. [1997 c.791 §3]

IMPAIRED HEALTH PROFESSIONAL PROGRAM

676.185 Definitions for ORS 676.185 to 676.200. As used in ORS 676.185 to 676.200:

(1) "Health profession licensing board" means:

(a) A health professional regulatory board as defined in ORS 676.160; or

(b) The Oregon Health Licensing Agency for a board, council or program listed in ORS 676.606.

(2) "Impaired professional" means a licensee who is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(3) "Licensee" means a health professional licensed or certified by or registered with a health profession licensing board. [2009 c.697 §1]

Note: 676.185 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

Note: Section 21, chapter 697, Oregon Laws 2009, provides:

Sec. 21. Sections 1 to 1c of this 2009 Act [676.185 to 676.200], the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20 of this 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 14 of this 2009 Act apply to:

(1) A licensee who is the subject of a complaint filed with a health profession licensing board on or after July 1, 2010;

(2) A licensee about whom a board receives information that the licensee may be impaired on or after July 1, 2010; and

(3) A disciplinary proceeding commenced on or after July 1, 2010. [2009 c.697 §21]

676.190 Establishment of program; reports of noncompliance; diversion agreements; audit; rules. (1) The Oregon Health Authority shall establish or contract to establish an impaired health professional program. The program must:

(a) Enroll licensees of participating health profession licensing boards who have been diagnosed with alcohol or substance abuse or a mental health disorder;

(b) Require that a licensee sign a written consent prior to enrollment in the program allowing disclosure and exchange of

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information between the program, the licensee's board, the monitoring entity established under ORS 676.195, the licensee's employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

(c) Enter into diversion agreements with enrolled licensees;

(d) Assess and evaluate compliance with diversion agreements by enrolled licensees;

(e) Assess the ability of an enrolled licensee's employer to supervise the licensee and require an enrolled licensee's employer to establish minimum training requirements for supervisors of enrolled licensees;

(f) Report substantial noncompliance with a diversion agreement to the monitoring entity established under ORS 676.195 within one business day after the program learns of the substantial noncompliance, including but not limited to information that a licensee:

(A) Engaged in criminal behavior;

(B) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;

(C) Was impaired in a health care setting in the course of the licensee's employment;

(D) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(E) Violated a restriction on the licensee's practice imposed by the program or the licensee's board;

(F) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

(G) Entered into a diversion agreement, but failed to participate in the program; or

(H) Was referred to the program but failed to enroll in the program; and

(g) At least weekly, submit a list of licensees who are enrolled in the program and a list of licensees who successfully complete the program to the monitoring entity established under ORS 676.195.

(2) When the program reports noncompliance to the monitoring entity, the report must include:

(a) A description of the noncompliance;

(b) A copy of a report from the independent third party who diagnosed the licensee under ORS 676.200 (2)(a) or subsection (5)(a) of this section stating the licensee's diagnosis;

(c) A copy of the licensee's diversion agreement; and

(d) The licensee's employment status.

(3) The program may not diagnose or treat licensees enrolled in the program.

(4) The diversion agreement required by subsection (1) of this section must:

(a) Require the licensee to consent to disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under ORS 676.195, the licensee's employer, evaluators and treatment providers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

(b) Require that the licensee comply continuously with the agreement for at least two years to successfully complete the program;

(c) Based on an individualized assessment, require that the licensee abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the program and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(d) Require the licensee to report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;

(e) Require the licensee to agree to participate in a treatment plan approved by a third party;

(f) Contain limits on the licensee's practice of the licensee's health profession;

(g) Provide for employer monitoring of the licensee;

(h) Provide that the program may require an evaluation of the licensee's fitness to

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practice before removing the limits on the licensee's practice of the licensee's health profession;

(i) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations;

(j) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement;

(k) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime to the program within three business days after the licensee is arrested or convicted;

(L) Require the licensee to report applications for licensure in other states, changes in employment and changes in practice setting; and

(m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and treatment.

(5)(a) A licensee of a board participating in the program may self-refer to the program.

(b) The program shall require the licensee to attest that the licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board. The program shall enroll the licensee on the date on which the licensee attests that the licensee, to the best of the licensee's knowledge, is not under investigation by the licensee's board.

(c) When a licensee self-refers to the program, the program shall:

(A) Require that an independent third party approved by the licensee's board to evaluate alcohol or substance abuse or mental health disorders evaluate the licensee for alcohol or substance abuse or mental health disorders; and

(B) Investigate to determine whether the licensee's practice while impaired has presented or presents a danger to the public.

(6) The authority shall adopt rules establishing a fee to be paid by the boards participating in the impaired health

professional program for administration of the program.

(7) The authority shall arrange for an independent third party to audit the program to ensure compliance with program guidelines. The authority shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(8) The authority may adopt rules to carry out this section. [2009 c.697 §1b; 2009 c.828 §73]

Note: 676.190 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

676.195 Monitoring entity; reports to health professional licensing boards; audit; fees. (1) The Oregon Health Authority shall contract with an independent third party to establish a monitoring entity for impaired professionals. The monitoring entity shall:

(a) Compare the weekly lists submitted by the impaired health professional program under ORS 676.190 to determine if any enrollees are no longer participating in the impaired health professional program; and

(b) Report to a health profession licensing board when:

(A) The monitoring entity receives a report from the impaired health professional program established under ORS 676.190 that a licensee is substantially noncompliant with the licensee's diversion agreement;

(B) Comparison of the weekly lists submitted by the impaired health professional program under ORS 676.190 shows that a licensee is no longer participating in the impaired health professional program; and

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(C) The monitoring entity receives a report from the impaired health professional program under ORS 676.190 that a licensee referred by the board has completed the impaired health professional program.

(2) The monitoring entity may not have any contact with a licensee and has no discretion in deciding whether to make a report required under this section.

(3) The weekly lists submitted by the impaired health professional program under ORS 676.190 are exempt from disclosure under public records law.

(4) If a licensee self-refers to the impaired health professional program, the monitoring entity may not report the licensee's enrollment or successful completion of the impaired health professional program to the licensee's board.

(5) The authority shall arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines. The authority shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(6) The authority may adopt rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity. [2009 c.697 §1c; 2009 c.828 §74]

Note: 676.195 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

676.200 Board participation in program; rules. (1)(a) A health profession licensing board that is authorized by law to take disciplinary action against licensees may adopt rules opting to participate in the impaired health professional program established under ORS 676.190.

(b) A board may only refer impaired professionals to the impaired health professional program established under ORS 676.190 and may not establish the board's own impaired health professional program.

(c) A board may adopt rules establishing additional requirements for licensees referred to the impaired health professional program established under ORS 676.190.

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

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

(b) The board has investigated to determine whether the licensee's professional practice while impaired has presented or presents a danger to the public; and

(c) The licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.

(3) A board that participates in the impaired health professional program shall investigate reports received from the monitoring entity established under ORS 676.195. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify or revoke the licensee's license or end the licensee's participation in the impaired health professional program.

(4) A board may not discipline a licensee solely because the licensee:

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- (a) Self-refers to or participates in the impaired health professional program;
- (b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or
- (c) Used controlled substances before entry into the impaired health professional program, if the licensee did not practice while impaired. [2009 c.697 §1a]

Note: 676.200 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

Note: Sections 13 and 23, chapter 697, Oregon Laws 2009, provide:

Sec. 13. The Oregon Health Authority shall report on the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009 [676.190], to the Governor, to the Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards as defined in section 1, chapter 697, Oregon Laws 2009 [676.185], on or before January 31, 2011. [2009 c.697 §13; 2009 c.828 §75]

Sec. 23. (1) Before the operative date specified in section 22, chapter 697, Oregon Laws 2009 [July 1, 2010], the Oregon Health Authority and the health profession licensing boards that opt to participate in the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009 [676.190], shall collaborate to transfer existing impaired professional programs and funding, and licensees who are subject to existing impaired professional programs, to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009.

(2) When a licensee is transferred to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009, pursuant to subsection

(1) of this section, the program shall honor the terms of the licensee's existing diversion agreement if the terms of the agreement are consistent with the requirements of section 1b, chapter 697, Oregon Laws 2009. If the terms of the licensee's existing diversion agreement are not consistent with the requirements of section 1b, chapter 697, Oregon Laws 2009, the diversion agreement entered into by the program and the licensee must comply with section 1b, chapter 697, Oregon Laws 2009.

(3) When a licensee who self-referred to an impaired professional program before the effective date of chapter 697, Oregon Laws 2009 [July 14, 2009], is transferred to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009, pursuant to subsection (1) of this section:

(a) The program may not disclose the licensee's enrollment in the program to the licensee's board unless the licensee:

(A) Ceases to participate in the program before completing the program; or

(B) Engages in substantial noncompliance as described in section 1b (1)(f)(A) to (H), chapter 697, Oregon Laws 2009.

(b) The program may not disclose the licensee's successful completion of the program to the licensee's board. [2009 c.697 §23; 2009 c.828 §77]

EFFECT OF EXPIRATION, LAPSE, SURRENDER, SUSPENSION OR REVOCATION OF LICENSE

676.205 Continuing jurisdiction of boards; effect of expiration, lapse, surrender, suspension or revocation of license. (1) As used in this section:

(a) "Health professional regulatory board" means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

HEALTH PROFESSIONS GENERALLY

(b) “License” means a license, registration, certification or other authorization to engage in a profession.

(2) A health professional regulatory board continues to have jurisdiction for licensing, regulatory and disciplinary purposes related to acts and omissions that occur while a person is licensed or required to be licensed, regardless of any changes in the licensing status of the person.

(3) A person who obtains, but is not required to obtain, a license to engage in a profession regulated by a health professional regulatory board, and whose license expires, lapses or is voluntarily surrendered while the person is under investigation by the board, or whose license is suspended or revoked, may not engage in that profession unless the person again obtains a license from the relevant health professional regulatory board to engage in the profession.

(4) Nothing in this section limits the jurisdictional, investigatory or other authority otherwise provided by law to a health professional regulatory board. [2009 c.756 §2]

676.210 Practice of health care profession after suspension or revocation of license prohibited. No person whose license has been revoked or suspended by any board authorized by the statutes of the State of Oregon to issue licenses to practice a health care profession shall continue the practice of this profession after the order or decision of the board suspending or revoking the license of the person has been made. The license shall remain suspended or revoked until a final determination of an appeal from the decision or order of the board has been made by the court. [1953 c.592 §1; 1983 c.769 §4]

676.220 Enjoining health care professional from practicing after suspension or revocation of license. (1) If at any time the board suspending or

revoking the license of any licentiate of a health care profession determines that such licentiate is continuing to practice the health care profession notwithstanding, the board shall in its own name bring an action to enjoin such licentiate.

(2) If the court shall find that the licentiate has been or is continuing the practice of the health care profession for which the license has been revoked or suspended it shall issue an injunction restraining the licentiate. The commission of a single act constituting the practice of the respective health care profession shall be prima facie evidence warranting the issuance of such injunction. [1953 c.592 §2; 1979 c.284 §191; 1983 c.769 §5]

676.230 Injunction as cumulative remedy. The remedy herein provided is cumulative and shall be without prejudice to any other civil or criminal remedy. [1953 c.592 §3]

MISCELLANEOUS

676.303 Purposes of health professional regulatory boards; authority of boards to require fingerprints. (1) As used in this section:

(a) “Health professional regulatory board” means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

(b) “Impairment” means an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition.

(c) “License” means a license, registration, certification or other authorization to engage in a profession.

(d) “Licensee” means a person licensed, registered, certified or otherwise authorized by a health professional regulatory board to engage in a profession.

HEALTH PROFESSIONS GENERALLY

(2) All health professional regulatory boards shall operate with the primary purposes of promoting the quality of health services provided, protecting the public health, safety and welfare by ensuring that licensees practice with professional skill and safety and addressing impairment among licensees.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, a health professional regulatory board may require the fingerprints of a licensee seeking renewal of a license, an applicant for a license, a board employee or volunteer or an applicant for employment with the board. [2009 c.756 §1]

676.306 Executive directors; reports; rules. (1) As used in this section, “health professional regulatory board” means a health professional regulatory board described in ORS 676.160 other than the Department of Human Services with regard to the certification of emergency medical technicians.

(2) Subject to applicable provisions of the State Personnel Relations Law and the approval of the Governor, notwithstanding ORS 182.468, each health professional regulatory board shall appoint an executive director and prescribe the duties and fix the compensation of the executive director. The executive director shall serve at the pleasure of the Governor under the direct supervision of the appointing board. The board may request that the Governor remove the executive director.

(3) In addition to any other duties imposed by law or otherwise required of state agencies, the executive director shall keep all records of the board and discharge all duties prescribed by the board.

(4) The executive director shall prepare periodic reports regarding the licensing, monitoring and investigative activities of the board. The executive director shall submit the reports to the board and the Governor.

The Oregon Department of Administrative Services, in consultation with the board, shall adopt rules specifying requirements for the report content and processes for preparing and submitting the reports. The rules may be consistent with performance management measures and processes initiated by the department. The rules shall require each board to undergo a peer review of board activities by a team of executive directors of other health professional regulatory boards and at least one public member. The department may assess the board for the cost of the peer review. [2009 c.756 §4]

676.405 Release of personal information. (1) As used in this section, “health professional regulatory board” means the agencies listed in ORS 676.160 and the Oregon Health Licensing Agency created in ORS 676.605.

(2) Notwithstanding ORS 192.410 to 192.505, a health professional regulatory board may, at its discretion, release or withhold the personal electronic mail address, home address and personal telephone number for a person licensed, registered or certified by the board. If the personal electronic mail address, home address or personal telephone number is requested for a public health or state health planning purpose, the board shall release the information. [2009 c.756 §3]

OREGON ADMINISTRATIVE RULES
OREGON BOARD OF MASSAGE THERAPISTS
CHAPTER 334

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DIVISION 1 PROCEDURAL RULES

334-001-0000

Notice to Interested Persons

Prior to adoption, amendment or repeal of any rule relating to the practice of massage or bodywork, the Board must give notice pursuant to ORS 183.335 of the proposed adoption, amendment or repeal:

(1) By mailing or delivering a copy of the notice to persons on the Board's mailing list, established pursuant to ORS 183.335(8);

(2) By mailing or furnishing a copy of the notice to representatives of the:

(a) Associated Press and United Press International;

(b) Oregon Massage Therapists Association;

(c) American Massage Therapy Association — Oregon chapter; and

(d) Certified Massage Schools in Oregon.

(3) By mailing or furnishing a copy of the notice to other persons, organizations, and publications that may have an interest in the subject matter of the proposal.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 687.011, 687.086 & 687.121

Hist.: MTB 1-1978, f. & ef. 7-28-78; MTB 2-1982, f. & ef. 7-21-82; MTB 1-1992, f. & ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0005

Model Rules of Procedure

The most current Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are by this reference adopted as the rules and procedures of the Board of Massage Therapists and must be controlling except as otherwise required by statutes or rules.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1978, f. & ef. 7-28-78; MTB 1-1980, f. & ef. 2-26-80; MTB 1-1982, f. & ef. 2-4-82; MTB 1-1985, f. & ef. 1-8-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0012

Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists 2011–2013 Biennium budget of \$1,602,000

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11

Contractual Agreements for Services

334-001-0020

Contracting and Procurement

(1) It is the policy of the Board to conduct its procurement efforts to ensure a process that promotes fairness, integrity, security, and honesty to maximize revenue and achieve the best value for the Board.

(2) These rules are used to simplify, clarify and modernize the public contracting of the Board.

Stat. Auth.: SB 1127

Stats. Implemented: Section 5(4)

Hist.: MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0025

Application of the Board's Procurement Rules; Exceptions

(1) General: It is the policy of the Board to maximize the net revenues of the Board and to conduct its contracting affairs in an open, competitive manner.

(2) Exceptions: The Board may enter into the following classifications of Contracts without a competitive process:

(a) Contracts between the Board and a state agency or local government of this state or another state, with the United States or a United States governmental agency, with an

American Indian tribe or an agency of an American Indian tribe, or with a nation or a public agency in any nation other than the United States as permitted in ORS Chapter 190;

(b) Emergency Procurements;

(c) Contracts for books, memberships, or subscriptions;

(d) Price regulated items where the rate or price is established by federal, state or local regulatory authority; and

(e) Purchase of used personal property.

(3) Reservation of Rights: Although the Board is exempt from ORS Chapter 279A and 279B, which govern public contracts and procurement, the Board reserves the right to use, as guidelines to govern its procurement actions, relevant provisions of ORS Chapter 279A, and 279B, the Attorney General's Model Public Contract Rules (OAR chapter 137, divisions 46 and 47) and the Public Contracting Rules established by the Oregon Department of Administrative Services (OAR chapter 125, divisions 246 and 247). However, the procedures set forth in these statutes and administrative rules must be guidance only and must not obligate the Board to follow the procedures set forth in these statutes and administrative rules.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0028

Procurement Authority

(1) General: The Executive Director is authorized to initiate procurements and enter into Contracts and Contract amendments for Goods and Services that are used in the normal day to day operations of the Oregon Board of Massage Therapists and in carrying out the vision of the Board.

(2) Board Approved Contracts: Notwithstanding the provisions of section (1) of this rule, the Board must approve contracts over \$50,000 and insure a

competitive procurement process is used. The Board having once approved a Contract or Contract amendment authorizes the Executive Director to execute the Contract or Contract amendment, make all disbursements and payments as provided in the Contract or Contract amendment, without further action by the Board.

(3) Emergency Procurements: Notwithstanding the provisions of section (1) of this rule, the Executive Director is authorized to enter into a Contract awarded as an Emergency procurement.

(4) Rule or Statutory Authorization: If a contract action is authorized by statute or rule, the Executive Director is authorized to execute the Contract or any Contract amendment, and make all disbursements and payments as required by the Contract terms or the terms of the Contract amendment.

(5) Price Reduction: The Executive Director is authorized, without further, specific approval action by the Board, to execute any Contract amendment that results in a reduction of the price paid by the Board.

(6) Delegation by Executive Director: The Executive Director may delegate, in writing, to any of the current Oregon Board of Massage Therapists employees the exercise or discharge of any of the powers, duties or functions of the Executive Director in these Division 1 rules.

(7) Legal Sufficiency Review: For all contracts, including amendments, in excess of \$150,000 the Board must seek an Attorney General legal sufficiency review and approval, as per OAR 137-045-0015.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0032

Source Selection

(1) General: Either the Board or the Executive Director must Award Contracts for Goods or Services by one of the source

selection methods in this rule. Except as provided in section (2), (5) and (6) of this rule, the Board will generally conduct a competitive process for Goods or Services by issuing a Solicitation Document.

(2) Small Procurements: Any procurement of Goods or Services not exceeding \$15,000 may be awarded without a competitive process. The Board may Award a Contract in any manner deemed practical or convenient by the Board, including by direct selection or Award. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this rule.

(3) Intermediate Procurements: Any procurement of Goods or Services exceeding \$15,000 but not exceeding \$150,000 may be awarded after seeking three competitive price quotes or Offers. Either the Board or the Executive Director must keep a written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but either the Board or the Executive Director must make a written record of the effort made to obtain the Offers. If a Contract is awarded, either the Board or the Executive Director must Award the Contract to the Offeror whose Offer will best serve the interests of the Board. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this rule.

(4) Large Procurements: Any procurement of Goods or Services exceeding \$150,000 may be awarded after seeking three solicited competitive Offers. The Board must keep a written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Board must make a written record of the effort made to obtain the Offers. If a Contract is awarded, the Board must Award the Contract to the Offeror whose Offer will best serve the interests of the Board.

(5) Sole Source Procurements: Either the Board or the Executive Director may Award a Contract for Goods or Services without a competitive process when the Executive Director, or a person designated in Writing by the Board, determines in Writing, based on findings of current market research, that the Goods or Services are available from only one seller or source.

(6) Emergency Procurements:

(a) General: The Executive Director may conduct an Emergency procurement and enter into Contracts Awarded as Emergency procurements in an Emergency. The Executive Director may conduct an Emergency procurement and enter into Contracts Awarded as Emergency procurements regardless of the dollar amount of the Contract without the Board's approval. The Board may, in its discretion, enter into a contract without a competitive solicitation if an emergency exists. Regardless of the dollar value of the contract, the Board entering into an Emergency Contract must encourage competition that is reasonable and appropriate under the Emergency circumstances.

(b) Large Procurements:

(A) Notwithstanding subsection 6(a) of this rule, the Executive Director may conduct an Emergency procurement or enter into an Emergency Contract for a Large Procurement only upon the approval of the Board.

(B) The Executive Director may establish an extension of an Emergency Contract for a Large Procurement without the approval of the Board, where the original Contract specifically provides for the extension, the extension does not result in any change in the terms and conditions of the Contract other than an extension in its term.

(C) The Executive Director must make reasonable efforts to report to the Board in Writing, within five days of the Contract

Award, or by the next scheduled Board meeting following the Contract Award date, whichever is later, any Emergency Contracts entered into by the Executive Director. However, the Executive Director's inability or failure to report to the Board within this time must not affect the validity of any Emergency Contract.

(7) Alternative Procurement Methods:

(a) The Board reserves the right to use an alternative procurement method if that method will be more likely to:

(A) Maximize the Board's net revenue;

(B) Achieve the specific business objective or business objectives of the procurement; or

(C) Aid the Executive Director in fulfilling the statutory mandate to operate and administer the Board.

(b) Alternative procurement methods may include, but are not limited to, multistep bids, quotes or Proposals, single Proposer negotiations, competitive negotiations between two or more Proposers, brand name solicitations, and cooperative procurements.

Stat. Auth.: ORS 183, 687

Stats. Implemented: ORS 182.456 - 182.472, 687.011, 687.051, 687.057, 687.061, 687.086, 687.121

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0036

Contract Amendments

(1) Additional Goods or Services: The Board may amend a Contract without additional competition to add additional Goods or Services within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, subject to the following conditions:

(a) The additional Goods or Services are required by reason of existing or new laws, rules, regulations, or ordinances that affect the performance of the original Contract; or

(b) The prices for the Goods or Services are modified only as follows:

(A) When prices for the Goods or Services are based on unit prices, unit prices that establish the cost basis for the additional

Goods or Services were provided in the Offer or original Contract and those prices do not increase except as permitted by an escalation clause in the Contract; or

B) When prices for the Goods or Services are not based on unit prices, options that establish the cost basis for the additional Goods or Services were provided in the Solicitation Document, Offer, or original Contract.

(2) Renegotiated Contract: The Board may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the Board subject to the following conditions:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, within the Scope the Contract;

(b) The Board must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Board as the original Contract; and

(c) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document or Contract after combining the initial and extended terms.

