

# House Bill 4016

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits Oregon Board of Dentistry, Oregon Medical Board, Oregon State Board of Nursing and State Board of Pharmacy to contract to establish impaired health professional program for licensees of boards. Requires program to meet requirements for impaired health professional program contracted for or established by Oregon Health Authority.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to impaired health professional programs; amending ORS 179.505, 676.185, 676.190, 676.200,  
3 678.112 and 687.081; and declaring an emergency.

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

5 **SECTION 1.** ORS 676.185 is amended to read:

6 676.185. As used in ORS 676.185 to 676.200:

7 (1) "Direct supervisor" means the individual who is responsible for:

8 (a) Supervising a licensee enrolled in *[the]* **an** impaired health professional program;

9 (b) Monitoring the licensee's compliance with the requirements of the program; and

10 (c) Periodically reporting to the program on the licensee's compliance with the requirements of  
11 the program.

12 (2) "Health profession licensing board" means:

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

14 (b) The Health Licensing Office for a board or council listed in ORS 676.583.

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

18 (4) "Licensee" means a health professional licensed or certified by or registered with a health  
19 profession licensing board.

20 (5) "Substantial noncompliance" includes the following:

21 (a) Criminal behavior;

22 (b) Conduct that causes injury, death or harm to the public, or a patient, including sexual  
23 impropriety with a patient;

24 (c) Impairment in a health care setting in the course of employment;

25 (d) A positive toxicology test result as determined by federal regulations pertaining to drug  
26 testing;

27 (e) Violation of a restriction on a licensee's practice imposed by *[the]* **an** impaired health pro-  
28 fessional program established under ORS 676.190 or the licensee's health profession licensing board;

29 (f) Civil commitment for mental illness;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (g) Failure to participate in the program after entering into a diversion agreement under ORS  
2 676.190; or

3 (h) Failure to enroll in the program after being referred to the program.

4 **SECTION 2.** ORS 676.190 is amended to read:

5 676.190. (1)(a) The Oregon Health Authority, **for licensees not regulated by a health profes-**  
6 **sion licensing board listed in paragraph (b) of this subsection,** shall establish or contract to  
7 establish an impaired health professional program.

8 **(b) The Oregon Board of Dentistry, the Oregon Medical Board, the Oregon State Board**  
9 **of Nursing and the State Board of Pharmacy may together contract to establish an impaired**  
10 **health professional program for the licensees regulated by those boards.**

11 **(2) A program established or contracted for under this section** [*The program*] must:

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

14 (b) Require that a licensee sign a written consent prior to enrollment in the program allowing  
15 disclosure and exchange of information between the program, the licensee's board, the licensee's  
16 employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

17 (c) Enter into diversion agreements with enrolled licensees;

18 (d) If the enrolled licensee has a direct supervisor, assess the ability of the direct supervisor to  
19 supervise the licensee, including an assessment of any documentation of the direct supervisor's  
20 completion of specialized training;

21 (e) Report substantial noncompliance with a diversion agreement to a noncompliant licensee's  
22 board within one business day after the program learns of the substantial noncompliance; and

23 (f) At least weekly, submit to licensees' boards:

24 (A) A list of licensees who were referred to the program by a health profession licensing board  
25 and who are enrolled in the program; and

26 (B) A list of licensees who were referred to the program by a health profession licensing board  
27 and who successfully complete the program.

28 [(2)] **(3)** The lists submitted under subsection [(1)(f)] **(2)(f)** of this section are exempt from dis-  
29 closure as a public record under ORS 192.410 to 192.505.

30 [(3)] **(4)** When the program reports substantial noncompliance under subsection [(1)(e)] **(2)(e)** of  
31 this section to a licensee's board, the report must include:

32 (a) A description of the substantial noncompliance;

33 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS  
34 676.200 (2)(a) or subsection [(6)(a)] **(7)(a)** of this section stating the licensee's diagnosis;

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

36 (d) The licensee's employment status.

37 [(4)] **(5)** The program may not diagnose or treat licensees enrolled in the program.

