

Administrative Rules (Compliance Requirements)

Chapter 676 — Health Professions Generally

2009 EDITION

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USE OF TITLES IMPORTING HEALTH CARE PROFESSION

676.100 [Repealed by 2009 c.142 §6]

676.110 Use of title “doctor.” (1) An individual practicing a health care profession may not use the title “doctor” in connection with the profession, unless the individual:

(a) Has earned a doctoral degree in the individual’s field of practice; and

(b)(A) Is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual’s doctoral degree was earned; or

(B) Is working under a board-approved residency contract and is practicing under the license of a supervisor who is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual’s doctoral degree was earned.

(2) When an individual uses the title “doctor” on written or printed matter or in connection with advertising, billboards, signs or professional notices, the individual shall designate the health care profession in which the individual’s doctoral degree was earned. The designation must be in letters or print at least one-fourth the size of the largest letters used in the title “doctor,” and in material, color, type or illumination to give display and legibility of at least one-fourth that of the title “doctor.”

(3) Subsection (1) of this section does not prohibit:

(a) A chiropractic physician licensed under ORS chapter 684 from using the title “chiropractic physician”;

(b) A naturopathic physician licensed under ORS chapter 685 from using the title “naturopathic physician”;

(c) A person licensed to practice optometry under ORS chapter 683 from using the title “doctor of optometry” or “optometric physician”; or

(d) A podiatric physician licensed under ORS 677.805 to 677.840 from using the title “podiatric physician.” [Amended by 1967 c.470 §66; 1983 c.169 §29; 1983 c.486 §1a; 1983 c.769 §1; 1991 c.314 §4; 1995 c.765 §1; 2007 c.418 §1; 2009 c.142 §1]

676.120 Use of deceased licensee’s name. Notwithstanding ORS 676.110, upon the death of any person duly licensed by a health professional regulatory board as defined in ORS 676.160, the executors of the estate or the heirs, assigns, associates or partners may retain the use of the decedent’s name, where it appears other than as a part of an assumed name, for no more than one year after the death of such person or until the estate is settled, whichever is sooner. [Amended by 1953 c.137 §2; 1983 c.769 §2; 1991 c.314 §5; 2009 c.142 §2]

676.130 Enforcement of ORS 676.110 and 676.120. Each health professional regulatory board as defined in ORS 676.160 shall notify the appropriate district attorney of any violation of ORS 676.110 and 676.120 which may be brought to the attention of such board. The district attorney of the county in which any violation of those sections takes place shall prosecute the violation upon being informed of the violation by any person or by one of such boards. [Amended by 1983 c.769 §3; 2009 c.142 §3]

676.140 [Repealed by 1967 c.470 §68]

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.

(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 Definitions for ORS 676.165 to 676.180. 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 Medical Imaging;
- (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]

Note: The amendments to 676.160 by section 25, chapter 833, Oregon Laws 2009, take effect July 1, 2010. See section 44, chapter 833, Oregon Laws 2009. The text that is effective until July 1, 2010, including amendments by section 9, chapter 43, Oregon Laws 2009, section 44, chapter 442, Oregon Laws 2009, section 1051, chapter 595, Oregon Laws 2009, and section 33, chapter 768, Oregon Laws 2009, is set forth for the user’s convenience.

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.

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 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 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;

(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 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 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.

Note: See second note under 676.185.

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

(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.

Note: See second note under 676.185.

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:

(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: See second note under 676.185.

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.

(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]

HEALTH CARE PROVIDER REPORTING OF BLOOD ALCOHOL LEVEL

676.260 Health care provider notification of blood alcohol level; content of notice. (1) If a health care provider who is providing medical care in a health care facility immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident, becomes aware, as a result of any blood test performed in the course of that treatment, that the person's blood alcohol level meets or exceeds the percent specified in ORS 813.010, the health care provider must notify any law enforcement officer who is at the health care facility and is acting in an official capacity in relation to the motor vehicle accident. If no law enforcement officer is present in an official capacity at the health care facility, the health care facility must notify a law enforcement agency in the county in which the accident occurred, or an Oregon State Police dispatch center, as soon as possible but no more than 72 hours after becoming aware of the results of the blood test.

(2) The notice shall consist of the name of the person being treated, the blood alcohol level disclosed by the test and the date and time of the administration of the test.