(d) If a Contractor offers a lower price in exchange for a term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(3) Small or Intermediate Contract: The Executive Director may amend a contract awarded as a small or intermediate procurement pursuant to sections (1) or (2) of this rule, but the cumulative amendments must not increase the total Contract Price to a sum that is greater than twenty-five percent of the original Contract Price, unless the amendment increasing the original Contract Price to more than twenty-five percent of the original Contract Price is

approved in writing by the Board prior to execution of the amendment.

(4) Emergency Contract: The Board may amend a Contract Awarded as an Emergency procurement if the Emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing Emergency.

Stat. Auth.: SB 1127
Stats. Implemented: Section 5(4)
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-001-0045

Personnel Policies

The Oregon Board of Massage Therapists hereby adopts its own personnel policies which are controlling.

Stat. Auth.: ORS 182.456 - 182.472
Stats. Implemented: ORS 182.456 - 182.472
Hist.: BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00;
BMT 1-2000, f. & cert. ef. 1-12-00; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-001-0055

Board Member Stipend

(1) The Oregon Board of Massage Therapists hereby adopts a board member stipend of \$100.00 per month for each month a board member serves in their appointment

(2) The Oregon Board of Massage Therapists hereby adopts an additional board chair stipend of \$375.00 per month for each month that a member serves as board chair.

Stat. Auth.: ORS 182.460 & 687.121
Stats. Implemented: ORS 182.460 & 687.121
Hist.: BMT 1-2010, f. & cert. ef. 4-12-10; BMT 2-2010, f. 7-23-10, cert. ef. 7-26-10; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11;
BMT 1-2011, f. & cert. ef. 4-21-11

334-001-0060

Definitions

(1) "Advantageous" means in the Board's best interests, as assessed according to the judgment of the Board.

(2) "Award" means either the act or occurrence of the Board's identification of the Person with whom the Board will enter into a Contract.

(3) "Barter" means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

(4) "Board" means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.

(5) "Bodywork" means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:

(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

(6) "Boundary" means the limits in a professional relationship which create safety based on the needs of the client.

(7) "Boundary violation" means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.

(8) "Caring" means acting in a manner in which things, events, people or relationships matter.

(9) "Certified Class or program" means a class or program that is approved by the Board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or

(b) By a community college or university approved by the Department of Education; or

(c) In another state and licensed or approved by the appropriate agency in that state.

(10) "Client" means any individual, group of individuals, or organization to whom an LMT provides massage

(11) "Client vulnerability" means factors which diminish a client's ability to be self-determining.

(12) "Compensation" means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.

(13) "Conflict of interest" means any action or decision or recommendation by an LMT at the detriment of a client.

(14) "Contact hours" means actual hours in class under the instruction of and in the presence of an instructor.

(15) "Contract" means an agreement for purchase, lease, rental or other acquisition or sale or other disposal by the Board of Goods or Services.

(16) "Contract Price" means, as the context requires;

(a) The maximum payments that the Board will make under a Contract if the Contractor fully performs under the Contract;

(b) The maximum not-to-exceed amount of payments specified in the Contract; or

(c) The unit prices for Goods and Services set forth in the Contract.

(17) "Contractor" means the Person with whom the Board enters into a Contract.

(18) "Critical Reflection" means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:

(a) Personal practice (perceptions, assumptions, motivations, values, behaviors).

(b) Assessment and understanding of a situation.

(c) Likely or actual consequences or impact of one's actions.

(19) "Dual Relationship" means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the LMT is providing or has

provided massage or bodywork services to that same client.

(20) "Ethics" means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual's person and rights.

(21) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Require prompt execution of a Contract to remedy the condition; and

(c) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen;

(22) Equivalent Credit Hours: are those credit hours as determined by the respective educational institution or its certified classes or programs

(23) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Board is authorized by law to procure.

(24) "Indorsement" means:

(a) the process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or

(b) the process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.

(25) "Informed consent" means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.

(26) "Licensee" means any person holding a license, permit, or certificate issued by this Board; an LMT

(27) "LMT" means a Licensed Massage Therapist.

(28) "Massage" or "massage therapy" is defined in ORS 687.011.

(29) "Offer" means a response to a request for price quote or response to a Solicitation Document.

(30) "Offeror" means a Person who submits an Offer.

(31) "Personal power" means recognizing and taking personal responsibility for the inherent power differential between the LMT and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.

(32) "Power differential" means the basic inequality inherent in the professional relationship between an LMT and a client in terms of who has the advantage in the relationship. The LMT is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.

(33) "Practical Work Experience" means experience gained while employed or self-employed providing legal massage/bodywork to the public within the last five (5) years, in another state or jurisdiction.

(34) "Practice of massage" is defined in ORS 687.011.

(35) "Professional authority" means the power inherent in the professional role and which is derived from a combination of an LMT's specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an LMT's personal power.

(36) "Professional relationship" means the relationship established when a LMT contracts with a client, verbally or in

writing, to provide any service associated with the practice of massage or bodywork.

(37) "Professional role" means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.

(38) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.

(39) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(40) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained.

(41) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

**DIVISION 10
MESSAGE LICENSING**

334-010-0005

Applications

(1) All applications for examinations, licensure, inactive status, renewal, or temporary permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board.

(2) All applications made to the Board must be accompanied by the required fee.

(3) Applicants for examination must submit the following with their application:

(a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.

(A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.

(B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.

(c) Proof of current certification in cardiopulmonary resuscitation (CPR);

(d) A current photograph of the applicant;

(e) All new applicants must submit a completed fingerprint card for a criminal background check. All lapsed and inactive licensees applying for reactivation must

submit a completed fingerprint card for a criminal background check.

(4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of:

(a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.

(c) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.

(5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.

(a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.

(6) All application documents for examination and licensure submitted in a language other than English must be accompanied by:

(a) An accurate translation of those documents into English;

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and

(c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.

(7) Any costs of translation of all documents required by the Board must be at the expense of the applicant.

(8) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0002; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Section (7)(d) Renumbered from 334-010-0036; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2011(Temp), f. & cert. ef. 8-10-11 thru 2-6-12; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0008

Indorsement

(1) State Indorsement: The Board may grant a license by state indorsement, upon successful completion of the jurisprudence exam, without any additional examination to any applicant who holds a valid license or permit to practice massage from another jurisdiction if the requirements of that licensing authority meet or exceed the requirements established in Oregon.

(2) Health Indorsement: The Board may grant a license by health indorsement, after successful completion of practical and jurisprudence examination, to any applicant currently holding an active Oregon license in good standing in a Board approved health related field who can document curriculum that includes a minimum of 300 hours comprised of Massage Theory & Practical Application, Clinical Practice, Business Development, Communication, Ethics, and Sanitation. Kinesiology and Hydrotherapy may be included as part of the 300 hours.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; Renumbered from 334-010-0041 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09;

BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0009

Credentialing Review

The Board may grant a license to applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon after successful completion of the practical and jurisprudence examinations, the written examination and upon a credentialing review.

(1) Credentialing review must be submitted on the approved Board of Massage forms (Credentialing Review), submitted with official transcripts and/or certificates as proof of completion.

(a) Of the 200 Anatomy & Physiology, Pathology and Kinesiology hours required, 120 hours minimum must be from certified class instruction. Of the 200 hours required, up to 80 contact hours of prior continuing education in subject areas may apply.

(b) Official Transcripts or Certificates of Completion must be documented on the approved Board of Massage form: Credentialing Review.

(c) Of the 300 Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation hours required, 140 hours minimum must be from certified class instruction. Of the 300 hours required up to 120 contact hours of prior continuing education in subject areas may apply. Of the 300 hours required, up to 40 hours of practical work experience may apply.

(d) Practical Work Experience must be documented on the approved Board of Massage forms: Credentialing Review and Work Experience Verification Worksheet.

(2) Credentialing Review applications must be accompanied by:

(a) Current Credentialing Review fee and

(b) Any additional documentation required by the Board.

334-010-0010

Examination

(1) The LMT examination must be held at least twice annually.

(2) The applicant must be notified by mail, postmarked at least two weeks before the scheduled exam, unless otherwise waived by the applicant, of the time and place.

(3) Applicants who have a documented and verifiable emergency may request to have their exam fee apply to a subsequent examination so long as the applicant sits for the examination within a one year of the original date of examination. Only one extension shall be permitted.

(4) Refund of the examination fee may be granted upon written request should the applicant not qualify for the examination. Refunds may also be made for individuals who have a documented and verifiable emergency and are unable to sit for the exam provided the written request and associated documentation are received by the board at least 7 days prior to the exam.

(5) Applicants are required to take and pass a Board approved written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

(6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.

(7) Examinee Conduct: An examinee, whose conduct interferes with the testing process or whose behavior violates ethical practices or jeopardizes the safety of another may be dismissed and disqualified from examination. Such conduct includes but is not limited to the following behaviors:

(a) Giving or receiving examination data, either directly or indirectly,

(b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;

(c) Endangering the life or health of others present

(d) Introducing unauthorized materials during any portion of the examination;

(e) Attempting to remove examination materials or notations from the testing site; or

(f) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

(8) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

(9) The Board may release statistical information regarding examination pass/fail rates by group, type of examination, school, year, and subject area to any interested party.

(10) All examinations are given in the English language.

(11) Applicants with Special Needs: An applicant is presumed to possess sufficient sensory, visual, hearing and psychomotor capabilities to independently perform massage and bodywork skills. An applicant with special needs may apply to the Board for the provision of special conditions to complete the examination:

(a) The Board may require proof, provided by a qualified professional on letterhead, of the nature of the special need and type of special conditions recommended to complete the exam.

(b) A request for special conditions must be made to the Board in writing at the time of application.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0012 Examination Appeal

(1) The following appeal process must be utilized to request a Board review of examination results:

(a) A request for appeal must be made by the applicant in writing and must be received in the Board office within thirty days of the date on the letter of notification of examination results sent to the applicant; and

(b) In the written appeal the applicant must specifically state the reason for the appeal and why the applicant believes the results should be modified. The applicant must identify the specific errors of content, procedure, bias, prejudice or discrimination.

(2) The following appeal process must be utilized to conduct a review of examination results:

(a) During the review, the applicant must be identified only by the applicant's test number.

(b) The Board's representative must review the examination results including any written materials, audio or video related to the examinations, examiner comments, and information provided by the applicant related to examination results.

(c) The Board representative(s) must present its findings to the Board in executive session at a regularly scheduled meeting of the Board.

(d) The Board must not consider oral arguments from the applicant regarding an examination appeal unless the Board determines that further information is required directly from the applicant.

(e) The Board must make a determination as to whether to grant the appeal and that the determination must become part of the public record.

(3) An appeal may result in:

(a) No action;

(b) Reversal of a failing score; or

(c) Suspension of a failing score and opportunity for the applicant to retake the practical examination.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0015 Licensure

(1) An applicant for an initial license or renewal of a license must complete, in its entirety, an original application furnished by the Board.

(2) An applicant must provide written explanation and copies of all related documentation as requested by the board if:

(a) Applicant has ever been investigated, disciplined or denied licensure by this agency or any other governmental agency in any state or jurisdiction of the United States or foreign country;

(b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country;

(c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions

in any state or jurisdiction of the United States or foreign country;

(d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or

(e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage.

(3) Applicants for initial licensure must apply within one year of the successful completion of the practical examination.

(a) If an applicant does not apply within one year, the applicant must retake the practical examination.

(b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.

(4) Licenses issued expire on the last day of the licensees' birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee must be paid if the completed application and all requirements are not received by the due date.

(5) Applicants for the renewal of an active license must sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours.

(6) Applications for renewal of an active license must be accompanied by:

(a) Current licensing fee;

(b) Any applicable late fees;

(c) Proof of current certification in cardiopulmonary resuscitation (CPR);

(d) Proof of 25 hours of continuing education; and

(e) Any additional documentation required by the Board.

(7) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and must comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.

(8) Licenses issued by the Board must not be transferable.

(9) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.

(10) An application to reactivate an inactive license:

(a) must be accompanied by:

(A) Current licensing fee;

(B) Proof of current cardiopulmonary resuscitation (CPR);

(C) Proof of 25 hours of continuing education for each biennium or fraction of the biennium the license was inactive, up to 50 hours; and

(D) Completed fingerprint card for criminal background check.

(b) An individual who has been inactive or a combination of lapsed/inactive for 6 consecutive years or greater must, in addition, successfully pass the practical examination.

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0017

Lapsed License

- (1) The massage therapist license is considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.
- (2) During the lapsed status, no such person shall practice massage in the State of Oregon.
- (3) An applicant whose license is lapsed may return to active status by including the following with the completed application.
 - (a) Payment of the current fee for activation of the license;
 - (b) Payment of the licensing fee applicable for the period of the lapsed license;
 - (c) Late fee payment;
 - (d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;
 - (e) Proof of current certification in cardiopulmonary resuscitation (CPR);
 - (f) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status; and
 - (g) Applicants must submit a completed fingerprint card for criminal background check.
- (4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0018

Criminal Background Checks, Fitness Determinations

- (1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the

professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards must subsequently be destroyed by the Oregon Department of State Police.

- (a) The Board requires a criminal background check of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under investigation to determine the professional fitness of an applicant or licensee.

- (2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.

- (3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.

- (4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.

- (5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living

at each residence; or additional criminal, judicial or other background information.

(6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:

- (a) Criminal background check;
- (b) The nature of the crime;
- (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
- (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
- (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
- (f) Any other pertinent information requested or obtained as a part of an investigation;
- (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.

(9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.

(10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687, 676

Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0025

Practice of Massage

(1) Massage treatment may include, but is not limited to:

- (a) Client intake and assessment;
- (b) Practice of massage or bodywork;
- (c) Post massage assessment and recommendation; and
- (d) Documentation.

(2) Massage treatment does not include:

- (a) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces;
- (b) The use of equipment or devices that require a prescription; or
- (c) Making a medical diagnosis.

(3) A massage therapist must use safe and functional coverage/draping practices during the practice of massage when the client is disrobed.

(a) Safe and functional coverage/draping means:

(A) LMT explains, maintains and respects coverage/draping boundaries;

(B) Client gives informed consent;

(C) Genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed;

(i) With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area.

(D) Massage or movement of the body does not expose genitals, gluteal cleft or breast area.

(b) Exceptions to the rule may be made for LMTs who can document training in specific modalities that require variations in coverage/draping.

(4) A Licensed massage therapist must not perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in ORS 687, unless the LMT has additional training and/or licensure.

(5) A person represents himself or herself as a massage therapist when the person adopts or uses any word(s) that implies a skill or application as defined by statute 687.011.

(6) Any person who holds a license as a massage therapist in this state may use the abbreviation "LMT." No other person(s) may assume such title or such abbreviation or any other word[s], letters, signs, or figures to indicate that the person using the title is a licensed massage therapist.

(7) All licensed massage therapists must notify the Board office in writing of any change of residence, business, email or mailing address within 30 days of change of address.

(8) Active licensed massage therapists must display their license in a location clearly visible to their clients.

(9) Active licensed massage therapists are required to include their license number in all advertisements, including but not limited to: written, electronic, televised and audio.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0010; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MTB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0027

Exempt Practices

(1) Practitioners exempt from the Oregon Board of Massage Therapists licensing authority are defined as practitioners who:

(a) Do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of:

(A) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement, as defined per 687.031(1)(j)(i). Examples include the Feldenkrais Method of Somatic Education as defined on May 16, 2011, by the

Feldenkrais Guild® of North America and The Trager® Approach as defined on May 16, 2011, by the United States Trager® Association; or

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system, as defined per 687.031(1)(j)(ii). An example includes Bowenwork® and/ or the Bowen Technique as defined on May 16, 2011 by the Bowenwork Academy USA; or

(C) Using touch to affect the energy systems or channels of energy of the body, as defined per 687.031(1)(j)(iii). An example includes Polarity Therapy as defined on May 16, 2011 by the American Polarity Therapy Association; and

(b) Hold an active certification from a National or International professional organization or credentialing agency that:

(A) Requires a minimum level of training specific to their discipline, demonstration of competence and adherence to an approved scope of practice and ethical standards;

(B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(c) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(2) It is the exempt practitioner's responsibility to insure they meet the criteria for being exempt and only practice within their exempt scope of practice. Practitioners may be subject to discipline by the Board if they:

(a) Refer to themselves or imply they are a massage therapist;

(b) Practice outside of the exempt scope of practice;

(c) Practice without an active certification from a National or International professional organization or credentialing agency; or

(d) Fail to provide contact information in the practitioner's place of business for any

organization or agency that has certified the practitioner.

(3) The State Board of Massage Therapists has the authority to verify a practitioners claimed exemption from licensure of ORS 687 under subsection (1)(j) of section 687.031. Verification may include, but is not limited to, consultation with the practitioners certifying organization or agency.

(4) Practitioners, Disciplines and/or Organizations seeking to be named in the exemption shall contact the Board of Massage Therapists to request a review.

Stat. Auth.: ORS 687, SB 454

Stats. Implemented: ORS 687.031

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0033

Fees

(1) The fees are:

(a) \$100 per biennial renewal for initial license;

(b) \$150 per biennial renewal for active license;

(c) \$50 per biennial renewal for inactive license;

(d) \$25 per week, up to a maximum of \$250, for any late renewal;

(e) \$50 for exam/endorsement application processing;

(f) \$150 for each practical examination;

(g) \$100 for mailing list;

(h) \$10 for license reprint;

(i) \$10 for license verification;

(j) \$250 Credentialing Review;

(k) Current Oregon State Police Criminal Background Check Fee; and

(l) Other administrative fees as allowed by law.

(2) Application and licensure fees are not refundable

(3) Examination fees are refunded only when requested in writing and either:

(a) The applicant is unqualified by Oregon statutes, or

(b) Applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0046

Class Certification

- (1) A class or program certified under ORS 687.051 must be offered by:
 - (a) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or
 - (b) By a community college or university and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or
 - (c) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and
 - (d) Approved by the Board.
- (2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to:
 - (a) A completed Board application;
 - (b) Verification of content meeting the Model Curriculum;
 - (c) Course descriptions and syllabi;
 - (d) The institution's Code of Ethics and fraternization policy;
 - (e) The method of evaluation to determine the student's successful completion of a class;

- (f) The attendance requirements for students to successfully complete each class;
 - (g) Minimum qualifications for selecting instructors.
- (3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.
 - (4) A certified class or program must renew their certification on a regular basis as determined by the Board.
 - (5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.
 - (6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board

Stat. Auth.: ORS 687.121
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-010-0047

Competencies

- A Licensed Massage Therapist must establish by successful completion of Board approved written and/or practical exams, and maintain through Continuing Education, the knowledge and skills relevant to the practice of massage and bodywork as follows:
- (1) Knowledge of:
 - (a) Massage and bodywork assessment and application;
 - (b) Anatomy;
 - (c) Physiology;
 - (d) Kinesiology;
 - (e) Pathology;
 - (f) Legal and business requirements;
 - (g) Ethical principles; and
 - (h) Basic CPR.
 - (2) Practical skills application of:

(a) Fundamental techniques of soft tissue manipulation and treatment, and safe utilization of:

- (A) Thermal modalities;
- (B) Topical preparations;
- (C) Mechanical assistance devices and appliances;
- (D) Other applications available to the public; and

(E) Movements and exercises that lengthen and shorten soft tissues within the normal range of the client; and

(b) Fundamental principles of body mechanics in the application of massage and bodywork; and

(c) Locating muscle attachments and bellies; and

(d) Draping/coverage practices that address both function and safety.

(3) Demonstrating Treatment and Business skills in the following areas by:

(a) Developing and utilizing treatment plans addressing client conditions and concerns by:

(A) Identification of indications and contraindications,

(B) Informing the client and obtaining informed consent regarding the risks and benefits of the treatment plan, and

(C) Application and modification of the treatment plan as needed;

(b) Using effective verbal and non-verbal interpersonal communication;

(c) Tracking the client's non-verbal communication and adjusting treatment plan as indicated;

(d) Utilizing an ethical decision making process;

(e) Establishing and maintaining a practice environment that provides for the client's safety and comfort; and

(f) Establishing and maintaining professional business records.

Stat. Auth: ORS 687.121
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-010-0050

Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing competencies as defined in OAR 334-010-0047.

(1) Each licensee must complete 25 hours of continuing education in the competencies each renewal period. At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.

(a) At least 12 hours must be contact hours.

(b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.

(2) The continuing education requirement must not apply to a licensee's first license renewal.

(3) Continuing education must be completed within the renewal period. Contact hours taken in excess of the total number required may only be carried over to the next subsequent renewal period.

(4) Continuing education records must be maintained by each licensee for a minimum of five years.

(5) If the Board finds indications of fraud or falsification of records, investigative action must be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.

(6) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.

(7) Continuing education must be in areas related to the practice of massage or

bodywork including theory, research, technique or business development.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

**DIVISION 20
SANITATION, FACILITY AND
BUILDING REQUIREMENTS**

334-020-0005

Facilities and sanitation

(1) Permanent and Mobile structures:

(a) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:

(A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;

(B) Provide a finished lavatory that

(i) Is well maintained,

(ii) Provides a system for sanitary disposal of waste products,

(iii) Is capable of being fully closed and locked from the inside,

(iv) Supplies hot and cold running water,

(v) Is supplied with liquid soap and single use towels,

(vi) Is supplied with toilet paper at each toilet, and

(vii) Has a poster prominently displayed encouraging handwashing;

(C) Dispose of refuse sewage in a manner described by local and state law; and

(D) Follow applicable laws pertaining to public spas, pools, baths and showers.

(b) All treatment spaces must:

(A) Provide for client privacy, both in-house and on-site;

(B) Be designated as used only for massage at the time of services;

(C) Provide for sufficient hearing, cooling and ventilation for client comfort; and

(D) Provide illumination during cleaning.

(c) The facility and treatment space must be:

(A) Cleaned regularly and kept free of clutter, garbage or rubbish;

(B) Maintained in a sanitary manner; and

(C) Maintained free from flies, insects, rodents and all other types of pests.

(2) Outcall/On-site

(a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:

(b)(A) Safe, sanitized and well-maintained equipment, tools and preparations;

(B) Sanitary linen practices; and

(C) Client privacy practices.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-020-0015

Equipment

(1) All equipment and tools used in conjunction with a treatment on a client must:

(a) Be approved by a nationally recognized testing laboratory when applicable;

(b) Be maintained on a regular basis; and

(c) Be cleaned between each use.

(2) Cushions on tables and chairs, as well as bolster and pillows, must be covered with impervious material that is cleaned after every use.

(3) Topical preparations must be:

(a) Stored in a manner that maintains the integrity of the product and prevents spoilage and contamination;

(b) Dispensed in a manner that prevents contamination of the unused portion; and

(c) Dispensed in a manner that prevents cross-contamination between clients.