38 [(5)] **(6)** The diversion agreement required by subsection [(1)] **(2)** of this section must:

39 (a) Require the licensee to consent to disclosure and exchange of information between the pro-  
40 gram, the licensee's board, the licensee's employer, evaluators and treatment programs or providers,  
41 in compliance with ORS 179.505 and 42 C.F.R. part 2;

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

44 (c) Require that the licensee abstain from mind-altering or intoxicating substances or potentially  
45 addictive drugs, unless the drug is:

1 (A) Prescribed for a documented medical condition by a person authorized by law to prescribe  
2 the drug to the licensee; and

3 (B) Approved by the program if the licensee's board has granted the program that authority;

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

6 (e) Require the licensee to agree to participate in a recommended treatment plan;

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

8 (g) Require the licensee to submit to random drug or alcohol testing in accordance with federal  
9 regulations, unless the licensee is diagnosed with solely a mental health disorder and the licensee's  
10 board does not otherwise require the licensee to submit to random drug or alcohol testing;

11 (h) Require the licensee to report to the program regarding the licensee's compliance with the  
12 agreement;

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

15 (j) Require the licensee to report applications for licensure in other states, changes in employ-  
16 ment and changes in practice setting; and

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

19 [(6)(a)] **(7)(a)** *[If a health profession licensing board participating in the program establishes by*  
20 *rule an option for self-referral to the program, a licensee of the health profession licensing board may*  
21 *self-refer to the program.]* **A health profession licensing board may establish by rule an option**  
22 **to permit licensees of the health profession licensing board to self-refer to the program.**

23 (b) The program shall require a licensee who self-refers to the program to attest that the  
24 licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board.  
25 The program shall enroll the licensee on the date on which the licensee attests that the licensee,  
26 to the best of the licensee's knowledge, is not under investigation by the licensee's board.

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

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

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

33 (d) When a licensee self-refers to the program, the program may not report the licensee's en-  
34 rollment in or successful completion of the program to the licensee's board.

35 [(7)] **(8)** The authority shall adopt rules establishing a fee to be paid by the health profession  
36 licensing boards participating in the program for administration of the program. **The health pro-**  
37 **feesion licensing boards listed in subsection (1)(b) of this section are not subject to the fees**  
38 **established by the authority under this subsection.**

39 [(8)] **(9)(a)** The authority shall arrange for an independent third party to **conduct an audit of**  
40 **the program every four years to ensure compliance with program guidelines.** The authority shall  
41 report the results of the audit to the Legislative Assembly **in the manner provided by ORS**  
42 **192.245, to the Governor and to the health profession licensing boards.** The report may not contain  
43 individually identifiable information about licensees.

44 **(b) The health profession licensing boards listed in subsection (1)(b) of this section shall**  
45 **arrange for an independent third party to conduct an audit every four years of an impaired**

1 **health professional program for the licensees of those health profession licensing boards to**  
 2 **ensure compliance with program guidelines. The health profession licensing boards listed in**  
 3 **subsection (1)(b) of this section shall report the results of the audit to the Legislative As-**  
 4 **sembly in the manner provided by ORS 192.245 and to the Governor. The report may not**  
 5 **contain individually identifiable information about licensees.**

6 [~~9~~] (10) The authority may adopt rules to carry out this section.

7 **SECTION 3.** ORS 676.200 is amended to read:

8 676.200. (1)(a) A health profession licensing board that is authorized by law to take disciplinary  
 9 action against licensees may adopt rules opting to participate in [~~the~~] **an** impaired health profes-  
 10 sional program established under ORS 676.190 and may contract with or designate one or more  
 11 programs to deliver therapeutic services to its licensees.

12 (b) A board may not establish the board's own impaired health professional program for the  
 13 purpose of monitoring licensees of the board that have been referred to the program.

14 (c) A board may adopt rules establishing additional requirements for licensees referred to [~~the~~]  
 15 **an** impaired health professional program established under ORS 676.190 or a program with which  
 16 the board has entered into a contract or designated to deliver therapeutic services under subsection  
 17 (1) of this section.

18 (2) If a board participates in [~~the~~] **an** impaired health professional program, the board shall es-  
 19 tablish by rule a procedure for referring licensees to the program. The procedure must provide that,  
 20 before the board refers a licensee to the program, the board shall ensure that:

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

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

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

28 (3) A board that participates in [~~the~~] **an** impaired health professional program shall review re-  
 29 ports received from the program. If the board finds that a licensee is substantially noncompliant  
 30 with a diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify  
 31 or revoke the licensee's license or end the licensee's participation in the impaired health profes-  
 32 sional program.

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

34 (a) Self-refers to or participates in the impaired health professional program;

35 (b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or

36 (c) Used controlled substances before entry into the impaired health professional program, if the  
 37 licensee did not practice while impaired.

38 **SECTION 4.** ORS 179.505 is amended to read:

39 179.505. (1) As used in this section:

40 (a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any  
 41 other manner of information outside the health care services provider holding the information.