(3) Nothing contained in ORS 40.225 to 40.295 affects the requirement to provide notice imposed by this section, and the health care provider shall not be considered to have breached any duty under ORS 40.225 to 40.295 owed to the person about whom the notice is made. [1995 c.546 §1; 2003 c.89 §2; 2007 c.662 §1]

676.280 Immunity of person participating in report pursuant to ORS

676.260. No action or administrative proceeding shall be brought against anyone participating in good faith in providing notice pursuant to ORS 676.260 and any person participating in providing notice shall have immunity from any liability, civil or criminal, and from any professional disciplinary action, that might otherwise be incurred or imposed with respect to the notification or the content of the notice. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the notice. [1995 c.546 §2; 2003 c.89 §3]

676.300 Authority of health care provider to notify law enforcement agency that patient who is under influence of intoxicants is about to drive vehicle; immunity. (1) If a health care provider who is providing emergency medical care in a health care facility to a person has reason to believe that the person is under the influence of intoxicants and is about to drive a motor vehicle on a highway as defined in ORS 801.305 or a premises open to the public as defined in ORS 801.400 and is a clear and present

danger to society, the health care provider may notify as soon as reasonably possible the law enforcement agency which has jurisdiction over the health care facility site.

(2) The notice shall consist of the name and physical description of the person being treated and the fact that the health care provider believes the person is intoxicated and is about to drive a motor vehicle as described in subsection (1) of this section.

(3) The health care provider may inform the person if the health care provider intends to notify the law enforcement agency described in subsection (1) of this section. The person's consent is not required.

(4) Anyone participating in good faith in the making of a report or not making a report pursuant to subsections (1) to (3) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or the content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report. [Formerly 441.827]

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.

(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]

676.310 Fees for laboratory testing; itemized billing; failure to comply considered unprofessional conduct. (1) Any person authorized by law to order laboratory testing may charge a reasonable fee for all laboratory and other specialized testing performed by the practitioner or by a person in the practitioner's employ. In addition, the practitioner is entitled to charge a reasonable fee for collecting and preparing specimens to be sent to independent persons or laboratories for testing, and for the preparation of the billing to the patient for the test. However, a practitioner shall not mark up, or charge a commission or make a profit on services rendered by an independent person or laboratory.

(2) A practitioner shall prepare an itemized billing, indicating the charges for each service rendered to the patient. Any services rendered to the patient that were performed by persons other than those in the direct employ of the practitioner and the charges therefor shall be indicated separately on the patient's bill.

(3) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct and may be subject to disciplinary action by the appropriate licensing board.

(4) As used in this section, "practitioner" means a person licensed to practice medicine, dentistry, naturopathic medicine or chiropractic or to be a nurse practitioner. [1979 c.428 §1]

676.330 Approved osteopathic residency training and certification included as medical specialty certification. Any health care entity, hospital, hospital medical staff, health care service contractor, independent practice association, health insurance company or any other entity that requires physicians to be certified or eligible for certification in a medical specialty shall include residency training and certification approved by the American Osteopathic Association and the American Board of Medical Specialties. [1995 c.627 §1]

676.340 Limitations on liability of health practitioners providing health care services without compensation; requirements; exceptions; attorney fees; applicability. (1) Notwithstanding any other provision of law, a health practitioner described in subsection (7) of this section who has registered under ORS 676.345 and who provides health care services without compensation is not liable for any injury, death

or other loss arising out of the provision of those services, unless the injury, death or other loss results from the gross negligence of the health practitioner.

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

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

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

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

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

(7) This section applies only to:

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

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

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

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

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

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

(g) A dentist licensed under ORS 679.060 to 679.180. [1999 c.771 §1; 1999 c.771 §3; 2005 c.462 §2]

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

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

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

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

(2) The health professional regulatory boards listed in subsection (1) of this section shall establish a registration program for the health practitioners who provide health care services without compensation and who wish to be subject to the liability limitation

provided by ORS 676.340. All health practitioners registering under the program must provide the health professional regulatory board with:

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

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

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

(3) Registration under this section must be made annually. The health professional regulatory boards listed in subsection (1) of this section shall charge no fee for registration under this section. [1999 c.771 §2; 1999 c.771 §4; 2005 c.462 §3]

676.350 Authority of health professional regulatory boards to adopt rules permitting expedited partner therapy. (1) As used in this section:

(a) "Expedited partner therapy" means the practice of prescribing or dispensing antibiotic drugs for the treatment of a sexually transmitted disease to the partner of a patient without first examining the partner of the patient.