(4) Topical preparations such as ice cubes, plasters, herbal wraps and any other similar product that comes in contact with the client must be used only once and then disposed of in a sanitary manner.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0016; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0040; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-020-0050

Linens

- (1) When linens are used they must be routinely cleaned and stored in a manner which reasonably assures the sanitary use for each client.
- (2) The use of soiled linens is prohibited.
- (3) All soiled linens must be:
 - (a) Immediately placed in a receptacle that closes and prevents cross-contamination;
 - (b) Handled as little as possible;
 - (c) Laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections; and
 - (d) Laundered in a manner that removes all residue of topical preparations.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0030; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86;

Renumbered from 334-010-0075; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

334-020-0055

Communicable Disease Control

- (1) All therapists must always practice communicable disease prevention and control.
- (2) LMT's are required to follow the communicable disease guidelines as adopted by the Board.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0032; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86;

Renumbered from 334-010-0080; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

DIVISION 30
ETHICAL STANDARDS

334-030-0001

Preamble and Fundamental Canon

(1) In order to safeguard the health, safety and welfare of the citizens of Oregon and to establish and maintain a high standard of integrity and practice, the following Standards of Professional Conduct must be binding on every person holding a license to practice massage in this state.

(2) The Standards of Professional Conduct as promulgated herein are an exercise of the authority vested in the Board by acts of the legislature.

(3) All persons licensed under ORS 687 are charged with having knowledge of the existence of these Standards of Professional Conduct and must be deemed to be familiar with their provisions and to understand them. Such knowledge must encompass the understanding that the practice of massage is a privilege as opposed to a right.

(4) The Board may establish guidelines for ethical decision-making that are congruent with the standards of professional conduct promulgated by the Board. Such guidelines may be modified or revised at the Board's discretion. The Board must use current standards of practice and codes of ethics in the field of massage and bodywork as well as relevant statutes and regulations in establishing guidelines for ethical decision-making. A copy of any such guidelines or change must be published in the Board's newsletter and relevant professional publications in the field of massage and bodywork.

(5) All LMT's, in the fulfillment of their professional duties, must comply with the Standards and Objectives of Professional Conduct.

Stat. Auth.: ORS 687.011 & 687.081
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

334-030-0005

Standards and Objectives of Professional Conduct

(1) Standard I: Responsibility — the relationship between the LMT and the profession. The LMT must:

(a) Acquire, maintain and improve professional knowledge and competence using scientific, clinical, technical, psychosocial and governmental sources of information;

(b) Act within the context of professional practice standards, codes of ethics, and relevant statutes and regulations;

(c) Consider factors related to safety, effectiveness, and cost in planning and providing care and services;

(d) Represent all aspects of his or her professional capabilities and services honestly and accurately;

(e) Be accountable to his or her profession for establishing the quality and effectiveness of care and services, using their experience, professional education, and available resources;

(f) Establish relationships with other massage, bodywork or healthcare professionals to collaborate with, and to offer or receive consultation in the provision of services; and

(g) Be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best.

(2) Standard II: Therapeutic Relationship -- the relationship between the LMT and the client. The LMT must:

(a) Be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship;

(b) Plan and provide care and services to the best of his or her abilities, in partnership with the client, based on client needs;

(c) Ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power;

(d) Develop alliances with the client, colleagues, other health care providers and the community to provide care and services that are safe, effective and appropriate to the client's needs;

(e) Develop and incorporate respect for diverse client backgrounds in regard to a client's clinical diagnosis, lifestyle, sexual orientation, race, gender, ethnicity, religion, age, and socioeconomic background when planning and providing services;

(f) Act as an advocate for client and client's needs;

(g) Support and respect the client's right and responsibility for self-determination in making health care choices; and

(h) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.

(3) Standard III: Critical Reflection — the relationship of LMT to self. The LMT must:

(a) Use critical reflection in the assessment of professional and clinical situations for the development and provision of care and services;

(b) Evaluate the quality and effectiveness of his or her professional practice activities;

(c) Modify and adapt professional practice activities, consistent with current professional standards and practices, in response to client needs, advancing knowledge and research, and social expectations; and

(d) Be an autonomous agent in planning and providing care and services to individuals, groups and the community.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

DIVISION 40
COMPLAINTS AND DISCIPLINE

334-040-0001

Complaints

(1) Every licensee having information regarding a possible violation of the rules or statutes governing massage must cooperate with the Board in furnishing such information and must assist the Board, in order that appropriate investigative, corrective or disciplinary action may be taken.

(2) Anyone may submit a complaint against a licensed or unlicensed person. A complaint may be submitted anonymously. Complainants are kept confidential.

(3) A preliminary review of the complaint must be made by the Board or its representative, to assure there is sufficient evidence to justify proceeding to investigate and to determine if the allegations against the Respondent are such that, if proven, could result in disciplinary action being imposed by the Board.

(4) If the complaint is considered to be valid, the Board must then proceed as follows:

(a) The Board or its representative may notify the Respondent of the allegations by mail and request written response. Written responses must be received by the Board within two weeks after the notification was first mailed, unless an extension is authorized by the Board. In the event no written response is received the Board may evaluate the complaint using available evidence; or

(b) The Board or its representative may refer the complaint to the Board's designated authority for additional investigation.

(5) The Board must evaluate all evidence obtained; including any documents or comments received from the Respondent and the Board must proceed as follows:

(a) If the evidence is insufficient to justify further proceedings, the Complainant and Respondent must be so notified in writing.

(b) If the evidence is sufficient to justify further proceedings, the Board must consider and take appropriate action at a regular or special meeting.

Stat. Auth.: ORS 687.081 & 687.121
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061,
687.081, 687.086 & 687.121
Hist.: BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f.
12-1-11, cert. ef. 1-1-12

334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

(1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;

(2) Knowingly or recklessly making any false statement to the Board;

(3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;

(4) Conviction of a crime in this state, or jurisdiction;

(5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;

(6) Allowing the use of a license by an unlicensed person;

(7) Presenting as one's own license, the license of another;

(8) Practicing massage under a false or assumed name without notification to the Board;

- (9) Impersonating another massage therapist;
- (10) Assisting, employing, or permitting an unlicensed person to practice massage;
- (11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (12) Practicing or offering to practice massage beyond the scope permitted by law;
- (13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (18) Failing to comply with an order issued by the Board;
- (19) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:

- (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
- (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
- (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress for self gratification instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;
 - (iii) An examination or touching of genitals;
 - (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;

- (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
- (vi) Kissing of a sexual nature.
- (b) Violating the client's rights of privacy, and confidentiality.
- (c) Failure to disclose or release information about a client if required by law or on written consent of client.
- (d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
- (e) Any conduct or practice which could endanger the health or safety of a client or the public.
- (f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
- (h) Routinely practicing in an incompetent manner.
- (i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
- (j) Practicing a modality or technique without adequate training or licensure.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12

OTHER RELATED STATUTES

LIMITATIONS OF ACTIONS AND SUITS

GENERAL PROVISIONS

- 12.110 Actions for certain injuries to person not arising on contract; action for overtime or premium pay; action for professional malpractice; effect of fraud or deceit; action for injuries to person arising from nuclear incident.
- 12.115 Action for negligent injury to person or property.

SUPPORT ENFORCEMENT

SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

- 25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules
- 25.752 Memberships in professional organizations that are required by state law
- 25.756 Identifying persons holding licenses, certificates, permits and registrations
- 25.759 Notice to persons subject to suspension; contents
- 25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement
- 25.765 Procedure if obligor contacts administrator within time limits; hearing
- 25.768 Judicial review of order
- 25.771 Obligor holding more than one license, certificate, permit or registration
- 25.774 Reinstatement
- 25.777 Reimbursing issuing entities for costs incurred
- 25.780 Other licenses, certificates, permits and registrations subject to suspension
- 25.783 Confidentiality of information
- 25.785 Issuing entities to require Social Security number

ACTIONS AND SUITS IN PARTICULAR CASES

MISCELLANEOUS ACTIONS

- 30.792 Liability of health care provider or health clinic for volunteer services to charitable corporations
- 30.800 Liability for emergency medical assistance
- 30.802 Liability for use of automated external defibrillator
- 30.865 Action for invasion of personal privacy; attorney fees.
- 30.867 Action for violation of criminal laws relating to involuntary servitude or trafficking in persons

TORT ACTIONS

PUNITIVE DAMAGES

- 31.740 When award of punitive damages against health practitioner prohibited.

DISSOLUTION, ANNULMENT AND SEPARATION

- 107.154 Authority of parent when other parent granted sole custody of child.

PARENT AND CHILD RIGHTS AND RELATIONSHIPS

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(1) An action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

(2) An action upon a statute for a forfeiture or penalty to the state or county shall be commenced within two years.

(3) An action for overtime or premium pay or for penalties or liquidated damages for failure to pay overtime or premium pay shall be commenced within two years.

(4) An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered. However, notwithstanding the provisions of ORS 12.160, every such action shall be commenced within five years from the date of the treatment, omission or operation upon which the action is based or, if there has been no action commenced within five years because of fraud, deceit or misleading representation, then within two years from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered.

(5) An action, arising from a nuclear incident, as defined in 42 U.S.C. 2014(q), that involves the release of radioactive

material, excluding releases from acts of war, that causes bodily injury, sickness or death, shall be commenced:

(a) Within two years from the time an injured person discovers or reasonably could have discovered the injury and the causal connection between the injury and the nuclear incident; or

(b) Within two years from any substantial change in the degree of injury to the person arising out of a nuclear incident. [Amended by 1957 c.374 §1; 1967 c.406 §1; 1969 c.642 §1; 1971 c.473 §1; 1975 c.796 §10a; 1981 c.149 §1; 1987 c.705 §4]

12.115 Action for negligent injury to person or property.

(1) In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of.

(2) Nothing in this section shall be construed to extend any period of limitation otherwise established by law, including but not limited to the limitations established by ORS 12.110. [1967 c.406 §2]

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SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules.

(1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is in arrears under any child support judgment or order, in an amount equal to the greater of three months of support or \$2,500, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43; 2009 c.209 §1]

Note: Section 2, chapter 209, Oregon Laws 2009, provides:

Sec. 2. The amendments to ORS 25.750 by section 1 of this 2009 Act apply to all child support judgments and orders, whether entered before, on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.209 §2]

25.752 Memberships in professional organizations that are required by state law.

As used in ORS 25.750 to 25.783, “licenses, certificates, permits or registrations” includes, but is not limited to, memberships in professional organizations that are required by state law in order to engage in a profession. [1995 c.620 §12]

25.753 [1993 c.365 §3; repealed by 1995 c.620 §13]

25.756 Identifying persons holding licenses, certificates, permits and registrations.

The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

(1) The Oregon Liquor Control Commission;

(2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a

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particular occupational or professional title;
and

(3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, Social Security number, if available, date of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750

(1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or \$2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1)

If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

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(2) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing.

(1) If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether suspension should occur. If the administrator determines that suspension should occur, the administrator shall make a written determination of such finding.

(2) The obligor may object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Any suspension is stayed pending the decision of the administrative law judge. Any order of the administrative law judge that supports a suspension shall result in the notification to the issuing entity by the administrator to suspend the license, certificate, permit or registration forthwith.

(3) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS

25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

25.771 Obligor holding more than one license, certificate, permit or registration.

In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

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(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information.

Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number.

(1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require

that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this section knowing the statement to be false. [1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

Note: 25.785 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ACTIONS AND SUITS IN PARTICULAR CASES

MISCELLANEOUS ACTIONS

30.792 Liability of health care provider or health clinic for volunteer services to charitable corporations. (1) As used in this section:

(a) “Charitable corporation” has the meaning given that term in ORS 128.620.

(b) “Health care provider” means any person licensed in this state as a practitioner of one or more healing arts as described in ORS 31.740.

(c) “Health clinic” means a public health clinic or a health clinic operated by a charitable corporation that provides primarily primary physical health, dental or mental health services to low-income patients without charge or using a sliding fee scale based on the income of the patient.

(2) Except as provided in subsection (3) of this section, no person may maintain an action for damages against:

(a) A health care provider who voluntarily provides to a charitable corporation any assistance, services or advice directly related to the charitable purposes of the corporation if the assistance, services or advice are within the scope of the license of the health care provider; or

(b) A health clinic for the assistance, services or advice provided by a health care provider described in paragraph (a) of this subsection.

(3) The immunity provided in this section shall not apply to:

(a) Any person who receives compensation other than reimbursement for expenses incurred by the person providing such assistance, services or advice.

(b) The liability of any person for damages resulting from the person’s gross negligence or from the person’s reckless, wanton or intentional misconduct.

(c) Any activity for which a person is otherwise strictly liable without regard to fault. [1995 c.616 §2; 2005 c.362 §2]

30.800 Liability for emergency medical assistance. (1) As used in this section, “emergency medical assistance” means:

(a) Medical or dental care not provided in a place where emergency medical or dental care is regularly available, including but not limited to a hospital, industrial first-aid station or a physician’s or dentist’s office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical or dental care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical after effects; or

(b) Medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Oregon Medical Board in the physician’s professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events.

(2) No person may maintain an action for damages for injury, death or loss that results from acts or omissions of a person while rendering emergency medical assistance unless it is alleged and proved by the complaining party that the person was grossly negligent in rendering the emergency medical assistance.

(3) The giving of emergency medical assistance by a person does not, of itself, establish the relationship of physician and patient, dentist and patient or nurse and patient between the person giving the assistance and the person receiving the assistance insofar as the relationship carries with it any duty to provide or arrange for further medical care for the injured person after the giving of emergency medical assistance. [1967 c.266 §§1,2; 1973 c.635 §1; 1979 c.576 §1; 1979 c.731 §1; 1983 c.771 §1; 1983 c.779 §1; 1985 c.428 §1; 1989 c.782 §35; 1997 c.242 §1; 1997 c.751 §11]

ACTIONS AND SUITS IN PARTICULAR CASES

30.802 Liability for use of automated external defibrillator. (1) As used in this section:

(a) “Automated external defibrillator” means an automated external defibrillator approved for sale by the federal Food and Drug Administration.

(b) “Public setting” means a location that is:

(A) Accessible to members of the general public, employees, visitors and guests, but that is not a private residence;

(B) A public school facility as defined in ORS 327.365; or

(C) A health club as defined in ORS 431.680.

(2) A person may not bring a cause of action against another person for damages for injury, death or loss that result from acts or omissions involving the use, attempted use or nonuse of an automated external defibrillator when the other person:

(a) Used or attempted to use an automated external defibrillator;

(b) Was present when an automated external defibrillator was used or should have been used;

(c) Provided training in the use of an automated external defibrillator;

(d) Is a physician and provided services related to the placement or use of an automated external defibrillator; or

(e) Possesses or controls one or more automated external defibrillators placed in a public setting and reasonably complied with the following requirements:

(A) Maintained, inspected and serviced the automated external defibrillator, the battery for the automated external defibrillator and the electrodes for the automated external defibrillator in accordance with guidelines set forth by the manufacturer.

(B) Ensured that a sufficient number of employees received training in the use of an automated external defibrillator so that at least one trained employee may be

reasonably expected to be present at the public setting during regular business hours.

(C) Stored the automated external defibrillator in a location from which the automated external defibrillator can be quickly retrieved during regular business hours.

(D) Clearly indicated the presence and location of each automated external defibrillator.

(E) Established a policy to call 9-1-1 to activate the emergency medical services system as soon as practicable after the potential need for the automated external defibrillator is recognized.

(3) The immunity provided by this section does not apply if:

(a) The person against whom the action is brought acted with gross negligence or with reckless, wanton or intentional misconduct;

(b) The use, attempted use or nonuse of an automated external defibrillator occurred at a location where emergency medical care is regularly available; or

(c) The person against whom the action is brought possesses or controls one or more automated external defibrillators in a public setting and the person’s failure to reasonably comply with the requirements described in subsection (2)(e) of this section caused the alleged injury, death or loss.

(4) Nothing in this section affects the liability of a manufacturer, designer, developer, distributor or supplier of an automated external defibrillator, or an accessory for an automated external defibrillator, under the provisions of ORS 30.900 to 30.920 or any other applicable state or federal law. [2005 c.551 §1]

30.865 Action for invasion of personal privacy; attorney fees. (1) A plaintiff has a cause of action for invasion of personal privacy if the plaintiff establishes any of the following:

ACTIONS AND SUITS IN PARTICULAR CASES

(a) The defendant knowingly made or recorded a photograph, motion picture, videotape or other visual recording of the plaintiff in a state of nudity without the consent of the plaintiff, and at the time the visual recording was made or recorded the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(b) For the purpose of arousing or gratifying the sexual desire of the defendant, the defendant was in a location to observe the plaintiff in a state of nudity without the consent of the plaintiff, and the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(c) For the purpose of arousing or gratifying the sexual desire of any person, the defendant knowingly:

(A) Made or recorded a photograph, motion picture, videotape or other visual recording of an intimate area of the plaintiff without the consent of the plaintiff; or

(B) Viewed an intimate area of the plaintiff without the consent of the plaintiff.

(d) Without the consent of the plaintiff, the defendant disseminated a photograph, motion picture, videotape or other visual recording of the plaintiff in a state of nudity, and the defendant knew that at the time the visual recording was made or recorded the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(2) A plaintiff who prevails in a cause of action for invasion of personal privacy under this section is entitled to receive:

(a) Compensatory damages; and

(b) Reasonable attorney fees.

(3) An action under this section must be commenced not later than two years after the conduct that gives rise to a claim for relief occurred.

(4) The remedy provided by this section is in addition to, and not in lieu of, any other

claim for relief that may be available to a plaintiff by reason of conduct of a defendant described in subsection (1) of this section.

(5) The provisions of subsection (1)(a) and (d) of this section do not apply to a photograph, motion picture, videotape or other visual recording of a person under 12 years of age if:

(a) The person who makes, records or disseminates the visual recording is the father, mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under 12 years of age; and

(b) The visual recording is made, recorded or disseminated for a purpose other than arousing or gratifying the sexual desire of the person or another person.

(6) As used in this section:

(a) "Intimate area" means:

(A) Undergarments that are being worn by a person, are covered by clothing and are intended to be protected from being seen; and

(B) Any of the following that are covered by clothing and are intended to be protected from being seen:

(i) Genitals;

(ii) Pubic areas; or

(iii) Female breasts below the point immediately above the top of the areola.

(b) "Made or recorded a photograph, motion picture, videotape or other visual recording" includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

(c) "Nudity" means any part of the uncovered, or less than opaquely covered,:

(A) Genitals;

(B) Pubic area; or

(C) Female breast below a point immediately above the top of the areola.

ACTIONS AND SUITS IN PARTICULAR CASES

(d) “Places and circumstances where the plaintiff has a reasonable expectation of personal privacy” includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

(e) “Public view” means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when viewed from a public place as defined in ORS 161.015. [2005 c.544 §1; 2009 c.877 §3]

Note: Section 4, chapter 877, Oregon Laws 2009, provides:

Sec. 4. The amendments to ORS 30.865, 163.700 and 163.702 by sections 1 to 3 of this 2009 Act apply to conduct occurring on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.877 §4]

30.867 Action for violation of criminal laws relating to involuntary servitude or trafficking in persons. (1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263, 163.264 or 163.266 may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.

(2) Upon prevailing in an action under this section, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively

reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a circuit court.

(4) An action under this section must be commenced within six years of the conduct giving rise to the claim. [2007 c.811 §9]

TORT ACTIONS

PUNITIVE DAMAGES

31.740 When award of punitive damages against health practitioner prohibited.

Punitive damages may not be awarded against a health practitioner if:

(1) The health practitioner is licensed, registered or certified as:

(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A regulated social worker under ORS 675.510 to 675.600;

(d) A physician under ORS 677.100 to 677.228;

(e) An emergency medical technician under ORS chapter 682;

(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;

(g) A nurse under ORS 678.040 to 678.101;

(h) A nurse practitioner under ORS 678.375 to 678.390;

(i) A dentist under ORS 679.060 to 679.180;

(j) A dental hygienist under ORS 680.040 to 680.100;

(k) A denturist under ORS 680.515 to 680.535;

(L) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;

(m) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;

(n) A chiropractor under ORS 684.040 to 684.105;

(o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;

(p) A massage therapist under ORS 687.021 to 687.086;

(q) A physical therapist under ORS 688.040 to 688.145;

(r) A medical imaging licensee under ORS 688.445 to 688.525;

(s) A pharmacist under ORS 689.151 and 689.225 to 689.285; or

(t) A physician assistant as provided by ORS 677.505 to 677.525; and

(2) The health practitioner was engaged in conduct regulated by the license, registration or certificate issued by the appropriate governing body and was acting within the scope of practice for which the license, registration or certificate was issued and without malice. [Formerly 18.550; 2005 c.366 §4; 2009 c.442 §27; 2009 c.833 §26]

DISSOLUTION, ANNULMENT AND SEPARATION

107.154 Authority of parent when other parent granted sole custody of child.

Unless otherwise ordered by the court, an order of sole custody to one parent shall not deprive the other parent of the following authority:

- (1) To inspect and receive school records and to consult with school staff concerning the child's welfare and education, to the same extent as the custodial parent may inspect and receive such records and consult with such staff;
- (2) To inspect and receive governmental agency and law enforcement records concerning the child to the same extent as the custodial parent may inspect and receive such records;
- (3) To consult with any person who may provide care or treatment for the child and to inspect and receive the child's medical, dental and psychological records, to the same extent as the custodial parent may consult with such person and inspect and receive such records;
- (4) To authorize emergency medical, dental, psychological, psychiatric or other health care for the child if the custodial parent is, for practical purposes, unavailable; or
- (5) To apply to be the child's conservator, guardian ad litem or both. [1987 c.795 §3]

PARENT AND CHILD RIGHTS AND RELATIONSHIPS

RIGHTS OF MINORS

109.672 Certain persons immune from liability for providing care to minor. (1)

No person licensed, certified or registered to practice a health care profession or health care facility shall be liable for damages in any civil action arising out of the failure of the person or facility to obtain the consent of a parent to the giving of medical care or treatment to a minor child of the parent if consent to the care has been given by the other parent of the child.

(2) The immunity provided by subsection (1) of this section shall apply regardless of whether:

(a) The parents are married, unmarried or separated at the time of consent or treatment.

(b) The consenting parent is, or is not, a custodial parent of the minor.

(c) The giving of consent by only one parent is, or is not, in conformance with the terms of any agreement between the parents, any custody order or any judgment of dissolution or separation.

(3) The immunity created by subsection (1) of this section shall not apply if the parental rights of the parent who gives consent have been terminated pursuant to ORS 419B.500 to 419B.524.

(4) For the purposes of this section, "health care facility" means a facility as defined in ORS 442.015 or any other entity providing medical service. [Formerly 109.133; 1993 c.33 §296; 2003 c.576 §158]

DEATHS, INJURIES AND MISSING PERSONS

IDENTIFICATION OF DEAD AND MISSING PERSONS

146.181 Missing persons; police report; supplementary report.

(1) When a person is reported as missing to any city, county or state police agency, the agency, within 12 hours thereafter, shall enter into state and federal records maintained for that purpose, a report of the missing person in a format and according to procedures established by the authorities responsible respectively for the state and federal records.