42 (b) "Health care services provider" means:

43 (A) Medical personnel or other staff employed by or under contract with a public provider to  
 44 provide health care or maintain written accounts of health care provided to individuals; or

45 (B) Units, programs or services designated, operated or maintained by a public provider to pro-

1 vide health care or maintain written accounts of health care provided to individuals.

2 (c) "Individually identifiable health information" means any health information that is:

3 (A) Created or received by a health care services provider; and

4 (B) Identifiable to an individual, including demographic information that identifies the individual,  
5 or for which there is a reasonable basis to believe the information can be used to identify an indi-  
6 vidual, and that relates to:

7 (i) The past, present or future physical or mental health or condition of an individual;

8 (ii) The provision of health care to an individual; or

9 (iii) The past, present or future payment for the provision of health care to an individual.

10 (d) "Personal representative" includes but is not limited to:

11 (A) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with  
12 authority to make medical and health care decisions;

13 (B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-  
14 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment  
15 decisions; and

16 (C) A person appointed as a personal representative under ORS chapter 113.

17 (e) "Psychotherapy notes" means notes recorded in any medium:

18 (A) By a mental health professional, in the performance of the official duties of the mental  
19 health professional;

20 (B) Documenting or analyzing the contents of conversation during a counseling session; and

21 (C) That are maintained separately from the rest of the individual's record.

22 (f) "Psychotherapy notes" does not mean notes documenting:

23 (A) Medication prescription and monitoring;

24 (B) Counseling session start and stop times;

25 (C) Modalities and frequencies of treatment furnished;

26 (D) Results of clinical tests; or

27 (E) Any summary of the following items:

28 (i) Diagnosis;

29 (ii) Functional status;

30 (iii) Treatment plan;

31 (iv) Symptoms;

32 (v) Prognosis; or

33 (vi) Progress to date.

34 (g) "Public provider" means:

35 (A) The Oregon State Hospital campuses;

36 (B) Department of Corrections institutions as defined in ORS 421.005;

37 (C) A contractor of the Department of Corrections or the Oregon Health Authority that provides  
38 health care to individuals residing in a state institution operated by the agencies;

39 (D) A community mental health program or community developmental disabilities program as  
40 described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to  
41 provide mental health or developmental disabilities programs or services;

42 (E) A program or service provided under ORS 431.001 to 431.550 and 431.990;

43 (F) A program or service established or maintained under ORS 430.630 or 430.664;

44 (G) A program or facility providing an organized full-day or part-day program of treatment that  
45 is licensed, approved, established, maintained or operated by or contracted with the Oregon Health

1 Authority for alcoholism, drug addiction or mental or emotional disturbance;

2 (H) A program or service providing treatment by appointment that is licensed, approved, estab-  
3 lished, maintained or operated by or contracted with the authority for alcoholism, drug addiction  
4 or mental or emotional disturbance; or

5 (I) ~~[The]~~ **An** impaired health professional program established under ORS 676.190.

6 (h) "Written account" means records containing only individually identifiable health information.

7 (2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16), (17) and (18)  
8 of this section or unless otherwise permitted or required by state or federal law or by order of the  
9 court, written accounts of the individuals served by any health care services provider maintained  
10 in or by the health care services provider by the officers or employees thereof who are authorized  
11 to maintain written accounts within the official scope of their duties are not subject to access and  
12 may not be disclosed. This subsection applies to written accounts maintained in or by facilities of  
13 the Department of Corrections only to the extent that the written accounts concern the medical,  
14 dental or psychiatric treatment as patients of those under the jurisdiction of the Department of  
15 Corrections.

16 (3) If the individual or a personal representative of the individual provides an authorization, the  
17 content of any written account referred to in subsection (2) of this section must be disclosed ac-  
18 cordingly, if the authorization is in writing and is signed and dated by the individual or the personal  
19 representative of the individual and sets forth with specificity the following:

20 (a) Name of the health care services provider authorized to make the disclosure, except when  
21 the authorization is provided by recipients of or applicants for public assistance or medical assist-  
22 ance, as defined in ORS 414.025, to a governmental entity for purposes of determining eligibility for  
23 benefits or investigating for fraud;

24 (b) Name or title of the persons or organizations to which the information is to be disclosed or  
25 that information may be disclosed to the public;

26 (c) Name of the individual;

27 (d) Extent or nature of the information to be disclosed; and

28 (e) Statement that the authorization is subject to revocation at any time except to the extent  
29 that action has been taken in reliance thereon, and a specification of the date, event or condition  
30 upon which it expires without express revocation. However, a revocation of an authorization is not  
31 valid with respect to inspection or records necessary to validate expenditures by or on behalf of  
32 governmental entities.