(b) "Partner of a patient" means a person whom a patient diagnosed with a sexually transmitted disease identifies as a sexual partner of the patient.

(c) "Practitioner" has the meaning given that term in ORS 475.005.

(2) A health professional regulatory board, as defined in ORS 676.160, may adopt rules permitting practitioners to practice expedited partner therapy. If a board adopts rules permitting practitioners to practice expedited partner therapy, the board shall consult with the Department of Human Services to determine which sexually transmitted diseases are appropriately addressed with expedited partner therapy.

(3) A prescription issued in the practice of expedited partner therapy authorized by the rules of a board is valid even if the name of the patient for whom the prescription is intended is not on the prescription.

(4) The department shall make available informational material about expedited partner therapy that a practitioner may distribute to patients. [2009 c.522 §1]

676.400 Racial and ethnic composition of regulated health professions; findings; duties of health professional regulatory boards. (1) It is the intention of the Legislative Assembly to achieve the goal of universal access to adequate levels of high quality health care at an affordable cost for all Oregonians, regardless of ethnic or cultural background.

(2) The Legislative Assembly finds that:

(a) Access to health care is of value when it leads to treatment that substantially improves health outcomes;

(b) Health care is most effective when it accounts for the contribution of culture to health status and health outcomes;

(c) Ethnic and racial minorities experience more than their statistically fair share of undesirable health outcomes;

(d) The lack of licensed health care professionals from ethnic and racial minorities or who are bilingual contributes to the inadequacy of health outcomes in communities of color in this state; and

(e) The development of a partnership between health professional regulatory boards and communities of color to increase the representation of people of color and bilingual people in health care professions has significant potential to improve the health outcomes of people of color and bilingual citizens of this state.

(3) Health professional regulatory boards shall establish programs to increase the representation of people of color and bilingual people on the boards and in the professions that they regulate. Such programs must include activities to promote the education, recruitment and professional practice of members of these targeted populations in Oregon.

(4) Each health professional regulatory board shall maintain records of the racial and ethnic makeup of applicants and professionals regulated by the board. Such information shall be requested from applicants and the professionals regulated who shall be informed in writing that the provision of such information is voluntary and not required.

(5) Each health professional regulatory board shall report biennially to the Legislative Assembly in the manner required by ORS 192.245. The report shall contain:

(a) Data detailing the efforts of the board to comply with the requirements of subsection (3) of this section; and

(b) Data collected under subsection (4) of this section documenting the ethnic and racial makeup of the applicants and of the professionals regulated by the board.

(6) For purposes of this section, “health professional regulatory board” has the meaning given that term in ORS 676.160. [2001 c.973 §1]

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]

676.410 Information required for issuance or renewal of certain licenses; confidentiality; fees. (1) As used in this section, “healthcare workforce regulatory board” means the:

- (a) Occupational Therapy Licensing Board;
- (b) Oregon Medical Board;
- (c) Oregon State Board of Nursing;
- (d) Oregon Board of Dentistry;
- (e) Physical Therapist Licensing Board;
- (f) State Board of Pharmacy; and
- (g) Board of Examiners of Licensed Dietitians.

(2)(a) An applicant for a license from a healthcare workforce regulatory board or renewal of a license by a healthcare workforce regulatory board shall provide the information prescribed by the Office for Oregon Health Policy and Research pursuant to subsection (3) of this section.

(b) Except as provided in subsection (4) of this section, a healthcare workforce regulatory board may not approve a subsequent application for a license or renewal of a license until the applicant provides the information.

(3) The Administrator for the Office for Oregon Health Policy and Research shall collaborate with the healthcare workforce regulatory boards to adopt rules for the manner, form and content for reporting, and the information that must be provided to a healthcare workforce regulatory board under subsection (2) of this section, which may include:

- (a) Demographics, including race and ethnicity.
- (b) Education information.
- (c) License information.
- (d) Employment information.
- (e) Primary and secondary practice information.
- (f) Anticipated changes in the practice.
- (g) Languages spoken.

(4)(a) A healthcare workforce regulatory board shall report healthcare workforce information collected under subsection (2) of this section to the Office for Oregon Health Policy and Research.

(b) A healthcare workforce regulatory board shall keep confidential and not release personally identifiable data collected under this section for a person licensed, registered or certified by a board. This paragraph does not apply to the release of information to a law enforcement agency for investigative purposes or to the release to the Office for Oregon Health Policy and Research for state health planning purposes.