(2) The law enforcement agency to which the report is made:

(a) May request from the person making the report information or material likely to be useful in identifying the missing person or the human remains of the missing person, including, but not limited to:

(A) The name of the missing person and any alternative names the person uses;

(B) The date of birth of the missing person;

(C) A physical description of the missing person, including the height, weight, gender, race, eye color, current hair color and natural hair color of the missing person, any identifying marks on the missing person, any prosthetics used by, or surgical implants in, the missing person and any physical anomalies of the missing person;

(D) The blood type of the missing person;

(E) The driver license number of the missing person;

(F) The Social Security number of the missing person;

(G) A recent photograph of the missing person;

(H) A description of the clothing the missing person is believed to have been wearing at the time the person disappeared;

(I) A description of items that the missing person is believed to have had with the person at the time the person disappeared;

(J) Telephone numbers and electronic mail addresses of the missing person;

(K) The name and address of any school the missing person attends;

(L) The name and address of any employer of the missing person;

(M) The name and address of the primary care physician and dentist of the missing person;

(N) A description of any vehicle that the missing person might have been driving or riding in when the person disappeared;

(O) The reasons why the person making the missing person report believes the person is missing;

(P) Any circumstances that indicate that the missing person may be at risk of injury or death;

(Q) Any circumstances that may indicate that the disappearance is not voluntary;

(R) Information about a known or possible abductor or a person who was last seen with the missing person; and

(S) The date of the last contact with the missing person.

(b) May request in writing from any dentist, denturist, physician, optometrist or other medical practitioner possessing it such medical, dental or other physically descriptive information as is likely to be useful in identifying the missing person or the human remains of the missing person.

(3) The law enforcement agency, upon obtaining information pursuant to subsection (2) of this section, shall make a supplementary entry of that information into the state and federal records described in subsection (1) of this section. The supplementary report shall be in a format and according to procedures established by the authorities responsible respectively for the state and federal records. [Formerly 146.525]

146.184 Medical practitioners to provide information about missing persons.

(1) A dentist, denturist, physician, optometrist or other medical practitioner, upon receipt of a

DEATHS, INJURIES AND MISSING PERSONS

written request from a law enforcement agency for identifying information pursuant to ORS 146.181, shall furnish to the agency such information known to the practitioner upon the request forms provided by the agency.

(2) Information obtained under this section is restricted to use for the identification of missing persons or the identification of unidentified human remains and may not be made available to the public.

(3) Compliance with a written request for information under this section by a dentist, denturist, physician, optometrist or other medical practitioner does not constitute a breach of confidentiality. [Formerly 146.535]

STATE ADMINISTRATIVE AGENCIES

STATE ADMINISTRATIVE AGENCIES GENERALLY

182.010 Nonattendance of member of board or commission at meetings as forfeiting office; appointment of successor. Any member of a state board or commission appointed by the Governor who fails to attend two consecutive meetings of the board or commission, whether regular, adjourned or special, shall forfeit office unless the member is prevented from attending by the serious illness of a member or the family of the member or for any other cause that in the judgment of the Governor constitutes a valid reason for failing to attend. The Governor shall immediately appoint a successor.

182.020 Notice of meetings of boards and commissions; reporting of absences. The secretary or clerk of every state board and commission shall:

- (1) Give the members of the board or commission at least 10 days' notice, in writing, of the date and place of each regular, adjourned or special meeting.
- (2) Report to the Governor the names of all members who fail to attend any meeting of the board or commission.

182.030 Employment of persons advocating violent overthrow of the Government of the United States or Oregon prohibited. (1) No state department, board or commission shall knowingly employ any person who either directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against the Government of the United States or of the State of Oregon.

(2) Any person employed by any state department, board or commission shall immediately be discharged from employment when it becomes known to the

appointing employer that such person has, during the period of employment, committed any offense set forth in subsection (1) of this section.

(3) Any person denied employment or discharged pursuant to this section shall have a right of appeal in accordance with the provisions of the State Personnel Relations Law.

182.040 Boards and commissions to pay counties for services; exceptions. (1) All state boards and commissions that are supported by fees, fines, licenses or taxes or other forms of income not derived from a direct tax on tangible property shall pay the various counties of the State of Oregon the same fees required of others for services rendered.

(2) ORS 182.040 to 182.060 do not apply to:
(a) Except for those fees required in ORS 205.320, services rendered for the Bureau of Labor and Industries on wage claims assigned to it for collection.

(b) Any of the provisions or requirements of ORS 21.310, 52.410 to 52.440, 156.160, 205.360 and 205.370. [Amended by 1965 c.619 §35; 1967 c.398 §8; 1973 c.381 §7; 1981 s.s. c.3 §97; 1985 c.496 §25; 1999 c.803 §3]

182.050 Time and manner of payment to counties. No state board or commission affected by the provisions of ORS 182.040 and 182.060 shall be required at the time of ordering the performance of any services for which a fee or charge may be collected by the county to pay the collectible fee or charge in advance or at the time the services are rendered. The county clerk or other officer performing the service, upon request made by the board or commission, shall charge to the board or commission the amount of the fee or charge, and thereafter on the first days of January, April, July and October of each calendar year supply to the

STATE ADMINISTRATIVE AGENCIES

board or commission an itemized statement of all services performed upon order of the board or commission for the three months preceding, together with the legal charge collectible therefor. The board or commission, upon receipt of the statement, promptly shall pay the amount due the county.

182.060 County clerk to record instruments affecting realty for state boards and commissions. When requested by a state board or commission, the county clerk shall record in the office of the clerk any instrument affecting real property and shall return to the board or commission a receipt for the instrument showing the legal charge for the recording of the instrument. [Amended by 1999 c.654 §12]

182.072 Payment for licenses issued by county or other public body on behalf of state agency. If an agency of the executive department, as defined in ORS 174.112, enters into a contract with a county or other public body, as defined in ORS 174.109, for the purpose of issuing licenses on behalf of the agency, the agency, by rule, shall provide that payment for the licenses be made directly to the agency if:

- (1) The agency has implemented a functioning licensing software system that is approved by the Oregon Department of Administrative Services; and
- (2) The agency pays to the county or other public body the same amounts under the contract that the county or other public body would have received if the county or other public body had collected the license fees. [2007 c.768 §61]

SEMI-INDEPENDENT STATE AGENCIES

182.454 Semi-independent state agencies. The following semi-independent state

agencies are subject to ORS 182.456 to 182.472:

- (1) The Appraiser Certification and Licensure Board.
- (2) The State Board of Architect Examiners.
- (3) The State Board of Examiners for Engineering and Land Surveying.
- (4) The State Board of Geologist Examiners.
- (5) The State Landscape Architect Board.
- (6) The Oregon Board of Optometry.
- (7) The Oregon Patient Safety Commission.
- (8) The Oregon Wine Board.
- (9) The State Board of Massage Therapists.
- (10) The Physical Therapist Licensing Board.
- (11) The State Landscape Contractors Board. [1999 c.1084 §3; 2003 c.686 §13; 2003 c.797 §27; 2005 c.109 §2; 2007 c.71 §59]

Note: 182.454 to 182.472 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(General Provisions Relating to Semi-Independent State Agencies)

182.456 Definitions for ORS 182.456 to 182.472. As used in ORS 182.456 to 182.472:

- (1) “Board” means a semi-independent state agency listed in ORS 182.454.
- (2) “License” includes licenses, registrations, certifications, permits or other forms of permission required by law to pursue an occupation or engage in a business regulated by a board. [1999 c.1084 §§4,55; 2003 c.686 §§14,15; 2007 c.71 §60]

182.460 Statutory provisions applicable to semi-independent state agencies. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, 279A,

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279B, 279C, 282, 283, 291, 292 and 293 do not apply to a board. A board is subject to all other statutes governing a state agency that do not conflict with ORS 182.456 to 182.472, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183, and a board's employees are included within the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, the following provisions shall apply to a board:

- (a) ORS 240.309 (1) to (6) and 240.321;
- (b) ORS 279A.250 to 279A.290;
- (c) ORS 282.210 to 282.230; and
- (d) ORS 293.240.

(3) In carrying out the duties, functions and powers of a board, the board may contract with any state agency for the performance of duties, functions and powers as the board considers appropriate. A state agency may not charge a board an amount that exceeds the actual cost of those services. ORS 182.456 to 182.472 do not require an agency to provide services to a board other than pursuant to a voluntary interagency agreement or contract.

(4) A board shall adopt personnel policies and contracting and purchasing procedures. The Oregon Department of Administrative Services shall review those policies and procedures for compliance with applicable state and federal laws and collective bargaining contracts.

(5) Except as otherwise provided by law, directors and employees of a board are eligible to receive the same benefits as state employees and are entitled to retain their State of Oregon hire dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer of all accumulated state agency leaves. [1999 c.1084 §5; 2003 c.794 §204; 2007 c.71 §61]

182.462 Budgets for semi-independent state agencies; annual financial statements; disposition of civil penalties; rules. (1) A board shall adopt budgets on a biennial basis using classifications of expenditures and revenues required by ORS 291.206 (1), but the budget shall not be subject to review and approval by the Legislative Assembly or to future modification by the Emergency Board or the Legislative Assembly.

(2) The budget referred to in subsection (1) of this section shall be adopted in accordance with applicable provisions of ORS chapter 183. Except as provided in this subsection, a board shall adopt or modify a budget only after a public hearing thereon. A board must give notice of the hearing to all holders of licenses issued by the board.

(3) A board shall follow generally accepted accounting principles and keep financial and statistical information as necessary to completely and accurately disclose the financial condition and financial operations of the board as may be required by the Secretary of State.

(4) A board shall prepare an annual financial statement of board revenues and expenses and shall make the statement available for public review. The board shall provide a copy of the statement to the Oregon Department of Administrative Services not later than the 90th day after the end of the state fiscal year.

(5) A board may, by rule, elect to donate all or part of the revenue derived by the board from civil penalties to the General Fund of the State Treasury. [1999 c.1084 §6]

182.464 Financial review by Secretary of State. The Secretary of State shall enter into agreements with each of the boards to set appropriate financial review schedules for those boards. The financial review schedules shall be set to allow board compliance with ORS 182.472. In lieu of conducting a

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financial review, the Secretary of State may elect to contract for the financial review with, or accept a financial review conducted by, an independent certified public accountant. [1999 c.1084 §7; 2007 c.218 §1]

182.466 Powers of semi-independent state agencies; fees; rules. In addition to other powers granted by ORS 182.456 to 182.472 and by the statutes specifically applicable to a board, a board may:

- (1) Sue and be sued in its own name.
- (2) Notwithstanding ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C, enter into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and dispose of real and personal property.
- (3) Notwithstanding ORS 670.300, fix a per diem amount to be paid to board members for each day or portion thereof during which the member is actually engaged in the performance of official duties. Board members may also receive actual and necessary travel expenses or other expenses actually incurred in the performance of their duties. If an advisory council or peer review committee is established under the law that governs the board, the board may also fix and pay amounts and expenses for members thereof.
- (4) Set the amount of any fee required by statute and establish by rule and collect other fees as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this subsection, a board shall hold a public hearing prior to adopting or modifying any fee without regard to the number of requests received to hold a hearing. A board shall give notice to all licensees of the board prior to holding a hearing on the adoption or modification of any fee. A board may adopt fees in

conjunction with the budget adoption process described in ORS 182.462.

(5) Subject to any other statutory provisions, adopt procedures and requirements governing the manner of making application for issuance, renewal, suspension, revocation, restoration and related activities concerning licenses that are under the jurisdiction of a board. [1999 c.1084 §8; 2001 c.104 §62; 2003 c.794 §205]

182.468 Administrators. (1) Notwithstanding ORS 670.306, a board may select and appoint an administrator. The board shall fix the qualifications and compensation for the position.

(2) An administrator of a board shall not be a voting member of that board.

(3) Notwithstanding ORS 670.306, an administrator of a board may employ persons as the board determines to be necessary for carrying out the business and responsibilities of the board. [1999 c.1084 §9(1),(2),(3)]

182.470 Depository accounts for moneys collected or received by semi-independent state agencies. (1) Notwithstanding ORS 670.335, except where otherwise specifically provided by statute pursuant to ORS 182.462 (5), all moneys collected or received by a board, placed to the credit of that board and remaining unexpended and unobligated on the date that the board is established as a semi-independent state agency, and all moneys collected or received by a board after the date that the board is established as a semi-independent state agency, must be deposited into an account established by that board in a depository insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to 295.108, the chairperson, president or administrator of a board shall

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ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. All moneys in the account are continuously appropriated to the board making the deposit for the purpose of carrying out the functions of the board.

(2) Subject to the approval of the chairperson, president or administrator, a board may invest moneys collected or received by the board. Investments made by a board are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investment maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(3) Interest earned from any accounts invested under subsection (2) of this section shall be made available to a board in a manner consistent with the board's annual budget.

(4) Subject to the approval of the chairperson, president or administrator, all necessary board expenses shall be paid from the moneys collected or earned by a board.

(5) As used in this section, "depository" has the meaning given that term in ORS 295.001. [1999 c.1084 §10; 2001 c.409 §3; 2003 c.405 §3; 2007 c.871 §25]

182.472 Reports. Not later than January 1 of each even-numbered year, each board subject to ORS 182.456 to 182.472 shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Legislative Fiscal Officer. The Legislative Fiscal Officer shall review the reports and shall prepare and submit a statement of findings and conclusions to the Joint Legislative Audit Committee. The report must include the following:

(1) A copy of the most recent audit or financial review of the board.

(2) A copy of the actual budget for the prior biennium and a copy of the board's adopted budget for the biennium in which the report is made. The budget documents must show:

(a) The beginning balance and ending balance for each of the two biennia;

(b) A description of material changes between the two biennia;

(c) A description of the public hearing process used to establish the budget adopted for the current biennium; and

(d) A description of current fees and proposed changes to fees, along with information supporting the amounts of the current fees and any proposed changes to the fees.

(3) A description of all temporary and permanent rules adopted by the board since the last report was submitted.

(4) A description of board actions promoting consumer protection that were taken since the last report was submitted.

(5) If the board issues licenses, a description of the board's licensing activities performed since the last report that is adequate to allow evaluation of the board's performance of its licensing responsibilities, including:

(a) The number of license applications;

(b) The number of licenses issued;

(c) The number of examinations conducted;

(d) The average time between application for and issuance of licenses;

(e) The number and types of complaints received about persons holding licenses;

(f) The number and types of investigations conducted;

(g) The number and types of resolutions of complaints;

(h) The number and type of sanctions imposed; and

(i) The number of days between beginning an investigation and reaching a resolution.

(6) A description of all other actions taken since the last report in the performance of

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the board's statutory responsibilities that is adequate to allow evaluation of the board's performance. [1999 c.1084 §11; 2005 c.109 §1; 2007 c.218 §2]

ADMINISTRATIVE PROCEDURES ACT

ADOPTION OF RULES

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required.

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

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(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall

publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) If requested by at least five persons before the earliest date that the rule could become effective after the agency gives notice pursuant to subsection (1) of this section, the agency shall provide a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective.

(e) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Any public comment received in response to the request made under subsection (2)(b)(G) of this section and the agency's response to that comment.

(D) Any statements provided by the agency under paragraph (d) of this subsection.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of

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notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the

temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;

(c) Correcting spelling;

(d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;

(e) Correcting statutory or rule references; or

(f) Correcting addresses or telephone numbers referred to in the rules.

(8)(a) Any person may request in writing that an agency send to the person copies of the agency's notices of intended action issued under subsection (1) of this section.

The person must provide an address where the person elects to receive notices. The address provided may be a postal mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing address.

(b) A request under this subsection must indicate that the person requests one of the following:

(A) The person may request that the agency mail paper copies of the proposed rule and other information required by subsection (2) of this section to the postal mailing address.

(B) If the agency posts notices of intended action on a website, the person may request that the agency mail the information required by subsection (2)(a) of this section to the postal mailing address with a reference to the website where electronic copies of the proposed rule and other

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information required by subsection (2) of this section are posted.

(C) If the agency provides notice by electronic mail, the person may request that the agency electronically mail the information required by subsection (2)(a) of this section to the electronic mailing address, and either provide electronic copies of the proposed rule and other information required by subsection (2) of this section or provide a reference to a website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(c) Upon receipt of any request under this subsection, the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing the mailing lists and keeping the mailing lists current. Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of the lists.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under

subsection (1) of this section is delivered to the Secretary of State for the purpose of publication in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.715.

(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule.

(b) An agency may use an amended filing to correct a failure to include a fiscal impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS 183.333.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

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(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or co-chairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or co-chairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2; 1993 c.729 §3; 1995 c.652 §5;

1997 c.602 §3; 1999 c.123 §1; 1999 c.334 §1; 2001 c.220 §1; 2001 c.563 §1; 2003 c.749 §5; 2003 c.794 §206; 2005 c.17 §1; 2005 c.18 §1; 2005 c.382 §1; 2005 c.807 §5; 2007 c.115 §1; 2007 c.768 §58]

CONTESTED CASES

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by this chapter before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

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183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

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INSPECTION OF PUBLIC RECORDS

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for

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purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Information relating to the appraisal of real estate prior to its acquisition.

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections.

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732.

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

(12) A personnel discipline action, or materials or documents supporting that action.

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research,

until publicly released, copyrighted or patented.

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(16) Data and information provided by participants to mediation under ORS 36.256.

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier,

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as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721.

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967.

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

- (a) Personal and corporate financial statements and information, including tax returns;
- (b) Credit reports;
- (c) Project appraisals;
- (d) Market studies and analyses;
- (e) Articles of incorporation, partnership agreements and operating agreements;
- (f) Commitment letters;
- (g) Project pro forma statements;
- (h) Project cost certifications and cost data;
- (i) Audits;
- (j) Project tenant correspondence requested to be confidential;
- (k) Tenant files relating to certification; and

(l) Housing assistance payment requests.

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body.

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6).

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System.

(26) Records of the name and address of a person who files a report with or pays an

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assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

(27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.

(28) Social Security numbers as provided in ORS 107.840.

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

(30) If requested by a public safety officer, as defined in ORS 181.610:

(a) The home address and home telephone number of the public safety officer contained in the voter registration records for the public safety officer.

(b) The home address and home telephone number of the public safety officer contained in records of the Department of Public Safety Standards and Training.

(c) The name of the public safety officer contained in county real property assessment or taxation records. This exemption:

(A) Applies only to the name of the public safety officer and any other owner of the property in connection with a specific property identified by the officer in a request for exemption from disclosure;

(B) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(C) Applies until the public safety officer requests termination of the exemption;

(D) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(E) May not result in liability for the county if the name of the public safety officer is disclosed after a request for exemption from disclosure is made under this subsection.

(31) Unless the public records request is made by a financial institution, as defined in ORS 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59, or title company for business purposes, records described in paragraph (a) of this subsection, if the exemption from disclosure of the records is sought by an individual described in paragraph (b) of this subsection using the procedure described in paragraph (c) of this subsection:

(a) The home address, home or cellular telephone number or personal electronic mail address contained in the records of any public body that has received the request that is set forth in:

(A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance, release, satisfaction, substitution of trustee, easement, dog license, marriage license or military discharge record that is in the possession of the county clerk; or

(B) Any public record of a public body other than the county clerk.

(b) The individual claiming the exemption from disclosure must be a district attorney, a deputy district attorney, the Attorney General or an assistant attorney general, the United States Attorney for the District of Oregon or an assistant United States attorney for the District of Oregon, a city attorney who engages in the prosecution of criminal matters or a deputy city attorney who engages in the prosecution of criminal matters.

(c) The individual claiming the exemption from disclosure must do so by filing the claim in writing with the public body for which the exemption from disclosure is

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being claimed on a form prescribed by the public body. Unless the claim is filed with the county clerk, the claim form shall list the public records in the possession of the public body to which the exemption applies. The exemption applies until the individual claiming the exemption requests termination of the exemption or ceases to qualify for the exemption.

(32) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

(33) Sensitive business records or financial or commercial information of the State Accident Insurance Fund Corporation that is not customarily provided to business competitors. This exemption does not:

(a) Apply to the formulas for determining dividends to be paid to employers insured by the State Accident Insurance Fund Corporation;

(b) Apply to contracts for advertising, public relations or lobbying services or to documents related to the formation of such contracts;

(c) Apply to group insurance contracts or to documents relating to the formation of such contracts, except that employer account records shall remain exempt from disclosure as provided in ORS 192.502 (35); or

(d) Provide the basis for opposing the discovery of documents in litigation pursuant to the applicable rules of civil procedure.

(34) Records of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181.662 or 181.878 (6), until the department issues the report described in ORS 181.662 or 181.878.

(35) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

192.505 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1987 c.764 §4 (enacted in lieu of 192.500)]

PROTECTED HEALTH INFORMATION

192.518 Policy for protected health information. (1) It is the policy of the State of Oregon that an individual has:

(a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and

(b) The right to access and review protected health information of the individual.

(2) In addition to the rights and obligations expressed in ORS 192.518 to 192.529, the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, establish additional rights and obligations regarding the use and disclosure of protected health information and the rights of individuals regarding the protected health information of the individual. [2003 c.86 §1]

192.519 Definitions for ORS 192.518 to 192.529. As used in ORS 192.518 to 192.529:

(1) "Authorization" means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

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(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual's right to revoke the authorization in writing;

(B) The exceptions to the right to revoke the authorization;

(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and

(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) "Covered entity" means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.529; or

(d) A health care clearinghouse.

(3) "Health care" means care, services or supplies related to the health of an individual.

(4) "Health care operations" includes but is not limited to:

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating de-identified information; and

(j) Fundraising.

(5) "Health care provider" includes but is not limited to:

(a) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;

(b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(g) An emergency medical technician certified under ORS chapter 682;

(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

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(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;

(o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;

(p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

(r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(s) A health care facility as defined in ORS 442.015;

(t) A home health agency as defined in ORS 443.005;

(u) A hospice program as defined in ORS 443.850;

(v) A clinical laboratory as defined in ORS 438.010;

(w) A pharmacy as defined in ORS 689.005;

(x) A diabetes self-management program as defined in ORS 743A.184; and

(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) “Health information” means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) “Health insurer” means:

(a) An insurer as defined in ORS 731.106 who offers:

(A) A health benefit plan as defined in ORS 743.730;

(B) A short term health insurance policy, the duration of which does not exceed six months including renewals;

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(8) “Individually identifiable health information” means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

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(C) The past, present or future payment for the provision of health care to an individual.

(9) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.526.

(11)(a) "Protected health information" means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) "State health plan" means:

(a) Medical assistance as defined ORS 414.025;

(b) The Health Care for All Oregon Children program;

(c) The Family Health Insurance Assistance Program established in ORS 414.841 to 414.864; or

(d) Any medical assistance or premium assistance program operated by the Oregon Health Authority.