33 (4) The content of any written account referred to in subsection (2) of this section may be dis-  
34 closed without an authorization:

35 (a) To any person to the extent necessary to meet a medical emergency.

36 (b) At the discretion of the responsible officer of the health care services provider, which in the  
37 case of any Oregon Health Authority facility or community mental health program is the Director  
38 of the Oregon Health Authority, to persons engaged in scientific research, program evaluation, peer  
39 review and fiscal audits. However, individual identities may not be disclosed to such persons, except  
40 when the disclosure is essential to the research, evaluation, review or audit and is consistent with  
41 state and federal law.

42 (c) To governmental agencies when necessary to secure compensation for services rendered in  
43 the treatment of the individual.

44 (5) When an individual's identity is disclosed under subsection (4) of this section, a health care  
45 services provider shall prepare, and include in the permanent records of the health care services

1 provider, a written statement indicating the reasons for the disclosure, the written accounts dis-  
 2 closed and the recipients of the disclosure.

3 (6) The content of any written account referred to in subsection (2) of this section and held by  
 4 a health care services provider currently engaged in the treatment of an individual may be disclosed  
 5 to officers or employees of that provider, its agents or cooperating health care services providers  
 6 who are currently acting within the official scope of their duties to evaluate treatment programs,  
 7 to diagnose or treat or to assist in diagnosing or treating an individual when the written account  
 8 is to be used in the course of diagnosing or treating the individual. Nothing in this subsection  
 9 prevents the transfer of written accounts referred to in subsection (2) of this section among health  
 10 care services providers, the Department of Corrections, the Oregon Health Authority or a local  
 11 correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

12 (7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240  
 13 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or  
 14 treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or  
 15 an institution operated by the department, nothing in this section prohibits the disclosure of any  
 16 written account referred to in subsection (2) of this section to the Department of Justice, Oregon  
 17 Department of Administrative Services, or their agents, upon request, or the subsequent disclosure  
 18 to a court, administrative hearings officer, arbitrator or other administrative decision maker.

19 (8)(a) When an action, suit, claim, arbitration or proceeding involves the Oregon Health Au-  
 20 thority or an institution operated by the authority, nothing in this section prohibits the disclosure  
 21 of any written account referred to in subsection (2) of this section to the Department of Justice,  
 22 Oregon Department of Administrative Services, or their agents.

23 (b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is  
 24 limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750  
 25 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed  
 26 under this paragraph.

27 (c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel  
 28 action taken against staff is limited to written accounts directly relating to alleged action or in-  
 29 action by staff for which the personnel action was imposed.

30 (9)(a) The copy of any written account referred to in subsection (2) of this section, upon written  
 31 request of the individual or a personal representative of the individual, shall be disclosed to the  
 32 individual or the personal representative of the individual within a reasonable time not to exceed  
 33 five working days. The individual or the personal representative of the individual shall have the  
 34 right to timely access to any written accounts.

35 (b) If the disclosure of psychiatric or psychological information contained in the written account  
 36 would constitute an immediate and grave detriment to the treatment of the individual, disclosure  
 37 may be denied, if medically contraindicated by the treating physician or a licensed health care  
 38 professional in the written account of the individual.

39 (c) The Department of Corrections may withhold psychiatric or psychological information if:

40 (A) The information relates to an individual other than the individual seeking it.

41 (B) Disclosure of the information would constitute a danger to another individual.

42 (C) Disclosure of the information would compromise the privacy of a confidential source.

43 (d) However, a written statement of the denial under paragraph (c) of this subsection and the  
 44 reasons therefor must be entered in the written account.

45 (10) A health care services provider may require a person requesting disclosure of the contents

1 of a written account under this section to reimburse the provider for the reasonable costs incurred  
 2 in searching files, abstracting if requested and copying if requested. However, an individual or a  
 3 personal representative of the individual may not be denied access to written accounts concerning  
 4 the individual because of inability to pay.

5 (11) A written account referred to in subsection (2) of this section may not be used to initiate  
 6 or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by  
 7 federal, state or local authorities against the individual or to conduct any investigations of the in-  
 8 dividual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily  
 9 produces evidence regarding an issue to which a written account referred to in subsection (2) of this  
 10 section would be relevant, the contents of that written account may be disclosed for use in the  
 11 proceeding.