(5) The requirements of subsection (2) of this section apply to an applicant for issuance or renewal of a license who is or who is applying to become:

- (a) An occupational therapist or certified occupational therapy assistant as defined in ORS 675.210;
- (b) A physician as defined in ORS 677.010;
- (c) A physician assistant as defined in ORS 677.495;
- (d) A nurse or nursing assistant licensed or certified under ORS 678.010 to 678.410;
- (e) A dentist or dental hygienist as defined in ORS 679.010;
- (f) A physical therapist or physical therapist assistant as defined in ORS 688.010;
- (g) A pharmacist or pharmacy technician as defined in ORS 689.005; or
- (h) A licensed dietitian, as defined in ORS 691.405.

(6) A healthcare workforce regulatory board may adopt rules as necessary to perform the board's duties under this section.

(7) In addition to licensing fees that may be imposed by a healthcare workforce regulatory board, the Oregon Health Policy Board shall establish fees to be paid by applicants for issuance or renewal of licenses reasonably calculated to reimburse the actual cost of obtaining or reporting information as required by subsection (2) of this section. [2009 c.595 §1175]

676.440 Duty of health professional regulatory boards to encourage multidisciplinary pain management services. (1) Health professional regulatory boards shall encourage the development of state-of-the-art multidisciplinary pain management services and the availability of these services to the public.

(2) As used in subsection (1) of this section, “health professional regulatory boards” means the:

- (a) Oregon Medical Board;
- (b) Oregon Board of Naturopathic Medicine;
- (c) Oregon Board of Dentistry;
- (d) Oregon State Board of Nursing;
- (e) Physical Therapist Licensing Board;
- (f) State Board of Chiropractic Examiners;
- (g) State Board of Pharmacy; and
- (h) State Board of Psychologist Examiners. [2003 c.325 §1; 2009 c.43 §10]

OREGON HEALTH LICENSING AGENCY

676.600 [1999 c.885 §1; repealed by 2005 c.648 §121]

676.605 Purpose of Oregon Health Licensing Agency. (1) To provide for the more effective coordination of administrative and regulatory functions of certain health boards, councils and programs involved in protecting the public through the licensing and regulation of health-related professions and occupations practiced in this state under uniform mission and goals, there is hereby created the Oregon Health Licensing Agency.

(2) The mission of the agency is to serve the public by providing a uniform structure and accountability for the boards, councils and programs under its administration to protect the public from harm. The agency’s focus is to:

(a) Promote effective health policy that protects the public from incompetent or unauthorized individuals and allows consumers to select a provider from a range of safe options.

(b) Provide outreach and training to stakeholders to improve compliance with public health and safety standards, and to involve stakeholders in the regulation of the various disciplines and fields of practice.

(c) Form partnerships and work in collaboration with each constituency, local and state governmental agencies, educators, organizations and other affected entities to encourage diverse opinions and perspectives.

(d) Provide the boards, councils and programs with a standardized administrative forum and procedures for operation, fiscal services, licensing, enforcement and complaint resolution.

(e) Resolve disputes between regulatory entities regarding the scope of practice of persons licensed by those entities. [1999 c.885 §2; 2001 c.54 §1; 2005 c.648 §1]

676.606 Oversight and centralized service by agency. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide administrative and regulatory oversight and centralized service for the following boards, advisory councils and programs:

- (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;
- (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
- (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- (5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;

- (6) Environmental Health Registration Board, as provided in ORS chapter 700;
 - (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as provided in ORS 690.350 to 690.430;
 - (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;
 - (9) Body piercing technician registration program and body piercing facility licensing program, as provided in ORS 690.500 to 690.570;
 - (10) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410; and
 - (11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820.
- [2003 c.547 §6; 2005 c.648 §2; 2007 c.841 §13; 2009 c.701 §8; 2009 c.768 §27]

676.607 Agency responsibilities; enumeration of powers not exclusive; rules. (1)

The Oregon Health Licensing Agency is responsible for the administration and regulatory oversight of the boards, councils and programs listed in ORS 676.606. The responsibilities of the agency include, but are not limited to:

- (a) Budgeting;
- (b) Record keeping;
- (c) Staffing;
- (d) Contracting;
- (e) Consumer protection and investigating complaints;
- (f) Approving and collecting fees;
- (g) Establishing and administering uniform application processes for the issuance of certificates, licenses, permits and registrations;
- (h) Issuing and renewing certificates, licenses, permits and registrations;
- (i) Conditioning, limiting, suspending, revoking or refusing to issue or renew a certificate, license, permit or registration or otherwise disciplining applicants, certificate holders, licensees, permit holders and registration holders;
- (j) Sanctioning any examination service provider, interpreter or proctor who is under contract or agreement with the agency and who compromises the security, confidentiality or integrity of examinations developed or conducted pursuant to the statutory authority of the boards and councils listed in ORS 676.606;
- (k) Enforcing all administrative rules adopted under any statute the agency is charged with enforcing, including board, council and program administrative rules establishing professional code of conduct and practice standards, continuing education requirements, the scope of professional practice and requirements for obtaining informed consent before providing certain services or performing any procedure on clients;
- (L) Preparing, tracking and reporting agency performance measures;
- (m) Implementing regulatory streamlining initiatives to reduce regulatory burdens without compromising regulatory standards;
- (n) Preparing and circulating printed and electronic materials for educating or otherwise assisting applicants, certificate holders, licensees, permit holders and registration holders and the public;
- (o) Adopting rules for the issuance of waivers or provisional authorizations to practice, and establishing special conditions of practice, during a state of emergency declared by the Governor under ORS 401.165;

(p) Referring impaired practitioners to a diversion program approved or recognized by the agency and establishing criteria by rule for monitoring the impaired practitioner's progress and successful completion of the program; and

(q) Establishing requirements for additional education, training or supervised experience to achieve compliance with the laws and rules governing professional practice.

(2) The enumeration of duties, functions and powers in subsection (1) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the agency by other statutes. [1999 c.885 §3; 2005 c.648 §3; 2009 c.701 §9]

676.608 Investigative authority; conduct of investigation. (1) As used in this section:

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

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

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

(b) Upon its own motion, the agency may initiate and conduct investigations of matters relating to the practice of occupations or professions subject to the authority of the boards, councils and programs listed in ORS 676.606.

(b) When the agency receives a complaint by any person against a holder, the agency shall investigate the complaint as provided in ORS 676.165.

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

(a) Take evidence;

(b) Administer oaths;

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

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

(e) Require answers to interrogatories;

(f) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation; and

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

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

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

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

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

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

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

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

(11) This section does not prohibit examination or questioning of a holder regarding records about the holder's care and treatment of a patient or affect the admissibility of those records. [2003 c.547 §1; 2005 c.648 §4; 2009 c.701 §10; 2009 c.756 §§5a,92]

676.609 Disclosure of records. (1) If the Oregon Health Licensing Agency intends to disclose a record pursuant to ORS 676.608, the agency shall:

(a) Send a notice of the intended disclosure to the person who is the subject of a complaint or an investigation by first class mail at least 14 days before the disclosure date; and

(b) Describe in the notice the type of record being disclosed in sufficient detail to allow the person who is the subject of a complaint or an investigation to understand the contents of the record that the agency intends to disclose.

(2) The agency shall disclose information obtained as part of an investigation of a person charged if another 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. [2009 c.701 §2]

Note: Section 69, chapter 701, Oregon Laws 2009, provides:

Sec. 69. Section 2 of this 2009 Act [676.609] applies to investigations commenced by the Oregon Health Licensing Agency on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.701 §69]

676.610 Director; appointment and qualifications; responsibilities; duties. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(b) The Director of the Oregon Department of Administrative Services shall establish the qualifications for and appoint the Director of the Oregon Health Licensing Agency,

who holds office at the pleasure of the Director of the Oregon Department of Administrative Services.

(c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative Services.

(d) The Director of the Oregon Health Licensing Agency shall be in the unclassified service.

(2) The Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs administered by the agency with such services and employees as the agency requires to carry out the agency's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and employees of the agency, prescribe their duties and fix their compensation.

(3) The Director of the Oregon Health Licensing Agency shall be responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 and 694.015 to 694.185 and ORS chapter 700.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the Oregon Health Licensing Agency by other statutes. [1999 c.885 §6; 2001 c.324 §1; 2005 c.648 §5; 2007 c.841 §14; 2009 c.701 §11; 2009 c.768 §28]

676.611 Duty of director to keep records and prepare reports; peer review of agency activities; rules. (1) In addition to any other duties imposed by law or otherwise required of state agencies, the Director of the Oregon Health Licensing Agency shall keep all records of the agency and discharge all duties prescribed by the agency.