(13) "Treatment" includes but is not limited to:

(a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers.

192.520 Health care provider and state health plan authority. A health care provider or state health plan:

(1) May use or disclose protected health information of an individual in a manner that is consistent with an authorization provided by the individual or a personal representative of the individual.

(2) May use or disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) For the provider's or plan's own treatment, payment or health care operations; or

(b) As otherwise permitted or required by state or federal law or by order of the court.

(3) May disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) To another covered entity for health care operations activities of the entity that receives the information if:

(A) Each entity has or had a relationship with the individual who is the subject of the protected health information; and

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(B) The protected health information pertains to the relationship and the disclosure is for the purpose of:

(i) Health care operations as listed in ORS 192.519 (4)(a) or (b); or

(ii) Health care fraud and abuse detection or compliance;

(b) To another covered entity or any other health care provider for treatment activities of a health care provider; or

(c) To another covered entity or any other health care provider for the payment activities of the entity that receives that information. [2003 c.86 §3]

192.521 Health care provider and state health plan charges. A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than \$30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [2003 c.86 §4; 2007 c.812 §1]

192.522 Authorization form. A health care provider may use an authorization that contains the following provisions in accordance with ORS 192.520:

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

I authorize: _____ (Name of person/entity disclosing information) to use and disclose a copy of the specific health information described below regarding: _____ (Name of individual) consisting of: (Describe information to be used/disclosed)

to: _____ (Name and address of recipient or recipients) for the purpose of: (Describe each purpose of disclosure or indicate that the disclosure is at the request of the individual)

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

_____ HIV/AIDS information

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- _____ Mental health information
- _____ Genetic testing information
- _____ Drug/alcohol diagnosis, treatment, or referral information.

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

PROVIDER INFORMATION

You do not need to sign this authorization. Refusal to sign the authorization will not adversely affect your ability to receive health care services or reimbursement for services. The only circumstance when refusal to sign means you will not receive health care services is if the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure.

You may revoke this authorization in writing at any time. If you revoke your authorization, the information described above may no longer be used or disclosed for the purposes described in this written authorization. The only exception is when a covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

To revoke this authorization, please send a written statement to _____ (contact person) at _____ (address of person/entity disclosing information) and state that you are revoking this authorization.

SIGNATURE

I have read this authorization and I understand it. Unless revoked, this authorization expires _____ (insert either applicable date or event).

By: _____
(individual or personal representative)

Date: _____

Description of personal representative's authority:

[2003 c.86 §5]

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192.523 Confidentiality; use and disclosure. A health care provider or a state health plan does not breach a confidential relationship with an individual if the health care provider or state health plan uses or discloses protected health information in accordance with ORS 192.520. [2003 c.86 §6]

192.524 No right of action. Nothing in ORS 192.519 or 192.520 may be construed to create a new private right of action against a health care provider or a state health plan. [2003 c.86 §7]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

- (1) “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.
- (2) “Executive session” means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.
- (3) “Governing body” means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.
- (4) “Public body” means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.
- (5) “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include

any on-site inspection of any project or program. “Meeting” also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the

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public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Health Authority or other state or local agency shall try to refer only certified

interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52; 2007 c.100 §21; 2009 c.595 §173]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings.

(1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

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192.650 Recording or written minutes required; content; fees.

(1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;
- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a

court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

- (a) To consider the employment of a public officer, employee, staff member or individual agent.
- (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.
- (c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.
- (d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

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(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

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(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9;

2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134; 2007 c.602 §11; 2009 c.792 §32]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610

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to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials

may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees

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operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23; 2007 c.796 §8; 2009 c.697 §11]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the

plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) “Public meeting” means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) “Public body” means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) “Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

192.990 Penalties. Violation of ORS 192.710 (1) is a violation punishable by a fine of \$10. [1973 c.168 §2]

STATE PERSONNEL RELATIONS; PUBLIC OFFICERS AND EMPLOYEES

ADMINISTRATIVE PROVISIONS

240.005 Short title. This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

240.010 Purpose of chapter. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles. [Amended by 1979 c.468 §3]

240.011 Policy on public service contracts; review. (1) The Legislative Assembly declares that the interests of the state are best served by a system that goes beyond consideration of mere short-term cost to encompass other benefits, such as efficiency, continuity of operations, public protection and avoidance of the spoils system. The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations, services and functions of all public agencies.

(2) It is the policy of the state that contracts for public services entered into by any public agency be entered with full knowledge of costs and benefits to the public and that contracts be subject to ongoing review to insure accountability of the contractor for the quantity and quality of contracted services. [1989 c.862 §1(1),(2)]

Note: 240.011 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.012 Job sharing; policy statement. The Legislative Assembly finds that job sharing is an efficient and effective technique which should be used to improve management of state agencies. It further finds that job sharing offers employment

opportunities to those who otherwise may be unable to participate in state employment and contribute to state operations. [1977 c.462 §1]

Note: 240.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.013 Job-sharing positions; adjustment of benefits and detriments. Insofar as reasonably possible, individuals who hold job-sharing positions shall be entitled to benefits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

240.015 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) “Administrator” means the Administrator of the Personnel Division.

(2) “Appointing authority” means an officer or agency having power to make appointments to positions in the state service.

(3) “Board” means the Employment Relations Board.

(4) “Class” or “classification” means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(5) “Division” means, except in the phrase “division of the service,” the Personnel Division referred to in ORS 240.055.

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(6) "Division of the service" means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

(7) "Job-sharing position" means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full-time.

(8) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

(9) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof. However, as provided in ORS 396.330, the term includes members of the Oregon National Guard or Oregon State Defense Force who are not serving pursuant to provisions of Title 10 or 32 of the United States Code and who are employed as state employees in the Oregon Military Department. [Amended by 1959 c.690 §1; 1969 c.80 §30; 1975 c.147 §9; 1979 c.302 §4; 1979 c.468 §4a; 1995 c.114 §1; 2005 c.22 §182]

240.055 Personnel Division. The Department of Civil Service that has heretofore functioned under ORS chapter 240 is hereby renamed the Personnel Division and transferred into the Oregon Department of Administrative Services. [Amended by 1969 c.80 §31]

240.057 Administrator of Personnel Division; appointment. The Personnel Division shall be under the supervision and control of an administrator who shall be appointed by and hold office at the pleasure

of the Director of the Oregon Department of Administrative Services. [1979 c.468 §7]

240.060 Employment Relations Board; qualification of members; outside activities. (1) The Civil Service Commission that has functioned under this chapter shall be continued as a board of three members to be known as the Employment Relations Board. Each member of the board shall be a citizen of the state known to be in sympathy with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. In the selection of the members of the Employment Relations Board, the Governor shall give due consideration to the interests of labor, management and the public. Each member of the board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. No member of the board shall hold, or be a candidate for, any public office.

(2) Except as provided in subsection (3) of this section, a member of the board shall not hold any other office or position of profit, pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote the member's entire time to the duties of the office of the member.

(3) A member of the board may:

(a) Serve as an arbitrator, fact finder or mediator for parties located outside of the State of Oregon;

(b) Teach academic or professional classes for entities that are not subject to the board's jurisdiction;

(c) Have a financial interest but an inactive role in a business unrelated to the duties of the board; and

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(d) Publish, and receive compensation or royalties for, books or other publications that are unrelated to the member's duties, provided that activity does not interfere with the performance of the member's duties.

(4) A member of the board shall be on leave status or act outside of normal work hours when pursuing any activity described in subsection (3)(a) and (b) of this section. [Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10; 1977 c.808 §1; 1999 c.248 §1]

240.065 Appointment; terms; vacancies.

(1) The members of the Employment Relations Board shall be appointed by the Governor for a term of four years.

(2) Each member shall be appointed for a term ending four years from the date of the expiration of the term for which the predecessor of the member was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [Amended by 1969 c.80 §34; 1973 c.536 §27; 1973 c.792 §6a; 1977 c.808 §2; 1991 c.67 §59]

240.070 [Repealed by 1967 c.73 §3 (240.071 enacted in lieu of 240.070)]

240.071 Compensation and expenses of

members. A member shall be paid in accordance with the provisions of ORS 240.240. However, the Personnel Division shall adopt a salary plan that requires the chairperson of the Employment Relations Board to receive a higher salary than the other members. In addition, subject to any other applicable law regulating travel and other expenses of state officers, a member shall receive the actual and necessary travel

and other expenses incurred in the performance of official duties. [1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16; 1975 c.518 §1; 1977 c.808 §3]

240.075 Removal of members. A member of the Employment Relations Board shall be removable by the Governor only for cause, after being given a copy of charges against the member and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the Secretary of State.

240.080 Chairperson appointed by Governor; meetings; quorum; hearings.

The Governor shall appoint one of the members of the Employment Relations Board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

240.085 [Repealed by 1969 c.80 §35 (240.086 enacted in lieu of 240.085)]

240.086 Duties of board; rules. The duties of the Employment Relations Board shall be to:

(1) Review any personnel action affecting an employee, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary or

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contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.

(2) Review and enforce arbitration awards involving employees in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

240.088 Review of arbitration awards after written exceptions filed. (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the

Employment Relations Board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

240.090 [Repealed by 1969 c.80 §92]

240.091 [Repealed by 1979 c.468 §1]

240.093 [1971 c.576 §3; repealed by 1979 c.468 §1]

240.095 [Amended by 1969 c.80 §37; 1969 c.489 §5; repealed by 1979 c.468 §1]

240.097 [1969 c.489 §2; repealed by 1979 c.468 §1]

240.099 [1969 c.658 §2; repealed by 1973 c.536 §39]

240.100 Administer oaths; subpoena witnesses; compel production of papers.

Each member of the Employment Relations Board may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. [Amended by 1969 c.80 §38]

240.105 Use of public facilities of state or municipalities.

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the Personnel Division or Employment Relations Board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS 243.005 to 243.215, 243.305, 243.315 and 243.401 to

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243.945. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it. [Amended by 1969 c.80 §38a]

240.110 [Amended by 1969 c.80 §39; repealed by 1973 c.794 §34]

240.115 Action to secure compliance with chapter. The Employment Relations Board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

240.120 [Amended by 1969 c.80 §39a; repealed by 1973 c.794 §34]

240.123 Board personnel; executive secretary of board; general counsel. (1) The Employment Relations Board shall employ such personnel as it considers necessary for efficient administration of its vested duties, and fix the compensation of its employees in accordance with the compensation plan for classified employees. (2) The board shall designate one of its employees as its executive secretary and delegate to the executive secretary such administrative duties and responsibilities as it finds advisable. The executive secretary shall be in the classified service. (3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The general counsel shall not appear before the board in any capacity other than general counsel to the board. The board may also delegate to its

general counsel such other administrative duties and responsibilities as it finds advisable. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5; 1979 c.468 §8]

240.125 [Amended by 1969 c.80 §40; repealed by 1979 c.468 §1]

240.130 [Amended by 1969 c.80 §41; repealed by 1979 c.468 §1]

240.131 Employment Relations Board Administrative Account. The Employment Relations Board Administrative Account is established separate and distinct from the General Fund. The account consists of all moneys received by the Employment Relations Board, other than moneys appropriated to the board by the Legislative Assembly. All moneys in the account are continuously appropriated to the board for the payment of all expenses incurred by the board. Interest earned by the account shall be credited to the General Fund. [2007 c.296 §4]

Note: 240.131 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.135 [Amended by 1969 c.80 §42; repealed by 1979 c.468 §1]

240.140 [Amended by 1969 c.80 §42a; repealed by 1979 c.468 §1]

240.145 Duties of administrator; rules. The Administrator of the Personnel Division, subject to the approval of the Director of the Oregon Department of Administrative Services, shall direct and supervise all the administrative and technical activities of the Personnel Division. In addition to the duties imposed

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upon the administrator elsewhere in this chapter, the administrator shall:

(1) Establish and maintain a roster of all employees in state service, in which there shall be set forth, as to each employee, the class title of the position held, the salary or pay; any change in class title, pay, status or merit rating; and any other data about the employee that the division deems necessary.

(2) Select for appointment, under this chapter, such employees of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter.

(3) Prepare such rules, policies and procedures, tests and eligible lists as are necessary to carry out the duties, functions and powers of the Personnel Division under this chapter.

(4) Devise plans for and cooperate with appointing authorities and other supervisory officers in the conduct of employee training programs, to the end that the quality of service rendered by state personnel may be continually improved.

(5) Investigate from time to time the operation and effect of this chapter and the rules thereunder, and report findings and recommendations to the director of the department.

(6) Make annual reports to the director of the department regarding the work of the division, and such special reports as the director considers desirable. [Amended by 1969 c.80 §43; 1971 c.695 §1; 1979 c.468 §9]

240.150 [Amended by 1969 c.348 §1; repealed by 1979 c.468 §37]

240.155 [Amended by 1969 c.80 §44; repealed by 1979 c.468 §1]

240.160 Agency personnel officers. A division of the service may designate a staff employee to serve as personnel officer for that division of the service. Such a personnel

officer shall administer, within the division of the service, training and educational programs developed by the administrative head thereof in cooperation with appointing authorities and others and shall have such other functions of the Personnel Division as are authorized by the Administrator of the Personnel Division. [Amended by 1969 c.80 §45]

240.165 Cost of operating Personnel Division divided among various agencies of state government.

(1) The administrative expenses and costs of operating the Personnel Division shall be paid by the various divisions of the service in the state government. To establish an equitable division of the costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to each division of the service bears to the total service rendered by the Personnel Division.

(2) The Personnel Division, at such times as its administrator deems proper, shall estimate in advance the expenses that will be incurred during a given period of not to exceed six months and, upon approval by the Director of the Oregon Department of Administrative Services, the division shall render to each division of the service affected thereby an invoice for its pro rata share of such expenses. Each division of the service shall pay such invoice as an administrative expense of that division of the service from funds or appropriations available to that division of the service in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division of the service are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [Amended by 1969 c.80 §46; 1969 c.489 §6]

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240.167 Cost of operating Employment Relations Board divided among various divisions of state government.

(1) The administrative expenses and costs of operation of the Employment Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. The board shall determine the amount of the expenses and costs to be paid by each division of the service on the basis of the proportion that the number of employees of that division in the classified service bears to the total number of employees of all divisions of the service in the classified service, or on any other basis that the board determines to be equitable.

(2) The Employment Relations Board, at such times as its executive secretary considers proper, shall estimate in advance the expenses and costs that will be incurred during a period of not to exceed six months and shall render to each division of the service in the state government affected thereby an invoice for its pro rata share of such expenses and costs. Each division shall pay such invoice promptly as an administrative expense of that division from funds appropriated to or otherwise available for expenditure by that division, in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [1969 c.658 §4; 1979 c.66 §1]

240.170 Oregon Department of Administrative Services Operating Fund.

All moneys received by the Personnel Division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are

appropriated continuously out of that fund for the payment of all expenses incurred by the division for administration of the state personnel management program. [Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8; 1993 c.500 §8a; 2007 c.296 §6]

240.180 [1969 c.80 §36; 1971 c.734 §20; repealed by 1979 c.468 §1]

240.185 Maximum number of state employees; applicability; exceptions.

(1) On and after January 1, 1984, the number of persons employed by the state shall not exceed 1.5 percent of the state's population of the prior year.

(2) The population figure shall be that required by ORS 190.510 to 190.610.

(3) This section applies to all full-time equivalent budgeted positions.

(4) This section does not apply to the Governor, the Secretary of State, the State Treasurer, the Supreme Court or the Legislative Assembly in the conduct of duties vested in any of them by the Oregon Constitution. However, this exception applies only to the office of the Governor and not to the executive branch of government.

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Department, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs.

(6) This section does not apply to personnel whose positions are funded by the gifts, grants and contracts program in the Oregon University System.

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(7) In order to assess the effect of subsection (1) of this section, the Oregon Department of Administrative Services by December 31 of each even-numbered year shall conduct a workload analysis of each state agency, regardless of whether the agency is exempt from the application of subsection (1) of this section. The workload analysis of each agency shall be submitted to the Legislative Assembly prior to its convening in regular session and shall accompany the agency's budget request before the Joint Ways and Means Committee. [1979 c.604 §1; 1983 c.340 §1; 1989 c.863 §1; 2009 c.762 §49]

Note: 240.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CATEGORIES OF SERVICE; CLASSIFICATION AND COMPENSATION PLANS

240.190 Policy on comparability of value of work and compensation and classification. (1) It is declared to be the public policy of the State of Oregon to attempt to achieve an equitable relationship between the comparability of the value of work, as defined in ORS 292.951, performed by persons in state service and the compensation and the classification structure within the state system. To further the effort to achieve and maintain equity for undervalued jobs and job classifications, the state shall employ a neutral and objective method of determining the comparability of the value of work. The first priority in attaining equitable relationships shall be achieving compensation equity for the most undervalued classes in the lowest salary ranges.

(2) State management, in each branch of government, shall, when establishing or modifying personnel plans and policies in compensation and classification matters, or in collective bargaining, arbitration and grievance procedures, hold equity in compensation and classification matters as an important consideration. Where applicable, an exclusive representative of a collective bargaining unit shall hold the same considerations to achieve consistency with the policies stated in this section and ORS 292.951 to 292.971.

(3) No employee shall have wages decreased in order to achieve the policy set forth in this section. [1983 c.814 §1; 1987 c.772 §2]

Note: 240.190 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.195 Categories of positions in state service. Positions in the service of the state are divided into the following categories:

- (1) The classified service as provided in ORS 240.210.
- (2) The unclassified service as provided in ORS 240.205.
- (3) The exempt service as defined in ORS 240.200.
- (4) The management service as provided in ORS 240.212. [1955 c.738 §1; 1981 c.409 §1]

240.200 Exempt service. The exempt service shall comprise:

- (1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.
- (2) Members of boards and commissions who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

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(3) Judges, referees, receivers, jurors and notaries public.

(4) Officers and employees of the Legislative Assembly.

(5) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislative Assembly or a committee thereof, or by authority of the Governor.

(6) Any other position designated by law as exempt. [1955 c.738 §2; 1969 c.80 §48; 1969 c.199 §17; 1975 c.427 §1; 1983 c.763 §29]

240.205 Unclassified service. The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. "Deputy" means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in

subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) The director, principals, instructors and teachers in the school operated under ORS 346.010.

(7) Apprentice trainees only during the prescribed length of their course of training.

(8) Licensed physicians and dentists employed in their professional capacities and student nurses, interns, and patient or inmate help in state institutions.

(9) Lawyers employed in their professional capacities.

(10) All members of the Oregon State Police appointed under ORS 181.250 and 181.265.

(11) Deputy superintendents and associate superintendents in the Department of Education.

(12) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(13) Any individual employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (United States Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employees for purposes of ORS 243.650 to 243.782.

(14) Managers, department heads, directors, producers and announcers of the state radio and television network.

(15) Employees, including managers, of the foreign trade offices of the Oregon Business Development Department located outside the country.

(16) Any other position designated by law as unclassified. [Amended by 1953 c.699 §3;

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1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a,66b; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1; 1979 c.468 §11; 1981 c.518 §3; 1981 s.s. c.3 §40; 1983 c.763 §30; 1985 c.388 §1; 1985 c.565 §38; 1991 c.149 §3; 1991 c.887 §2; 1993 c.741 §19; 1995 c.612 §13; 2001 c.883 §42; 2007 c.858 §61; 2009 c.562 §17]

240.207 [1969 c.564 §2; 1979 c.468 §29; repealed by 1995 c.612 §24]

240.210 Classified service. The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

240.212 Management service. The management service shall comprise all positions not in the unclassified or exempt service that have been determined to be confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650. [1981 c.409 §6; 1995 c.286 §25]

240.215 Classification plan; job share; career ladder; transfers. (1) The Personnel Division of the Oregon Department of Administrative Services shall adopt a classification plan which shall group all positions in the classified service in classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes

may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division. Agencies shall allocate positions to the available class that most accurately describes the work based upon the assigned duties, authorities and responsibilities. If a position is found to be misallocated, the agency shall change the allocation of the position to the proper class for the work, whether or not the assigned duties have changed since the previous allocation decision.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions.

(4) The division shall group jobs into broad, statewide classes, whenever possible, consistent with good management practices and ORS 240.190 and 243.650 to 243.782. In this process, the division shall work to reduce the total number of classes, in conjunction with developing career ladders and voluntary cross-agency transfers in concert with employees of the agency. It is intended that employees be provided the necessary training in those instances where additional skills are required. [Amended by 1969 c.80 §50; 1979 c.302 §5; 1979 c.468 §10a; 1993 c.724 §11; 1995 c.155 §1]

240.217 Certain reclassifications prohibited. Whenever class specifications for a class of positions in the classified service are changed to reflect revised or added responsibilities that require either the same level or a higher level of competence, such change will not result in a downward reclassification of the class. [1978 c.6 §2]

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Note: 240.217 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.220 [Amended by 1969 c.80 §51; repealed by 1979 c.468 §1]

240.225 [Repealed by 1979 c.468 §1]

240.227 Salary for legislator appointed to exempt, unclassified or management service. (1) Except as otherwise provided by section 30, Article IV of the Oregon Constitution, notwithstanding any statute or salary plan establishing the salary for a position in the exempt, unclassified or management service, a Senator or Representative who is appointed to a position in the exempt, unclassified or management service during the Senator's or Representative's term of office shall receive a salary established as follows:

(a) If the salary for the position to which the Senator or Representative is appointed has been increased during the Senator's or Representative's term of office, the Senator or Representative shall receive a salary equal to that established for the position immediately prior to the commencement of the Senator's or Representative's term of office until the term of office of the Senator or Representative expires.

(b) If the salary for the position to which the Senator or Representative is appointed decreased or remained unchanged during the Senator's or Representative's term of office, the Senator or Representative shall receive the salary established by the applicable statute or salary plan.

(2) As used in this section, "term of office" means the particular four-year or two-year period for which the Senator or Representative was elected pursuant to section 4, Article IV of the Oregon

Constitution. In the event that the Senator or Representative was appointed to fill a vacancy in the Legislative Assembly, "term of office" means the remainder of the four-year or two-year period for which the Senator or Representative was appointed, beginning on the date of appointment. "Term of office" does not mean the Senator's or Representative's duration of service in the Legislative Assembly. [1987 c.879 §23]

240.230 [Repealed by 1979 c.468 §1]

240.233 [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1; repealed by 1979 c.468 §1]

240.235 Compensation plan for classified service. (1) The Personnel Division shall establish and implement a merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state's financial condition and policies. The merit pay system may provide for monetary awards to employees for past meritorious service and contribution to the mission and goals of the employing agency.

(2) Modifications of the merit pay system may be adopted by the division and shall be effective only when approved by the Director of the Oregon Department of Administrative Services.