(2) The director shall prepare periodic reports regarding the licensing, monitoring and investigative activities of the agency. The director shall submit the reports to the Governor. The Oregon Department of Administrative Services, in consultation with the agency, 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 the agency to undergo a peer review of agency activities by a team of executive directors of health professional regulatory boards, as defined in ORS 676.160, and at least one public member of a health professional regulatory board. The department may assess the agency for the cost of the peer review. [2009 c.756 §5c]

676.612 Disciplinary authority; authority of agency to require fingerprints. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit or registration to practice issued by the agency or may discipline or place on probation a holder of a certificate, license, permit or registration for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board, council or program listed in ORS 676.606 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the agency concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, license, permit or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another certificate, license, permit or registration holder.

(e) Permitting a person other than the certificate, license, permit or registration holder to use the certificate, license, permit or registration.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the holder of a certificate, license, permit or registration or to the person or property of others in the course of performing the holder's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of a holder of a certificate, license, permit or registration.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt shall be considered a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the certificate, license, permit or registration holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(o) Failing to cooperate with the agency in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing any certificate, license, permit or registration to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the agency that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the agency may require the fingerprints of a person who is:

(a) Applying for a certificate, license, permit or registration that is issued by the agency;

(b) Applying for renewal of a certificate, license, permit or registration that is issued by the agency; or

(c) Under investigation by the agency.

(4) If the agency places a holder of a certificate, license, permit or registration on probation under subsection (1) of this section, the agency, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If a certificate, license, permit or registration is suspended, the holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the certificate, license, permit or registration may be reinstated by the agency if the conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement. [2003 c.547 §3; 2005 c.648 §6; 2005 c.730 §66; 2007 c.841 §15; 2009 c.701 §12; 2009 c.768 §29]

676.613 Injunctions. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 or 694.015 to 694.185 or ORS chapter 700, the agency may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section. [2003 c.547 §5; 2005 c.648 §7; 2007 c.841 §16; 2009 c.768 §30]

676.615 Rulemaking authority. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the Oregon Health Licensing Agency may adopt rules

necessary for the administration of the laws that the Oregon Health Licensing Agency is charged with administering.

(2) In accordance with applicable provisions of ORS chapter 183, the director may adopt rules necessary for the administration of ORS 676.605 to 676.625 and 676.992.

(3) The agency may adopt rules establishing requirements for placement of a certificate, license, permit or registration issued by the agency in a dormant status upon application by the holder and establishing conditions for reactivation of the certificate, license, permit or registration.

(4) Pursuant to ORS 676.605 and 676.607, the agency may adopt rules to recognize specialties within a regulated field of practice subject to the authority of the boards, councils or programs listed in ORS 676.606 and may establish requirements for education, experience, examinations and supervision as necessary to ensure public safety and competency within the specialty. [1999 c.885 §7; 2005 c.648 §8; 2009 c.701 §13]

676.617 Single facility license; rules; fees. (1) As used in this section, “single facility license” means a license to provide services in a single location in more than one of the following practice areas:

(a) Barbering, esthetics, hair design or nail technology, as provided in ORS 690.005 to 690.235;

(b) Electrolysis, as provided in ORS 690.350 to 690.430;

(c) Permanent coloring, as provided in ORS 690.350 to 690.430;

(d) Tattooing, as provided in ORS 690.350 to 690.430; and

(e) Body piercing, as provided in ORS 690.500 to 690.550.

(2) The Oregon Health Licensing Agency may issue a single facility license to an applicant that:

(a) Owns the facility to be licensed;

(b) If a natural person, is at least 18 years of age or, if an entity other than a natural person, is formed and operated in accordance with Oregon law;

(c) Has paid all required fees, as determined by the agency; and

(d) Has filed an application in the form and manner required by the agency.

(3)(a) A single facility license expires annually, unless otherwise specified by rule adopted by the agency, on a date determined by the agency.

(b) A single facility license may be renewed by submitting, prior to the expiration date of the license, the required renewal fees and a renewal application in the form and manner prescribed by the agency.

(c) The agency may impose a delinquency fee or require a new application for the failure to renew a single facility license prior to the date on which it expires.

(4) The agency shall establish by rule and collect fees associated with single facility licenses. Fees shall be established for:

(a) Application;

(b) Original license;

(c) License renewal;

(d) Delinquent renewal;

(e) Replacement license; and

(f) Compiling, photocopying, preparing and delivering copies of documents and records.