(3) Except as provided in subsection (4) of this section, each employee in the classified service shall be paid a rate within the salary range set forth in the merit pay system for the class of positions in which employed.

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employee holding such

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position shall not be reduced by reason of any such modification. An employee holding such a position shall not be eligible for any salary increase during such period of time that the employee's salary is above the maximum of the salary range of the classification to which the employee's position is allocated. [Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1; 1979 c.468 §12]

240.240 Application of chapter to unclassified or management service.

(1) The unclassified service or, except as provided in ORS 240.250, the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (5) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (5) of this section, the Personnel Division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may request the advice and assistance of the division.

(4) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in the school operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education.

(5) With regard to unclassified positions in the Oregon Business Development Department's foreign offices, the salary plan and arrangements for leave with pay shall be established by the Director of the Oregon Business Development Department. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3; 1985 c.121 §1; 1991 c.149 §4; 1995 c.612 §14; 2007 c.858 §62; 2009 c.562 §18]

240.245 Application of chapter to exempt service.

The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state. [1955 c.738 §3; 1969 c.80 §55]

240.250 Rules applicable to management service.

The Personnel Division shall adopt rules, policies and procedures necessary for the management service. The rules may cover any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the rule, those wages, hours, terms and conditions would not otherwise apply to the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7; 1985 c.121 §2]

240.305 [Amended by 1975 c.427 §5; repealed by 1979 c.468 §1]

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METHOD OF SELECTING EMPLOYEES FOR SERVICE IN CLASSIFIED POSITIONS

240.306 Recruitment, selection and promotion of state employees; criteria; procedures; duties of department.

(1) Recruiting, selecting and promoting employees shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, political affiliation or other non-job related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employees concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The Oregon Department of Administrative Services shall establish procedures to provide for statewide open recruitment and selection for classifications that are common to state agencies. The procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The department may delegate to individual operating agencies the responsibility for recruitment and selection of classifications where appropriate.

(3) Competition for appropriate positions may be limited to facilitate employment of those with a substantial disability or who are economically disadvantaged, or for purposes of implementing a specified affirmative action program.

(4) Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from

eligible lists established by the department or a delegated operating agency.

(5)(a) Noncompetitive selection and appointment procedures may be used for unskilled or semiskilled positions, or where job related ranking measures are not practical or appropriate.

(b) Noncompetitive selection and appointment or direct appointment also may be used by agency appointing authorities to fill positions that:

(A) Require special or unique skills such as expert professional level or executive positions; or

(B) Have critical timing requirements affecting recruitment.

(6) Minimum qualifications and performance requirements and duties of a classification may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

(7) The department or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The department shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels when the competition provides abilities not available among existing employees, enrich state service or contribute to improved employment opportunity for underrepresented groups. [1979 c.468 §20; 1985 c.635 §1; 1989 c.224 §28; 1997 c.51 §1; 2007 c.100 §22]

240.307 Procedure for enforcement of ORS 240.309; rules. (1) Any complaint alleging violation of ORS 240.309 shall be filed with the Employment Relations Board.

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(2) Any employee may file a complaint with the board alleging violation of ORS 240.309.

(3) If the employee makes a prima facie case showing that the employer has violated ORS 240.309, then the burden of rebutting the prima facie case is on the employer.

(4)(a) Any employer found to be in violation of ORS 240.309 by the board may be required to pay any affected employee damages for any loss of wages, benefits and rights. The board may also require the agency to discontinue the improper practices.

(b) Any award granted to an affected employee by the board shall be in addition to any penalty imposed under ORS 240.990.

(5) Subject to the requirements of ORS 183.452, the state agency need not be represented by legal counsel in these proceedings before the Employment Relations Board. The board may adopt, by rule, special informal proceedings to review these matters and may, in its discretion, rely on any grievance procedure records developed by the state agency. If the board adopts a rule under this subsection, the employer shall not be required to comply with ORS 183.452 (2)(b) for hearings conducted under the board rule. Any court review of the board's decision under this section shall give special deference to the informality of the proceedings in reviewing the sufficiency of the record. [1990 c.3 §3; 1999 c.448 §7]

240.309 Temporary appointments; limitations; duration; extension; periodic reports; post-audit review; investigation; exceptions. (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a non-status appointment without open competition and consideration only for the

purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments. The reports shall be made available upon request to interested parties, including employee organizations. If any interested party alleges misuse of temporary employees, the division shall investigate,

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report its findings and take appropriate action.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(9) The chief administrative law judge of the Office of Administrative Hearings may use temporary status appointments for student law clerks for a period not to exceed 24 months. Student law clerks appointed under this subsection may not act as administrative law judges or conduct hearings for the Office of Administrative Hearings.

(10) The Public Utility Commission may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(11) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Student interns are not eligible for benefits under ORS 243.105 to 243.285. [1985 c.635 §3; 1990 c.3 §1; 1993 c.98 §5; 1993 c.724 §12; 2001 c.312 §1; 2003 c.75 §20; 2009 c.177 §1]

240.310 [Amended by 1969 c.80 §56; 1975 c.427 §6; repealed by 1979 c.468 §1]

240.311 Delegation of authority and responsibility by division; post-audit review. (1) Delegations of authority and responsibility to operating agencies shall be subject to appropriate post-audit review by the Personnel Division.

(2) Controversies between operating agencies and the division arising from post-audit reviews shall be resolved by the Director of the Oregon Department of Administrative Services. [1979 c.468 §22]

240.315 [Amended by 1969 c.80 §57; 1975 c.427 §7; repealed by 1979 c.468 §1]

240.316 Trial service; regular status; procedures for transfer, demotion and separation of employees. (1)(a) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period.

(b) An appointing authority has the discretion to subject an employee to a trial service period when:

(A) A management service employee or a classified, unrepresented employee transfers to a different agency;

(B) A management service employee or a classified, unrepresented employee transfers back to the same agency after an absence of more than one year;

(C) A former management service employee or former classified, unrepresented employee is reemployed by the same agency after an absence of more than one year; or

(D) A former management service employee or former classified, unrepresented employee is reemployed by a different agency.

(c) Any employee who serves the trial service period designated by the Personnel Division or a delegated operating agency for a given classification or as described in paragraph (b) of this subsection shall be given regular employee status.

(2) Employees who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employees separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of

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performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employees for the good of the service or separation of employees whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate. [1979 c.468 §23; 1981 c.155 §1; 1989 c.134 §1; 1989 c.890 §11]

240.320 [Amended by 1969 c.80 §58; repealed by 1979 c.468 §1]

240.321 Collective bargaining; effect of collective bargaining agreements on personnel rules; grievance procedures.

(1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employee representative of classified employees shall be under the direction and supervision of the Director of the Oregon Department of Administrative Services.

(2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430 and 240.551, employees of state agencies who are in certified or recognized appropriate bargaining units shall have all aspects of their wages, hours and other terms and conditions of employment determined by collective bargaining agreements between the state and its agencies and the exclusive employee representatives of such employees pursuant to the provisions of ORS 243.650 to 243.762, except with regard to the recruitment and selection of applicants for initial appointment to state service.

(3) The provisions of rules adopted by the Oregon Department of Administrative Services, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to employees within appropriate bargaining units covered by such agreements.

(4) The department shall ensure the speedy resolution of employee grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the Employment Relations Board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employees in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24; 1997 c.23 §1]

240.325 [Amended by 1969 c.80 §59; repealed by 1979 c.468 §1]

240.330 [Amended by 1969 c.80 §60; repealed by 1979 c.468 §1]

240.335 [Repealed by 1979 c.468 §1]

240.340 [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61; 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7; repealed by 1979 c.468 §1]

240.345 [Amended by 1969 c.80 §62; repealed by 1979 c.468 §1]

240.350 [Amended by 1969 c.80 §63; repealed by 1979 c.468 §1]

240.355 [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1; repealed by 1979 c.468 §1]

240.360 [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9; repealed by 1979 c.468 §1]

240.365 [Amended by 1969 c.80 §66; 1969 c.347 §1; 1975 c.427 §10; repealed by 1979 c.468 §37]

240.370 [Amended by 1971 c.696 §1; repealed by 1979 c.468 §1]

240.375 [Amended by 1959 c.375 §1; 1969 c.80 §67; repealed by 1979 c.468 §1]

240.379 [1981 c.557 §2; 1987 c.743 §1; 1989 c.224 §29; repealed by 1997 c.221 §1]

240.380 [Amended by 1971 c.695 §6; repealed by 1979 c.468 §1]

240.384 [1981 c.557 §3; 1989 c.224 §30; repealed by 1997 c.221 §1]

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240.385 [Repealed by 1971 c.695 §10]

240.387 [1971 c.697 §2; repealed by 1979 c.468 §1]

240.390 [Repealed by 1979 c.468 §1]

240.391 [1979 c.217 §2; 1987 c.743 §2; 1989 c.224 §31; 1991 c.402 §2; 1993 c.9 §1; repealed by 2005 c.45 §1]

240.392 [1979 c.217 §3; 1989 c.224 §32; repealed by 1997 c.221 §1]

240.393 [1979 c.217 §4; 1981 c.557 §4; 1989 c.224 §33; repealed by 1997 c.221 §1]

240.394 [1979 c.217 §5; 1983 c.740 §63; 1989 c.224 §34; repealed by 1997 c.221 §1]

240.395 Suspension of merit system in emergencies; reinstatement. (1) In the event of emergency or abnormal employment conditions due to disaster, national defense, war or conflict in which the Armed Forces of the United States are participating and because of which Oregon citizens are subject to induction into the Armed Forces, if a critical shortage of persons available and employable to fill positions and discharge duties in the classified service results, and the Personnel Division so finds and the Governor so certifies, the examination, certification and appointment procedures required by law shall be suspended for the duration of the emergency as to all or any classes of positions in which there is a shortage of employees.

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made. [Amended by 1969 c.80 §68]

240.400 Designation by appointing authority of staff employees to act as alternates. An appointing authority may file in writing with the Personnel Division names of staff employees to act in the name of the appointing authority and to perform any act or duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5; 1979 c.468 §14]

240.405 [Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1; repealed by 1979 c.468 §1]

REMOVAL DURING TRIAL SERVICE; SEASONAL EMPLOYEES; MERIT RATINGS

240.410 Removals during trial period. At any time during the trial service period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employee do not merit continuance in the service. [Amended by 1979 c.468 §15]

240.415 [Repealed by 1979 c.468 §1]

240.420 [Repealed by 1961 c.646 §1]

240.425 Regular seasonal employees. Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule, policy or procedure of the Personnel Division as seasonal positions. An employee who satisfactorily serves in a seasonal position the trial service period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a regular seasonal employee. [Amended by 1969 c.80 §70; 1981 c.156 §1]

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240.430 Merit ratings. In cooperation with appointing authorities, the Personnel Division shall establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service. [Amended by 1969 c.80 §71; 1979 c.468 §16]

STATE MANAGEMENT CREDENTIALS PROGRAM

240.435 State Management Credentials Program required; purpose. The Oregon Department of Administrative Services shall establish a state management credentials program for state agency managers and employees on a career track to become agency managers. The state management credentials program shall include training opportunities for agency employees and training requirements for existing agency managers. The purpose of the state management credentials program is to insure that agency managers have the necessary training and skills to be effective leaders and team builders and to provide training in management skills as part of a professional development program for nonmanagement agency employees. To that end, the department shall:

- (1) Identify necessary job skills for state managers, including team-building skills;
- (2) Identify skills and training needs for state managers to meet workplace requirements in the future;
- (3) Identify incentives for employees to participate in the program; and
- (4) Identify continuing education resources in the public sector and through in-service training to implement the state management credentials program. [1993 c.724 §13a(1)]

Note: 240.435 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any

series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.505 [Repealed by 1979 c.468 §1]

240.510 [Amended by 1963 c.199 §3; 1969 c.80 §72; repealed by 1979 c.468 §1]

240.515 [Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73; 1973 c.471 §1; repealed by 1979 c.468 §1]

240.520 [Amended by 1969 c.80 §74; repealed by 1979 c.468 §1]

240.525 [Repealed by 1979 c.468 §1]

240.530 [Repealed by 1979 c.468 §1]

240.535 [Amended by 1969 c.80 §75; repealed by 1979 c.468 §1]

240.540 [Amended by 1969 c.80 §76; repealed by 1979 c.468 §1]

240.545 [Repealed by 1979 c.468 §1]

WORKING HOURS, LEAVES, DISCIPLINE, REEMPLOYMENT

240.546 Payments in lieu of sick leave with pay; rules; exclusions. The Personnel Division may adopt rules, policies and procedures for state agencies to provide employees in the classified and unclassified service with payments on account of sickness in lieu of accrued and any future sick leave with pay. The Legislative Assembly, state courts and Department of Education may similarly adopt rules, policies and procedures providing unclassified employees with such payments. Payments on account of sickness may be made directly or from an insured plan, but the payments may not include medical treatment, hospitalization, dental or eye or other health care or duplicate any group insurance coverage otherwise provided in whole or in part by employer contributions. [1981 c.567 §9; 1995 c.612 §15; 2005 c.751 §3]

240.550 [Repealed by 1979 c.468 §1]

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240.551 Working hours, holidays, leaves of absence and vacations of employees in state classified service. The Personnel Division shall establish the hours of work, holidays, leaves of absence with and without pay and vacations of employees in the state classified service. The division may delegate this responsibility to individual operating agencies where appropriate. [1979 c.468 §21]

240.555 Suspension, reduction, demotion or dismissal. The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

240.560 Appeal procedure. (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the Employment Relations Board not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The appeal must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed postpaid and properly addressed, not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The board shall hear the appeal within 30 days after the board receives the appeal, unless the parties to the hearing agree to a postponement. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be conducted as provided for a contested case in ORS chapter 183.

(3) If the board finds that the action complained of was taken by the appointing

authority for any political, religious or racial reasons, or because of sex, marital status or age, the employee shall be reinstated to the position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employee in the position without the loss of pay. In lieu of affirming the action, the board may modify the action by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6; 1993 c.778 §24; 2003 c.213 §1]

240.563 Judicial review. Judicial review of orders under ORS 240.560 shall be as provided in ORS chapter 183. [1971 c.734 §31]

240.565 [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

240.570 Classified employee filling position in unclassified, exempt or management service. (1) Positions in the unclassified, management and exempt services may be filled by classified employees. After an employee is terminated from the unclassified or exempt service or removed from the management service, for reasons other than those specified in ORS 240.555, the state agency that employed the employee before the appointment to the unclassified, exempt or management service may, at the agency's sole discretion, restore the employee to a position held in the agency before the appointment if the

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employee meets the position requirements. If an employee is restored to a former position, the employee is subject to any applicable agency collective bargaining agreement.

(2) An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work.

(3) A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or removed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined or removed from the management service for the reasons specified in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.

(5) Management service employees with immediate prior former regular status in the classified service may be dismissed from state service only for reasons specified by ORS 240.555 and pursuant to the appeal procedures provided by ORS 240.560. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4; 1985 c.121 §3; 1987 c.269 §1; 2005 c.766 §1]

240.572 [1977 c.271 §3; repealed by 1979 c.468 §1]

240.575 [1971 c.542 §2; repealed by 1979 c.468 §1]

240.580 Service credits for service in unclassified service. An employee who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181.250 or 181.265, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employee status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2]

240.590 Reemployment of employee in exempt service. An employee in the exempt service who has been employed full-time for at least 12 months consecutively in such service may be noncompetitively reemployed in a position for which qualified within two years from the date of separation, if separated from state service in good standing. However, such reemployment shall occur only after current bargaining unit members have exhausted any rights under an applicable collective bargaining agreement. [1985 c.635 §5]

MEDIATION FEE

240.610 Mediation service fee; interest-based problem solving training fee; amount; payment; disposition of fees. (1) Notwithstanding ORS 662.435, when the Employment Relations Board assigns a mediator under ORS 243.712 or 662.425 to resolve a labor dispute or labor controversy between a local public employer and the exclusive representative of the public employees of that employer, the board may

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charge a fee for the mediation services provided by the board.

(2) Notwithstanding any other law, the fee charged by the board under this section shall not exceed \$1,000, and the local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. Notwithstanding any other law, in addition to the initial fee charged for mediation services, the board may charge a second fee, in an amount not to exceed \$1,000, for mediation services performed subsequent to those services performed at one mediation session after a notice of intent to strike or notice of intent to implement the employer's last offer has been given.

(3) Notwithstanding any other law, in addition to fees for mediation services, the board may establish fees for training in interest-based problem solving. Such fees are not subject to the provisions of subsection (2) of this section.

(4) Fees received by the board under this section shall be deposited to the credit of the Employment Relations Board Administrative Account.

(5) As used in this section:

(a) "Exclusive representative" and "labor dispute" have the meanings given those terms in ORS 243.650.

(b) "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district and a public and quasi-public corporation. [1993 c.711 §2; 1995 c.79 §84; 1995 c.448 §1; 2007 c.296 §7]

240.705 [Repealed by 1967 c.630 §5]

PROHIBITED CONDUCT

240.710 Certain acts unlawful. (1) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment

made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(3) No employee of the Personnel Division, examiner or other person shall defeat, deceive or obstruct any person in the right of the person to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service. [Amended by 1969 c.80 §80]

240.740 [1983 c.808 §2; repealed by 1989 c.890 §12]

240.750 When discipline action not to be retained in personnel file. No copy of a personnel discipline action that has been communicated orally or in writing to the employee and subsequently reduced in severity or eliminated through collective bargaining, grievance or personnel process shall be placed or otherwise retained in the personnel file of the employee unless agreed to by the employer and the employee. [1985 c.813 §2]

Note: 240.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

STATE PERSONNEL RELATIONS; PUBLIC OFFICERS AND EMPLOYEES

MISCELLANEOUS

240.850 Policy on work environments; duties of state agencies. It is the policy of the State of Oregon to encourage cooperative, participatory work environments and team-based management practices in all state agencies. To that end, when feasible and appropriate, state agencies shall:

- (1) Delegate responsibility for decision-making and service delivery to the lowest possible level;
- (2) Involve all workers, especially frontline workers, in the development and design of processes and program improvements;
- (3) Simplify and eliminate internal administrative rules and policies that unduly impede the attainment of the agency's mission and delivery of services;
- (4) Eliminate layers of organizational hierarchies;
- (5) Envision state government as a high performance organization in which training and technology are viewed as an investment in the workforce; and
- (6) Promote continuous improvement of state services through the involvement of all workers in process design and performance-based outcome development. [1993 c.724 §13b]

Note: 240.850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.855 Telecommuting; state policy; agencies to adopt written policies; biennial report. (1) As used in this section:

- (a) "State agency" means any state office, department, division, bureau, board and commission, whether in the executive, legislative or judicial branch.

- (b) "Telecommute" means to work from the employee's home or from an office near the employee's home, rather than from the principal place of employment.

- (2) It is the policy of the State of Oregon to encourage state agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings.

- (3) Each state agency shall adopt a written policy that:

- (a) Defines specific criteria and procedures for telecommuting;

- (b) Is applied consistently throughout the agency; and

- (c) Requires the agency, in exercising its discretion, to consider an employee request to telecommute in relation to the agency's operating and customer needs.

- (4) Each state agency that has an electronic bulletin board, home page or similar means of communication shall post the policy adopted under subsection (3) of this section on the bulletin board, home page or similar site.

- (5) The Oregon Department of Administrative Services, in consultation with the State Department of Energy, shall provide a biennial report to the Joint Committee on Technology, or a similar committee of the Legislative Assembly, containing at least the following:

- (a) The number of employees telecommuting;

- (b) The number of trips, miles and hours of travel time saved annually;

- (c) A summary of efforts made by the state agency to promote and encourage telecommuting;

- (d) An evaluation of the effectiveness of efforts to encourage employees to telecommute; and

- (e) Such other matters as may be requested by the committee. [Formerly 283.550]

STATE PERSONNEL RELATIONS; PUBLIC OFFICERS AND EMPLOYEES

Note: 240.855 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

240.990 Penalties. (1) Subject to ORS 153.022, any person who willfully violates any provision of this chapter or of the rules thereunder is guilty of a misdemeanor and is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for a term not exceeding one year, or both.

(2) Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter is guilty of a misdemeanor.

(3) A state officer or employee who fails to comply with any provision of this chapter or of any rule, regulation or order thereunder is subject to all penalties and remedies provided by law for failure of a public officer or employee to do an act required of a public officer or employee by law.

(4) Any person who is convicted of a misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if the person is an officer or employee of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of the office or position. [Amended by 1999 c.1051 §301]

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§§1,1a; 1987 c.566 §7; 2005 c.22 §185; 2007 c.865 §28; 2009 c.68 §1]

244.010 Policy. (1) The Legislative Assembly declares that service as a public official is a public trust and that, as one safeguard for that trust, the people require all public officials to comply with the applicable provisions of this chapter.

(2) The Legislative Assembly recognizes and values the work of all public officials, whether elected or appointed.

(3) The Legislative Assembly recognizes that many public officials are volunteers and serve without compensation.

(4) The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation.

(5) The Legislative Assembly recognizes that public officials should put loyalty to the highest ethical standards above loyalty to government, persons, political party or private enterprise.

(6) The Legislative Assembly recognizes that public officials should not make private promises that are binding upon the duties of a public official, because a public official has no private word that can be binding on public duty.

(7) The Legislative Assembly recognizes that public officials should expose corruption wherever discovered.

(8) The Legislative Assembly recognizes that public officials should uphold the principles described in this section, ever conscious of the public's trust. [1974 c.72

244.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock

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options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(4) "Candidate" means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual's consent, for nomination or election to public office.

(5) "Development commission" means any entity that has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

(6)(a) "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item,

with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined

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in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental

part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

(7) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

(8) "Income" means income of any nature derived from any source, including, but not

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limited to, any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.

(9) “Legislative or administrative interest” means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.

(10) “Member of the household” means any person who resides with the public official or candidate.

(11) “Planning commission” means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.

(12) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s

relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(13) “Public office” has the meaning given that term in ORS 260.005.

(14) “Public official” means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

(15) “Relative” means:

(a) The spouse of the public official or candidate;

(b) Any children of the public official or of the public official’s spouse;

(c) Any children of the candidate or of the candidate’s spouse;

(d) Siblings, spouses of siblings or parents of the public official or of the public official’s spouse;

(e) Siblings, spouses of siblings or parents of the candidate or of the candidate’s spouse;

(f) Any individual for whom the public official or candidate has a legal support obligation;

(g) Any individual for whom the public official provides benefits arising from the public official’s public employment or from whom the public official receives benefits arising from that individual’s employment; or

(h) Any individual from whom the candidate receives benefits arising from that individual’s employment.

(16) “Statement of economic interest” means a statement as described by ORS 244.060 or 244.070.