(5) All moneys received by the agency under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account, and are appropriated continuously to and shall be used by the agency as authorized by ORS 676.625.

(6) A single facility license holder shall ensure that the:

(a) Single facility license is displayed in public view where services are being rendered; and

(b) Facility authorized by the single facility license complies with all statutes and rules governing facilities in which services in the practice areas authorized by the license of the holder are provided.

(7) The agency may suspend, condition, limit, revoke or refuse to issue or renew a single facility license, or may place on probation or otherwise discipline a single facility license holder, for the reasons specified in ORS 676.612, 690.167, 690.407 or 690.515 or for failure to comply with subsection (6) of this section. [2005 c.648 §10; 2009 c.701 §14]

676.618 Inspection of facilities. (1) Upon its own motion or upon any complaint, the Oregon Health Licensing Agency may conduct an inspection to determine whether a facility or a part of the facility that is the subject of the inspection complies with the licensing, safety, infection control and sterilization requirements imposed by statute or rule of the agency or the boards, councils and programs administered by the agency.

(2) The agency shall provide for the periodic inspection of facilities, business premises or other locations where services are performed by the practitioners of the occupations or professions subject to the authority of the boards, councils and programs that are administered and regulated by the agency pursuant to ORS 676.606. [2003 c.547 §2; 2005 c.648 §11]

676.620 Use of services of Oregon Department of Administrative Services. In performing its powers and duties under ORS 676.605 to 676.625 and 676.992, the Oregon Health Licensing Agency may utilize the administrative assistance of the Oregon Department of Administrative Services. The agency shall pay to the department a proportionate share of the cost of such administrative services, such share to be fixed by biennial negotiation between the agency and the department. [1999 c.885 §13; 2001 c.104 §259; 2005 c.648 §12; 2009 c.701 §15]

676.622 Electronic and facsimile signatures. (1) A transaction conducted through a state or local system or network that provides electronic access to the Oregon Health Licensing Agency information and services is exempt from any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 and 694.015 to 694.185 and ORS chapter 700, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures. [2009 c.701 §3]

676.625 Oregon Health Licensing Agency Account; fees; record keeping; disposition of receipts. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and any responsibility imposed on the agency pertaining to the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606.

(2) The Oregon Health Licensing Agency Account is established in the General Fund of the State Treasury. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are appropriated continuously to and shall be used by the Oregon Health Licensing Agency for payment of expenses of the agency in carrying out the duties, functions and obligations of the agency, and for payment of the expenses of the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606. The agency shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting fees and charges credited to the account, the fees and charges may not exceed the cost of administering the agency and the boards, councils and programs within the agency, as authorized by the Legislative Assembly within the agency's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435, 688.728, 688.834, 690.235, 690.415, 690.550, 694.185 and 700.080, and moneys credited to the account from other agency and program fees established by the agency by rule, are continuously appropriated to the agency for carrying out the duties, functions and powers of the agency under ORS 676.605 to 676.625 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 shall be deposited and accounted for as are other moneys received by the agency and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the agency. [1999 c.885 §14; 2005 c.648 §13; 2009 c.701 §16]

PENALTIES

676.990 Criminal penalties. Violation of any of the provisions of ORS 676.110 to 676.130 is punishable, upon conviction, by a fine of not more than \$250, or by imprisonment in the county jail for not more than 30 days, or by both.

676.992 Civil penalties. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.500 to 690.570 (body piercing);
- (c) ORS 690.005 to 690.235 (cosmetology);
- (d) ORS 680.500 to 680.565 (denture technology);
- (e) ORS 687.405 to 687.495 (direct entry midwifery);
- (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);

- (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- (h) ORS 688.800 to 688.840 (respiratory therapy);
- (i) ORS chapter 700 (environmental sanitation);
- (j) ORS 676.617 (single facility licensure);
- (k) ORS 675.360 to 675.410 (sex offender treatment);
- (L) ORS 678.710 to 678.820 (nursing home administrators); and
- (m) ORS 676.612 (prohibited acts).

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any statute listed in subsection (1) of this section or any rule adopted under any statute listed in subsection (1) of this section.

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

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

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

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

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed. [2003 c.547 §4; 2005 c.648 §14; 2007 c.841 §17; 2009 c.701 §17; 2009 c.768 §31]