(17) “Zoning commission” means an entity to which is delegated at least some of the

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discretionary authority of a planning commission or governing body relating to zoning and land use matters. [1974 c.72 §2; 1975 c.543 §1; 1977 c.588 §2; 1979 c.666 §5; 1987 c.566 §8; 1989 c.340 §2; 1991 c.73 §1; 1991 c.770 §5; 1993 c.743 §8; 1995 c.79 §85; 1997 c.249 §75; 2001 c.200 §1; 2003 c.14 §115; 2005 c.574 §1; 2007 c.865 §8; 2007 c.877 §16a; 2009 c.68 §2; 2009 c.689 §§1,2]

244.025 Gift limit. (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

244.040 Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any

business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

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(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

(5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.

(6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.

(7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120. [1974 c.72 §3; 1975 c.543 §2; 1987 c.566 §9; 1989 c.340 §3; 1991 c.146 §1; 1991 c.770 §6; 1991 c.911 §4; 1993 c.743 §9; 2007 c.877 §17; 2009 c.68 §4]

244.042 Honoraria. (1) Except as provided in subsection (3) of this section, a public official may not solicit or receive, whether directly or indirectly, honoraria for the public official or any member of the household of the public official if the honoraria are solicited or received in connection with the official duties of the public official.

(2) Except as provided in subsection (3) of this section, a candidate may not solicit or receive, whether directly or indirectly, honoraria for the candidate or any member of the household of the candidate if the honoraria are solicited or received in connection with the official duties of the

public office for which the person is a candidate.

(3) This section does not prohibit:

(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or

(b) The solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official or candidate. [2007 c.877 §24; 2009 c.68 §21]

244.047 Financial interest in public contract. (1) As used in this section:

(a) "Public body" has the meaning given that term in ORS 174.109.

(b) "Public contract" has the meaning given that term in ORS 279A.010.

(2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.

(3) Subsection (2) of this section applies to a public contract that was authorized by:

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.

(4) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract. [2007 c.877 §23a; 2009 c.689 §4a]

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CONFLICTS OF INTEREST

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards.

(1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or

debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so. [1974 c.72 §10; 1975 c.543 §7; 1987 c.566 §15; 1993 c.743 §15]

244.130 Recording of notice of conflict; effect of failure to disclose conflict.

(1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time.

(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [1974 c.72 §11; 1975 c.543 §8; 1993 c.743 §16; 2007 c.865 §9]

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APPLICATION OF CHAPTER

244.165 Rules or policies of state agency or association of public bodies; commission approval; effect.

(1) For the purpose of protecting against violations of the provisions of this chapter, a state agency, as defined in ORS 183.750, or a statewide association of public bodies, as defined in ORS 174.109, may adopt rules or policies interpreting the provisions of this chapter. The rules or policies must be consistent with the provisions of this chapter. A state agency or a statewide association of public bodies may submit rules or policies adopted under this subsection to the Oregon Government Ethics Commission for review.

(2) Upon receiving rules or policies submitted under subsection (1) of this section, the commission shall review the rules and policies to determine whether the rules and policies are consistent with the provisions of this chapter. The commission, by a vote of a majority of the members of the commission, shall approve or reject the rules or policies. The commission shall notify the state agency or statewide association of public bodies in writing of the commission's approval or rejection. A written notice of rejection shall explain the reasons for the rejection.

(3) Unless the applicable rule or policy is amended or repealed by the state agency or the statewide association of public bodies, the commission may not impose a penalty under ORS 244.350 or 244.360 on a public official for any good faith action the official takes in compliance with a rule or policy that was adopted by the state agency that the official serves, or by a statewide association of which the public body that the official serves is a member, and approved by the commission under subsection (2) of this section. [2007 c.865 §5; 2007 c.877 §39b]

NEPOTISM

244.175 Definitions for ORS 244.177 and 244.179.

As used in ORS 244.177 and 244.179:

(1) "Governing body" has the meaning given that term in ORS 192.610.

(2) "Member of the household" means any person who resides with the public official.

(3) "Public body" has the meaning given that term in ORS 174.109.

(4) "Relative" means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters, half-brothers, half-sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law, fathers-in-law, aunts, uncles, nieces, nephews, stepparents, stepchildren or parents of the public official or of the public official's spouse. [2007 c.865 §26b; 2009 c.689 §3]

244.177 Employment of relative or member of household; exceptions.

(1) Except as provided in subsections (2) to (4) of this section:

(a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.

(b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official

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exercises jurisdiction or control. As used in this paragraph, “participate” does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.

(2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.

(b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) This section does not prohibit a public body from appointing, employing, promoting, discharging, firing or demoting a person who is a relative or member of the household of a public official serving the public body. [2007 c.865 §26c]

244.179 Supervision of relative or member of household; exceptions. (1) Notwithstanding ORS 659A.309 and except as provided in subsections (2) to (4) of this section, a public official acting in an official capacity may not directly supervise a person who is a relative or member of the household.

(2) A member of the Legislative Assembly may directly supervise a person who:

(a) Is a relative or member of the household; and

(b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.

(b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household. [2007 c.865 §26d]

ENFORCEMENT

244.350 Civil penalties; letter of reprimand or explanation. (1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:

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(a) Except as provided in paragraph (b) of this subsection, \$5,000 for violation of any provision of this chapter or any resolution adopted under ORS 244.160.

(b) \$25,000 for violation of ORS 244.045.

(2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil penalties not to exceed \$1,000 for violation of any provision of ORS 192.660.

(b) A civil penalty may not be imposed under this subsection if the violation occurred as a result of the governing body of the public body acting upon the advice of the public body's counsel.

(3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708. A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that may be imposed under subsection (1) of this section.

(4)(a) The commission may impose civil penalties on a person who fails to file the statement required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217 has occurred.

(b) Failure to file the required statement in timely fashion is prima facie evidence of a violation of ORS 244.050 or 244.217.

(c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

(5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a civil penalty under this section, the commission may issue a written letter of reprimand, explanation or education. [1974 c.72 §19; 1977 c.588 §10; 1987 c.360 §3; 1993 c.743 §29; 1993 c.747 §2; 1997 c.750

§2; 2005 c.179 §3; 2007 c.865 §18; 2007 c.877 §11a; 2009 c.68 §16; 2009 c.689 §4]

244.360 Additional civil penalty equal to twice amount of financial benefit.

In addition to civil penalties imposed under ORS 244.350, if a public official has financially benefited the public official or any other person by violating any provision of this chapter, the Oregon Government Ethics Commission may impose upon the public official a civil penalty in an amount equal to twice the amount the public official or other person realized as a result of the violation. [1974 c.72 §20; 1987 c.566 §21; 2007 c.865 §19; 2007 c.877 §12a]

244.390 Status of penalties and sanctions; consideration of other penalties imposed.

(1) A penalty or sanction imposed by the Oregon Government Ethics Commission under this chapter is in addition to and not in lieu of any other penalty or sanction that may be imposed according to law.

(2) Before making a finding that there is cause to undertake an investigation under ORS 244.260 and before imposing a civil penalty under ORS 244.350 or 244.360, the commission shall consider the public interest and any other penalty or sanction that has been or may be imposed on the public official as a result of the same conduct that is the subject of action by the commission under ORS 244.260.

(3) Nothing in this chapter is intended to affect:

(a) Any statute requiring disclosure of economic interest by any public official or candidate.

(b) Any statute prohibiting or authorizing specific conduct on the part of any public official or candidate. [1974 c.72 §25; 2007 c.865 §2; 2007 c.877 §39a; 2009 c.68 §23]

GOVERNMENT ETHICS

244.400 Attorney fees for person prevailing in contested case.

(1) A person who prevails following a contested case hearing under this chapter or ORS 171.778 shall be awarded reasonable attorney fees at the conclusion of the contested case or on appeal.

(2) Upon prevailing following a contested case hearing or lawsuit, the person may petition the Marion County Circuit Court for the purpose of determining the award of reasonable attorney fees. The Oregon Government Ethics Commission shall be named as a respondent in the petition. The petitioner and respondent shall follow the procedure provided in ORCP 68 for the determination of reasonable attorney fees. The court shall give precedence on its docket to petitions filed under this subsection as the circumstances may require.

(3) An appellate court shall award reasonable attorney fees to the person if the person prevails on appeal from any decision of the commission.

(4) Attorney fees to be awarded under this section shall be only those fees incurred by the person from the time the commission notifies the person that it has entered an order to move to a contested case proceeding.

(5) Any attorney fees awarded to the person pursuant to this section shall be paid by the commission from moneys appropriated or allocated to the commission from the General Fund. [1991 c.770 §9; 1993 c.743 §30; 2007 c.865 §26]

PUBLIC CONTRACTING; STATE SURPLUS PROPERTY

STATE SURPLUS PROPERTY

279A.250 Definitions for ORS 279A.250 to 279A.290. As used in ORS 279A.250 to 279A.290, unless the context requires otherwise:

(1) “Donee” means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire surplus property in accordance with rules adopted by the Oregon Department of Administrative Services. Entities eligible to acquire federal donation property may also acquire surplus property other than federal donation property.

(2) “Not-for-profit organization” means a nonprofit corporation as defined in ORS 307.130.

(3) “Property” means personal property.

(4) “State agency” means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(5) “Surplus property” means property received by the Oregon Department of Administrative Services or a state agency as surplus from federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities. [2003 c.794 §36]

279A.255 Inspection, appraisal and inventory of state property; reports by state agencies. The Oregon Department of Administrative Services may:

(1) Provide for the periodic inspection and appraisal of state property;

(2) Provide for the maintenance of current and perpetual inventories of state property; and

(3) Require any state agency to make reports of the property in the agency’s custody at such intervals and in such form as the department deems necessary. [2003 c.794 §37]

279A.260 Powers and duties of department; acquisitions by qualified donees; rules. (1) Subject to the power of the Governor to terminate the functions listed in this section, the Oregon Department of Administrative Services may:

(a) Accept surplus property;

(b) Distribute surplus property to donees;

(c) Provide suitable facilities for the storage and distribution of surplus property;

(d) Enter into reciprocal agreements and contracts with federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities, with respect to the utilization and exchange of property, facilities, personnel and services, for the administration of the provisions of this section in accordance with federal and state laws governing the acquisition, distribution, utilization, disposal or sale of surplus property;

(e) Expend funds in connection with the provisions of this section;

(f) Adopt rules for the acquisition, distribution, utilization, disposal or sale of surplus property in accordance with federal and state laws;

(g) Set charges, subject to federal and state laws, necessary to recover all direct and indirect costs associated with acquiring, purchasing, shipping, handling, warehousing, storing and distributing surplus property;

(h) Cooperate with donees in locating, obtaining or warehousing surplus property; and

PUBLIC CONTRACTING; STATE SURPLUS PROPERTY

(i) Obtain surplus property on behalf of donees.

(2) The department shall deposit all fees or charges collected or received under this section in the Oregon Department of Administrative Services Operating Fund.

(3) The governing board or the executive head of a donee may, by order or resolution, confer upon any officer or employee thereof authority to secure the acquisition of surplus property through the department in accordance with federal and state laws governing the acquisition, distribution, utilization, disposal or sale of surplus property. [2003 c.794 §38]

279A.265 Use of Oregon Department of Administrative Services Operating Fund; cash dividends. (1) In addition to the other purposes for which the Oregon Department of Administrative Services Operating Fund established under ORS 283.076 may be used, the fund hereby is appropriated continuously for and may be used for the purposes of this section and ORS 279A.260. All claims approved by the Oregon Department of Administrative Services for the purposes of this section and ORS 279A.260 shall be paid as provided in ORS 293.295 to 293.462. The department shall draw warrants on the State Treasurer for the payment thereof payable out of the fund. All moneys received under ORS 279A.260 shall be paid by the department to the State Treasurer for credit to the fund.

(2) The Director of the Oregon Department of Administrative Services may distribute in the form of cash dividends accumulated surpluses in the fund that arise because the charges collected from donees are in excess of the amount necessary to keep the activities under this section and ORS 279A.260 on a self-sustaining basis. The director shall pay the cash dividends to the donees referred to in ORS 279A.260 (1). Any dividend paid under this subsection

shall be based on the ratio of the charges collected from each donee during the preceding fiscal year to the total charges collected from all donees for the fiscal year immediately preceding the fiscal year in which the dividend is authorized to be paid.

(3) Upon termination by the Governor of the functions of the department under ORS 279A.260, any balance remaining in the fund that is attributable to the activities under this section and ORS 279A.260 shall be refunded pro rata to the donees referred to in ORS 279A.260 (1) upon the basis of the total charges collected from each donee during the preceding fiscal year, unless the director determines that the cost of making the refund is excessive, in which case the unrefunded moneys shall be paid to the Treasurer of the United States. [2003 c.794 §39]

279A.270 Contracts with federal government for accepting gifts and acquiring surplus property; bids not required. The Oregon Department of Administrative Services may enter into contracts with any federal government unit for the purpose of accepting gifts and for the acquisition of surplus property upon such terms and conditions as may be agreed upon, without regard to the provisions of law requiring the posting of notices or public advertising for bids or the soliciting or receiving of competitive bids. [2003 c.794 §40]

279A.275 Leasing of state property. The Oregon Department of Administrative Services may lease any state property not needed for public use, provided the law does not prohibit the leasing and the authority to lease is not vested in any other state agency. [2003 c.794 §41]

PUBLIC CONTRACTING; STATE SURPLUS PROPERTY

279A.280 Disposal of surplus property; costs of disposal. (1)(a) Without requiring competitive bidding:

(A) The Oregon Department of Administrative Services may sell or transfer surplus property to or transfer surplus property between donees. Donees may be given preference to acquire surplus property. Property acquired shall be used for public purpose or benefit and not for resale to a private purchaser.

(B) The department, or a public or private person or entity designated by the department, may transfer computers and related hardware that are surplus, obsolete or unused to a common or union high school district or education service district. The department, or its designee, may not charge the school district a fee for the transfer.

(C) The department, or a public or private person or entity designated by the department, may recycle or otherwise dispose of property when the department determines the value and condition of the property does not warrant the cost of a sale.

(b) Authorized transfers under this subsection include those made with or without consideration.

(2) In accordance with ORS 279B.055 or 279B.060, the department may sell surplus property.

(3) All proceeds derived from the disposal of property under this section, except proceeds that may not under federal laws or regulations be deposited in the manner provided by this section, shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund.

(4) In addition to the other purposes for which the fund may be used, the fund is appropriated continuously for and may be used for paying the administrative costs incurred in the transfer or disposal of property under subsections (1) and (2) of this section, and for paying the amount due

to the state agency whose property has been sold. The total amount payable to the agency whose property has been sold shall be the amount derived from the disposal of the property less the amount of the administrative costs incurred in disposing of the property. Such total amount may be deposited in the State Treasury to the credit of the miscellaneous receipts account established under ORS 279A.290 for the agency whose property has been sold.

(5) The cost of services for disposal of property under this section that is not recoverable from the proceeds of a sale of the property shall be charged to the state agency served and paid to the department in the same manner as other claims against the agency are paid. [2003 c.794 §42]

279A.285 Disposition of moneys received as payment for repair or replacement of damaged, destroyed, lost or stolen property. All moneys received from insurers and other sources as payment for the cost and expense of repair and replacement of property of state agencies that has been damaged, destroyed, lost or stolen, except the particular moneys as may not under federal law or regulations be deposited in the manner provided by this section, may be deposited in the State Treasury to the credit of the miscellaneous receipts account established under ORS 279A.290 for the state agency whose property has been damaged, destroyed, lost or stolen. [2003 c.794 §43]

279A.290 Miscellaneous receipts accounts. (1) The State Treasurer may establish a miscellaneous receipts account for any state agency and shall credit to the account any amounts paid into the State Treasury under ORS 190.240 (1), 279A.280, 279A.285, 283.110 or 357.885 for the state agency for which the account was established. The moneys credited to the

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miscellaneous receipts account of a state agency established under this section are appropriated continuously for the payment of the expenses of the state agency, subject to the allotment system provided by ORS 291.234 to 291.260.

(2) Laws enacted by the Legislative Assembly limiting expenditures do not limit expenditures from miscellaneous receipts accounts established under this section except when the law limiting expenditures of a state agency specifically establishes a limit for expenditures from the miscellaneous receipts account of the agency. [2003 c.794 §44; 2003 c.794 §44a]

PUBLIC PRINTING

PUBLIC PRINTING GENERALLY

282.210 Performance within state of public printing, binding and stationery work; stipulation in request for bids and in contracts; exceptions. (1) Except as provided in subsection (2) of this section, all printing, binding and stationery work, including the manufacture of motor vehicle registration plates and plates required to be affixed to motor carriers, for the state or any county, city, town, port district, school district, or other political subdivision thereof, shall be performed within the state. All requests for bids and all contracts for such work shall so stipulate.

(2) The work referred to in subsection (1) of this section may be performed outside the state if it is established that:

(a) The work cannot be performed within the state;

(b) The lowest price for which such work can be procured within the state exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality; or

(c) All bids for the work, or any part thereof, are excessive and not reasonably competitive. [Amended by 2003 c.758 §2]

282.220 Payment for unauthorized work outside state prohibited. No payment shall be made by the state or any political subdivision thereof for printing, binding or stationery work, including the manufacture of motor vehicle registration plates and plates required to be affixed to motor carriers, unless it appears that such work was done within the state, or was authorized to be done outside the state pursuant to ORS 282.210. [Amended by 2003 c.758 §3]

282.230 Provisions required in contracts for work to be done outside of state. (1) All contracts for work to be performed outside the state under ORS 282.210 shall

provide and require that such work shall be performed under conditions of labor and employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale for women and minors, and the rules and regulations promulgated by the Wage and Hour Commission of the State of Oregon regarding conditions of employment, hours of labor and minimum wages.

(2) Violation of the provision required by subsection (1) of this section shall be grounds for cancellation of the contract.

ADMINISTRATION OF PUBLIC FUNDS

UNCOLLECTIBLE DEBTS

293.240 Writing off uncollectible debts due state agency. (1) If a state agency has made all reasonable efforts to collect money owed to it, including money owed on a liquidated and delinquent account that has been relinquished by a private collection agency under ORS 293.231, and has determined that such money and any interest or penalties therefor are uncollectible, in accordance with criteria for uncollectibility formulated by the agency and approved by the Secretary of State and the Attorney General, which criteria shall include the right of offset, the agency may certify to the Secretary of State the amount of the money, interest and penalties, as accurately as can be determined. The Secretary of State may require submission by the agency of all relevant evidence and other information regarding the debt and may examine such records of any other state agency which may be pertinent in determining the uncollectibility of the debt, unless such examination is prohibited by specific provisions of law (except for the secretary's duty to audit the state agency), including but not limited to ORS 314.835 and 657.665.

(2) If the Secretary of State finds that the debt is uncollectible, in accordance with the criteria for uncollectibility of money due to that state agency, the Secretary of State shall direct the agency to write off the debt on its accounts in a manner approved by the Secretary of State.

(3) This section does not apply to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specially applicable to such state agency. [1965 c.448 §2; 1971 c.604 §3; 1991 c.567 §3; 1999 c.1092 §5]

REVENUE AND TAXATION

LICENSE LISTS

305.380 Definitions for ORS 305.385. As used in ORS 305.385:

(1) “Agency” means any department, board, commission, division or authority of the State of Oregon, or any political subdivision of this state which imposes a local tax administered by the Department of Revenue under ORS 305.620.

(2) “License” means any written authority required by law or ordinance as a prerequisite to the conduct of a business, trade or profession.

(3) “Provider” means any person who contracts to supply goods, services or real estate space to an agency.

(4) “Tax” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620. [1987 c.843 §6; 1997 c.99 §35; 1997 c.170 §16; 2005 c.94 §21]

305.385 Agencies to supply licensee and contractor lists; contents; effect of department determination on taxpayer status of licensee or contractor; rules. (1)

Upon request of the Department of Revenue, an agency issuing or renewing a license to conduct a business, trade or profession shall annually, on or before March 1, supply the department with a list of specified licenses issued or renewed by the agency during the preceding calendar year.

(2) Upon request of the department, an agency shall annually, on or before March 1, supply the department with a list of specified persons contracting with the agency to provide goods, services or real estate space to the agency during the preceding calendar year.

(3) The lists required by subsections (1) and (2) of this section shall contain the name, address, Social Security or federal employer identification number of each licensee or provider or such other information as the department may by rule require.

(4)(a) If the department determines that any licensee or provider has neglected or refused to file any return or to pay any tax and that such person has not filed in good faith a petition before the department contesting the tax, and the department has been unable to obtain payment of the tax through other methods of collection, the Director of the Department of Revenue may, notwithstanding ORS 118.525, 314.835 or 314.840 or any similar provision of law, notify the agency and the person in writing.

(b) Upon receipt of such notice, the agency shall refuse to reissue, renew or extend any license, contract or agreement until the agency receives a certificate issued by the department that the person is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(c) Upon the written request of the director and after a hearing and notice to the licensee as required under any applicable provision of law, the agency shall suspend the person’s license if the agency finds that the returns and taxes have not been filed or paid and that the licensee has not filed in good faith a petition before the department contesting the tax and the department has been unable to obtain payment of the tax through other methods of collection. For the purpose of the agency’s findings, the written representation to that effect by the department to the agency shall constitute prima facie evidence of the person’s failure to file returns or pay the tax. The department shall have the right to intervene in any license suspension proceeding.

(d) Any license suspended under this subsection shall not be reissued or renewed

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until the agency receives a certificate issued by the department that the licensee is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(5) The department may enter into an installment payment agreement with a licensee or provider with respect to any unpaid tax, penalty and interest. The agreement shall provide for interest on the outstanding amount at the rate prescribed by ORS 305.220. The department may issue a provisional certificate of good standing pursuant to subsection (4)(b) and (d) of this section which shall remain in effect so long as the licensee or provider fully complies with the terms of the installment agreement. Failure by the licensee or provider to fully comply with the terms of the installment agreement shall render the agreement and the provisional certificate of good standing null and void, unless the department determines that the failure was due to reasonable cause. If the department determines that the failure was not due to reasonable cause, the total amount of the tax, penalty and interest shall be immediately due and payable, and the department shall notify any affected agency that the licensee or provider is not in good standing. The agency shall then take appropriate action under subsection (4)(b) and (d) of this section.

(6) No contract or other agreement for the purpose of providing goods, services or real estate space to any agency shall be entered into, renewed or extended with any person, unless the person certifies in writing, under penalty of perjury, that the person is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).

(7) The certification under subsection (6) of this section shall be required for each contract and renewal or extension of a contract or may be provided on an annual

basis. A certification shall not be required for a contract if the consideration for the goods, services or real estate space provided under the contract is no more than \$1,000.

(8)(a) The requirements of the certification under subsection (6) of this section shall be subject to the rules adopted by the department in accordance with this section.

(b) The department may by rule exempt certain contracts from the requirements of subsection (6) of this section. [1987 c.843 §7; 1989 c.656 §1; 1997 c.99 §36]

(Temporary provisions relating to pilot project requiring tax compliance as condition of occupational and professional licensing)

Note: Sections 2 to 4, chapter 576, Oregon Laws 2009, provide:

Sec. 2. (1) The Department of Revenue may, in conjunction with state agencies, boards or commissions that issue occupational licenses or licenses for the privilege of engaging in an occupation or profession within this state, develop and implement a pilot project that requires, as a condition of issuance or renewal of a license, licensees to demonstrate compliance with the following, as applicable:

(a) The personal income tax laws of this state, including the withholding laws in ORS 316.162 to 316.221.

(b) The corporate excise or income tax laws of this state.

(c) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.

(2) Any state agency, board or commission that participates in the pilot project authorized under subsection (1) of this section may suspend, revoke or refuse to issue or renew a license if the department determines that the licensee has failed to demonstrate or maintain tax compliance as provided in this section.

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(3) Notwithstanding ORS 314.835 and 314.840, the department may disclose to a state agency, board or commission that requires tax compliance as a condition of issuance or renewal of a license under subsection (1) of this section whether an individual or corporation is in compliance.

(4) In determining compliance for purposes of this section, the department may consider whether the individual or corporation:

(a) Has not filed required returns or reports with respect to taxes imposed by ORS chapter 316 or 317, whichever is applicable, for any of the three tax years immediately preceding a year for which a tax return or report was required to be filed;

(b) Has not filed required reports with respect to taxes imposed under ORS 323.005 to 323.482 or 323.500 to 323.645 for any of the three calendar years immediately preceding a year in which a report was required to be filed;

(c) After all appeal rights, if any, have expired, has failed to:

(A) Pay any tax within 30 days after the date of the assessment and is still delinquent on any payments due;

(B) Enter into an approved payment plan within 60 days after the date of the assessment of the tax; or

(C) Follow the terms of an approved payment plan and is still delinquent on any payments due; or

(d) Has been convicted of a criminal offense related to the personal income tax laws of this state, the corporate excise and income tax laws of this state or the provisions of ORS 323.005 to 323.482 or 323.500 to 323.645, whichever are applicable.

(5) The department may enter into agreements with any state agency, board or commission that participates in the pilot project under subsection (1) of this section in order to assist in the administration of the tax compliance requirement.

(6) Participation in the pilot project authorized under subsection (1) of this section is limited to three state agencies, boards or commissions. [2009 c.576 §2]

Sec. 3. The Department of Revenue shall report to the Seventy-sixth Legislative Assembly no later than January 31, 2011, on the operation and effectiveness of the pilot project authorized in section 2 of this 2009 Act. [2009 c.576 §3]

Sec. 4. Section 2 of this 2009 Act is repealed on January 2, 2016. [2009 c.576 §4]

MISCELLANEOUS VETERANS' BENEFITS

408.450 Duty to pay fees during military duty. No person in the military or naval service of the United States, or any auxiliary corps thereof, while exercising any privilege in this state by virtue of having paid an annual license or privilege fee to any state board or commission for the right to practice a profession or engage in a trade, shall lose such privilege because of failure to pay any such fee for any subsequent year during the period the person is in such service, unless dishonorably discharged therefrom. Upon being discharged from such service under honorable conditions and upon written application within 60 days of such discharge, every such person shall be restored to former status with respect to any such privilege without the necessity of paying the then current license fee.

PUBLIC HEALTH AND SAFETY

PROCEDURE WHERE WORKERS EXPOSED TO INFECTIOUS DISEASE

433.407 Definitions for ORS 433.407 to 433.423. As used in ORS 433.407 to 433.423 unless the context requires otherwise:

(1) “Authority” means the Oregon Health Authority.

(2) “Health care facility” means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 and 430.397 to 430.401 or ORS chapter 430.

(3) “Worker” means a person who is licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 682.216, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory as defined in ORS 438.010, a firefighter, a law enforcement officer as defined in ORS 414.805, a corrections officer or a parole and probation officer. [1989 c.949 §2; 1993 c.196 §8; 2005 c.264 §24; 2009 c.595 §671]

Note: 433.407 to 433.423 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 433 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

433.411 Legislative finding. The Legislative Assembly finds that by reason of and in the course of their employment, health care workers and emergency response employees, are subject to exposure to infectious diseases, that this exposure is not fully preventable due to the nature of their duties and that health care workers should be informed of exposure to infectious diseases as soon as is practicable to initiate appropriate medical care and to prevent

exposing other persons to infectious diseases. [1989 c.949 §1]

433.416 When employer to provide preventive immunization. (1) An employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide to the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate.

(2) Such preventive immunization shall be provided by the employer at no cost to the worker.

(3) A worker shall not be required as a condition of work to be immunized under this section, unless such immunization is otherwise required by federal or state law, rule or regulation. [1989 c.949 §3]

433.419 Notice to employer and worker of exposure. When a local health department or the Oregon Health Authority learns of a case or suspected case of an infectious disease which may have exposed a worker to risk of infection, the local health department or the authority shall make every reasonable effort to notify the worker and employer of the exposure as soon as medically appropriate given the urgency of the disease or suspected disease. Notification shall include recommendations to the worker and employer that are medically appropriate. [1989 c.949 §4; 2009 c.595 §672]

433.423 Content of rules. (1) The Oregon Health Authority shall adopt rules implementing ORS 433.407 to 433.423. Such rules shall include, but need not be limited to:

(a) The development of curriculum dealing with the exposure of workers to infectious diseases;

(b) Development and conduct of training programs for local health department

PUBLIC HEALTH AND SAFETY

personnel to prepare them to train workers about the subject of infectious diseases;

(c) Information on the manner in which infectious diseases are transmitted; and

(d) Guidelines that can assist workers and their employers in distinguishing between conditions in which such workers are or are not at risk with respect to infectious diseases.

(2) The rules adopted by the authority shall require that implementation of ORS 433.407 to 433.423 be accomplished in such a manner as to protect the confidentiality of persons with infectious diseases and workers exposed to such persons. [1989 c.949 §5; 2009 c.595 §673]

PUBLIC HEALTH EMERGENCIES

433.441 Proclamation of public health emergency. (1) Upon the occurrence of a public health emergency, the Governor may declare a state of public health emergency as authorized by ORS 433.441 to 433.452 to protect the public health.

(2) A proclamation of a state of public health emergency must specify:

(a) The nature of the public health emergency;

(b) The political subdivision or geographic area subject to the proclamation;

(c) The conditions that have brought about the public health emergency; and

(d) The duration of the state of public health emergency, if the duration is less than 14 days.

(3) During a public health emergency, the Governor may:

(a) Close, order the evacuation of or the decontamination of any facility the Governor has reasonable cause to believe may endanger the public health.

(b) Regulate or restrict by any means necessary the use, sale or distribution of food, fuel, medical supplies, medicines or other goods and services.

(c) Prescribe modes of transportation, routes and destinations required for the evacuation of individuals or the provision of emergency services.

(d) Control or limit entry into, exit from, movement within and the occupancy of premises in any public area subject to or threatened by a public health emergency if such actions are reasonable and necessary to respond to the public health emergency.

(e) Take any other action that may be necessary for the management of resources, or to protect the public during a public health emergency, including any actions authorized under ORS 401.168, 401.185, 401.188 and 401.192.

(4) Nothing in ORS 433.441 to 433.452 limits the authority of the Governor to declare a state of emergency under ORS 401.165. If a state of emergency is declared as authorized under ORS 401.165, the Governor may implement any action authorized by ORS 433.441 to 433.452.

(5) A proclamation of a state of public health emergency expires when terminated by a declaration of the Governor or no more than 14 days after the date the public health emergency is proclaimed unless the Governor expressly extends the proclamation for an additional 14-day period.

(6) When real or personal property is taken under power granted by this section, the owner of the property shall be entitled to reasonable compensation from the state. [2003 c.555 §1; 2007 c.445 §23]

433.442 Definitions for ORS 433.441 to 433.452. As used in ORS 433.441 to 433.452:

(1) “Bioterrorism” means the intentional use of any microorganism, virus, infectious substance or biological product to cause death, disease or other biological harm to a human, an animal, a plant or another living organism.

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(2) “Communicable disease” has the meaning given that term in ORS 431.260.

(3) “Local public health authority” has the meaning given that term in ORS 431.260.

(4) “Public health emergency” means an occurrence or imminent threat of an illness or health condition that:

(a) Is believed to be caused by any of the following:

(A) Bioterrorism;

(B) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin that may be highly contagious;

(C) An epidemic of communicable disease; or

(D) A natural disaster, a chemical attack or accidental chemical release or a nuclear attack or nuclear accident; and

(b) Poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of persons in the affected population.

(5) “Public health measure” has the meaning given that term in ORS 431.260. [2007 c.445 §22]

433.443 Authority of Public Health Director during public health emergency; penalties; access to and use of individually identifiable health information; rules.

(1) As used in this section:

(a) “Covered entity” means:

(A) The Children’s Health Insurance Program;

(B) The Family Health Insurance Assistance Program established under ORS 414.842;

(C) A health insurer that is an insurer as defined in ORS 731.106 and that issues health insurance as defined in ORS 731.162;

(D) The state medical assistance program; and

(E) A health care provider.

(b) “Health care provider” includes but is not limited to:

(A) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;

(B) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(C) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(D) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(G) An emergency medical technician certified under ORS chapter 682;

(H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(J) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

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(K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(M) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(N) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;

(O) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;

(P) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(Q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

(R) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(S) A health care facility as defined in ORS 442.015;

(T) A home health agency as defined in ORS 443.005;

(U) A hospice program as defined in ORS 443.850;

(V) A clinical laboratory as defined in ORS 438.010;

(W) A pharmacy as defined in ORS 689.005;

(X) A diabetes self-management program as defined in ORS 743A.184; and

(Y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(c) "Individual" means a natural person.

(d) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(A) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(e) "Legal representative" means attorney at law, person holding a general power of attorney, guardian, conservator or any person appointed by a court to manage the personal or financial affairs of a person, or agency legally responsible for the welfare or support of a person.

(2)(a) During a public health emergency declared under ORS 433.441, the Public Health Director may, as necessary to appropriately respond to the public health emergency:

(A) Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions and facilities for the purpose of obtaining information directly related to the public health emergency;

(B) After consultation with appropriate medical experts, create and require the use of diagnostic and treatment protocols to respond to the public health emergency and provide notice of those protocols to health care providers, institutions and facilities;

(C) Order, or authorize local public health administrators to order, public health measures appropriate to the public health threat presented;

(D) Upon approval of the Governor, take other actions necessary to address the public health emergency and provide notice of those actions to health care providers,

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institutions and facilities, including public health actions authorized by ORS 431.264;

(E) Take any enforcement action authorized by ORS 431.262, including the imposition of civil penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail to comply with requirements resulting from actions taken in accordance with the powers granted to the Public Health Director under subparagraphs (A), (B) and (D) of this paragraph; and

(F) The authority granted to the Public Health Director under this section:

(i) Supersedes any authority granted to a local public health authority if the local public health authority acts in a manner inconsistent with guidelines established or rules adopted by the director under this section; and

(ii) Does not supersede the general authority granted to a local public health authority or a local public health administrator except as authorized by law or necessary to respond to a public health emergency.

(b) The authority of the Public Health Director to take administrative action, and the effectiveness of any action taken, under paragraph (a)(A), (B), (D), (E) and (F) of this subsection terminates upon the expiration of the proclaimed state of public health emergency, unless the actions are continued under other applicable law.

(3) Civil penalties under subsection (2) of this section shall be imposed in the manner provided in ORS 183.745. The Public Health Director must establish that the individual, institution or facility subject to the civil penalty had actual notice of the action taken that is the basis for the penalty. The maximum aggregate total for penalties that may be imposed against an individual, institution or facility under subsection (2) of this section is \$500 for each day of violation, regardless of the number of violations of subsection (2) of this section that occurred on each day of violation.

(4)(a) During a proclaimed state of public health emergency, the Public Health Director and local public health administrators shall be given immediate access to individually identifiable health information necessary to:

(A) Determine the causes of an illness related to the public health emergency;

(B) Identify persons at risk;

(C) Identify patterns of transmission;

(D) Provide treatment; and

(E) Take steps to control the disease.

(b) Individually identifiable health information accessed as provided by paragraph (a) of this subsection may not be used for conducting nonemergency epidemiologic research or to identify persons at risk for post-traumatic mental health problems, or for any other purpose except the purposes listed in paragraph (a) of this subsection.

(c) Individually identifiable health information obtained by the Public Health Director or local public health administrators under this subsection may not be disclosed without written authorization of the identified individual except:

(A) Directly to the individual who is the subject of the information or to the legal representative of that individual;

(B) To state, local or federal agencies authorized to receive such information by state or federal law;

(C) To identify or to determine the cause or manner of death of a deceased individual; or

(D) Directly to a health care provider for the evaluation or treatment of a condition that is the subject of a proclamation of a state of public health emergency issued under ORS 433.441.

(d) Upon expiration of the state of public health emergency, the Public Health Director or local public health administrators may not use or disclose any individually identifiable health information that has been obtained under this section. If

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a state of emergency that is related to the state of public health emergency has been declared under ORS 401.165, the Public Health Director and local public health administrators may continue to use any individually identifiable information obtained as provided under this section until termination of the state of emergency.

(5) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(6) The Public Health Director may request assistance in enforcing orders issued pursuant to this section from state or local law enforcement authorities. If so requested by the Public Health Director, state and local law enforcement authorities, to the extent resources are available, shall assist in enforcing orders issued pursuant to this section.

(7) If the Oregon Health Authority adopts temporary rules to implement the provisions of this section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The authority may amend temporary rules adopted pursuant to this subsection as often as necessary to respond to the public health emergency.

433.446 Authority of Governor during state of public health emergency. The Governor may seek assistance under the Emergency Management Assistance Compact during a state of public health emergency to obtain additional resources for providing services directly related to mitigation of the crisis. [2003 c.555 §4; 2007 c.445 §25]

OCCUPATIONS AND PROFESSIONS GENERALLY

EDUCATIONAL REQUIREMENTS

670.010 Waiver of educational requirement for admission to examination for license or certificate to practice profession, trade or calling. Any state board or commission that examines applicants for license or certification to practice a profession or engage in a trade or calling may, in its discretion, waive the educational requirement for admission to such examination, provided that the applicant furnishes evidence satisfactory to such state board or commission that the applicant is currently enrolled in a school, college or university approved by such state board or commission and will satisfy the educational requirement for admission to such examination on satisfactory completion of courses for which the applicant is currently enrolled and that this educational requirement will be met not later than four calendar months from the first day of the month following the month in which the examination is given. [1953 c.103 §1; 1975 c.429 §5; 1977 c.47 §1]

670.020 Filing evidence of complete educational requirement after taking examination. (1) Evidence of completion of the educational requirement waived as provided in ORS 670.010 shall be filed with such state board or commission not later than four calendar months from the first day of the month following the month in which the examination is taken. State boards and commissions shall withhold official certification of the successful completion of the examination until such evidence is furnished. The affidavit of the registrar or administrative head of the school, college or university shall be deemed satisfactory evidence.

(2) If any candidate admitted to an examination as provided in ORS 670.010 shall fail or neglect within said period to

complete the educational requirement for such examination, then the completion of the examination by such candidate shall be null and void, and of no effect. The state board or commission which examined the candidate, however, shall retain any examination fee paid by the candidate. [1953 c.103 §2; 1975 c.429 §6; 1981 c.89 §19]

LICENSING ADMINISTRATION (Generally)

670.275 Policy statement. In enacting chapter 753, Oregon Laws 1971, it is the intention of the Legislative Assembly to provide for the more effective coordination of the administrative functions of boards charged with responsibility for protecting the public through the licensing and regulating of certain professions practiced in this state. Further, it is the intention of the Legislative Assembly to retain responsibility for decisions on qualifications, standards of practice, licensing, discipline and other discretionary functions relating to professional activities in the professional licensing boards, members of which are qualified by education, training and experience to make the necessary judgments. [Formerly 184.575]

670.280 Denial, suspension or revocation of license based on criminal conviction; denial of license or imposition of discipline for conduct substantially related to fitness and ability of applicant or licensee. (1) As used in this section:

(a) "License" includes a registration, certification or permit.

(b) "Licensee" includes a registrant or a holder of a certification or permit.

(2) Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency may not deny, suspend or revoke an occupational or

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professional license solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

(3) Except as provided in ORS 342.143 (3) and 342.175 (3), a licensing board, commission or agency may deny an occupational or professional license or impose discipline on a licensee based on conduct that is not undertaken directly in the course of the licensed activity, but that is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required. In determining whether the conduct is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required, the licensing board, commission or agency shall consider the relationship of the facts with respect to the conduct and all intervening circumstances to the specific occupational or professional standards. [1973 c.359 §1; 1991 c.662 §6a; 2003 c.749 §13; 2009 c.386 §5]

670.283 Power of state agency to suspend license includes power to reinstate. If a state agency, board or commission has the power to issue any license, certification or registration necessary to practice any profession or engage in any trade or calling, any statute granting the state agency, board or commission the power to suspend the license, certification or registration includes the power to reinstate:

- (1) At a time certain; or
- (2) When the person subject to suspension fulfills conditions for reinstatement set by the agency, board or commission. [1979 c.201 §1]

670.290 Prohibited uses of juvenile records in employment, licensing or admission. It shall be unlawful for any state agency or licensing board, including the Oregon State Bar, to:

(1) Require that an applicant for employment, licensing or admission answer any questions regarding the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262;

(2) Bar or discharge from employment or refuse to hire or employ such individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262; or

(3) Deny, revoke or suspend a license because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262. [1977 c.801 §2; 1983 c.820 §16; 1993 c.33 §360]

HEALTH CARE SERVICE CONTRACTORS

750.003 Purpose. The purpose of this section and ORS 750.005, 750.025 and 750.045 is to encourage and guarantee the development of health care service contractors by licensing and regulating their operation to insure that they provide high quality health care services through state licensed organizations meeting reasonable standards as to administration, services and financial soundness. [1985 c.747 §64]

750.005 Definitions. As used in ORS 750.005 to 750.095:

- (1) "Claims" means any amount incurred by the insurer covering contracted benefits.
- (2) "Complementary health services" means the following health care services:
 - (a) Chiropractic as defined in ORS 684.010;
 - (b) Naturopathic medicine as defined in ORS 685.010;
 - (c) Massage therapy as defined in ORS 687.011; or
 - (d) Acupuncture as defined in ORS 677.757.
- (3) "Doctor" means any person lawfully licensed or authorized by statute to render any health care services.
- (4) "Health care service contractor" means:
 - (a) Any corporation that is sponsored by or otherwise intimately connected with a group of doctors licensed by this state, or by a group of hospitals licensed by this state, or both, under contracts with groups of doctors or hospitals that include conditions holding the subscriber harmless in the event of nonpayment by the health care service contract as provided in ORS 750.095, and that accepts prepayment for health care services; or
 - (b) Any person referred to in ORS 750.035.
- (5) "Health care services" means the furnishing of medicine, medical or surgical treatment, nursing, hospital service, dental service, optometrical service, complementary health services or any or all of the enumerated services or any other necessary services of like character, whether

or not contingent upon sickness or personal injury, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing or healing human illness, physical disability or injury.

(6) "Health maintenance organization" means any health care service contractor operated on a for-profit or not for-profit basis which:

(a) Qualifies under Title XIII of the Public Health Service Act; or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

(i) Usual physician services;

(ii) Hospitalization;

(iii) Laboratory;

(iv) X-ray;

(v) Emergency and preventive services; and

(vi) Out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis;

(C) Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis; and

(D) Employs the terms "health maintenance organization" or "HMO" in its name, contracts, literature or advertising media on or before July 13, 1985. [Formerly 742.010; 1973 c.515 §5; 1979 c.799 §1; 1985 c.747 §65; 1989 c.783 §4; 1991 c.958 §3; 2003 c.33 §1]

750.045 Required capitalization; bond, security or letter of credit; exemptions; rules.

(1) A health care service contractor that is a for-profit or not-for-profit

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corporation shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than \$2.5 million.

(2) A health care service contractor that is a for-profit or not-for-profit corporation shall file a surety bond or such other bond or securities in the sum of \$250,000 as are authorized by the Insurance Code as a guarantee of the due execution of the policies to be entered into by such contractor in accordance with ORS 750.005 to 750.095. In lieu of such bond or securities, a health care service contractor may file an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the sum of \$250,000. This subsection does not apply to a health care service contractor that has at least 75 percent of its assets invested in health care service facilities pursuant to ORS 733.700.

(3) Subsections (1) and (2) of this section do not apply to a health care service contractor furnishing only complementary health services, dental service or optometrical service operated on a for-profit or not-for-profit basis if:

(a) The services referred to in this subsection maintain capital or surplus, or any combination thereof, of not less than \$1 million.

(b) The services referred to in this subsection file a surety bond or other such bond or securities in the sum of \$50,000 as are authorized by the Insurance Code as a guarantee of the due execution of the policies to be entered into by such contractor in accordance with ORS 750.005 to 750.095.

(4) A health care service contractor that is a for-profit or not-for-profit corporation applying for its original certificate of authority in this state shall possess, when first so authorized, additional capital or surplus, or any combination thereof, of not less than \$500,000.

(5) For the protection of the public, the Director of the Department of Consumer and Business Services may require a health care service contractor to possess and maintain capital or surplus, or any combination thereof, in excess of the amount otherwise required under this section owing to the type, volume and nature of insurance business transacted by the health care service contractor, if the director determines that the greater amount is necessary for maintaining the health care service contractor's solvency according to standards established by rule. In developing such standards, the director shall consider model standards adopted by the National Association of Insurance Commissioners or its successor organization. For the purpose of determining the reasonableness and adequacy of a health care service contractor's capital and surplus, the director must consider at least the following factors, as applicable:

(a) The size of the health care service contractor, as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(b) The number of lives insured.

(c) The extent of the geographical dispersion of the lives insured by the health care service contractor.

(d) The nature and extent of the reinsurance program of the health care service contractor.

(e) The quality, diversification and liquidity of the investment portfolio of the health care service contractor.

(f) The recent past and projected future trend in the size of the investment portfolio of the health care service contractor.

(g) The combined capital and surplus maintained by comparable health care service contractors.

(h) The adequacy of the reserves of the health care service contractor.

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(i) The quality and liquidity of investments in affiliates. The director may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of the director the investment so warrants.

(j) The quality of the earnings of the health care service contractor and the extent to which the reported earnings include extraordinary items. [Formerly 742.050; 1975 c.273 §1; 1977 c.402 §1; 1985 c.747 §67; 1991 c.331 §132; 1991 c.958 §4; 1997 c.631 §552; 2001 c.318 §6; 2003 c.33 §2