12 (12) Information obtained in the course of diagnosis, evaluation or treatment of an individual  
 13 that, in the professional judgment of the health care services provider, indicates a clear and imme-  
 14 diate danger to others or to society may be reported to the appropriate authority. A decision not  
 15 to disclose information under this subsection does not subject the provider to any civil liability.  
 16 Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760,  
 17 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

18 (13) The prohibitions of this section apply to written accounts concerning any individual who  
 19 has been treated by any health care services provider irrespective of whether or when the individual  
 20 ceases to receive treatment.

21 (14) Persons other than the individual or the personal representative of the individual who are  
 22 granted access under this section to the contents of a written account referred to in subsection (2)  
 23 of this section may not disclose the contents of the written account to any other person except in  
 24 accordance with the provisions of this section.

25 (15) Nothing in this section prevents the Department of Human Services or the Oregon Health  
 26 Authority from disclosing the contents of written accounts in its possession to individuals or agen-  
 27 cies with whom children in its custody are placed.

28 (16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS  
 29 192.515, as provided in ORS 192.517.

30 (17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider  
 31 must obtain an authorization from an individual or a personal representative of the individual to  
 32 disclose psychotherapy notes.

33 (b) A health care services provider may use or disclose psychotherapy notes without obtaining  
 34 an authorization from the individual or a personal representative of the individual to carry out the  
 35 following treatment, payment and health care operations:

36 (A) Use by the originator of the psychotherapy notes for treatment;

37 (B) Disclosure by the health care services provider for its own training program in which stu-  
 38 dents, trainees or practitioners in mental health learn under supervision to practice or improve their  
 39 skills in group, joint, family or individual counseling; or

40 (C) Disclosure by the health care services provider to defend itself in a legal action or other  
 41 proceeding brought by the individual or a personal representative of the individual.

42 (c) An authorization for the disclosure of psychotherapy notes may not be combined with an  
 43 authorization for a disclosure of any other individually identifiable health information, but may be  
 44 combined with another authorization for a disclosure of psychotherapy notes.

45 (18) A health care services provider may disclose information contained in a written account if



1 the conditions of ORS 192.567 (1) to (5) are met.

2 **SECTION 5.** ORS 687.081 is amended to read:

3 687.081. (1) The State Board of Massage Therapists may discipline a person, deny, suspend, re-  
4 voke or refuse to renew a license to practice massage or a permit to operate a massage facility and  
5 issue a reprimand to or censure or place on probation a licensee or permittee, if the person:

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

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

10 (c) Is licensed under ORS 687.051 or holds a permit under ORS 687.059 and has a physical or  
11 mental condition that makes the licensee or permittee unable to conduct safely the practice of  
12 massage or operation of a massage facility.

13 (d) Is licensed under ORS 687.051 or holds a permit under ORS 687.059 and is habitually  
14 intemperate in the use of alcoholic beverages or is addicted to the use of habit-forming drugs or  
15 controlled substances.

16 (e) Has misrepresented to a patron services rendered.

17 (f) Has been convicted of a crime that bears a demonstrable relationship to the practice of  
18 massage or operation of a massage facility.

19 (g) Whether licensed to practice massage or applying for a license to practice massage, fails to  
20 meet a requirement under ORS 687.051.

21 (h) Whether permitted to operate a massage facility or applying for a permit to operate a mas-  
22 sage facility, fails to meet a requirement under ORS 687.059.

23 (i) Violates a provision of ORS 167.002 to 167.027.

24 (j) Engages in unprofessional or dishonorable conduct.

25 (k) Has been the subject of disciplinary action as a massage therapist or operator of a massage  
26 facility by another state or territory of the United States or by a foreign country and the board  
27 determines that the cause of the disciplinary action would be a violation under ORS 687.011 to  
28 687.250, 687.895 or 687.991 or the rules of the board if the cause of the disciplinary action had oc-  
29 curred in this state.

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

32 (a) Limitation on the scope of the practice of massage or the operation of a massage facility.

33 (b) Referral to *[the]* **an** impaired health professional program established under ORS 676.190.

34 (c) Individual or peer supervision.

35 (d) Any other condition that the board considers necessary for the protection of the public or  
36 the rehabilitation of the licensee or permittee.

37 (3) If the board determines that the continued practice of massage by a licensee or the continued  
38 operation of a massage facility by a permittee constitutes a serious danger to the public, the board  
39 may impose an emergency suspension of the license or permit without a hearing. Simultaneous with  
40 the order of suspension, the board shall institute proceedings for a hearing as provided under ORS  
41 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless and until the licensee  
42 or permittee obtains injunctive relief from a court of competent jurisdiction or the board determines  
43 that the suspension is no longer necessary for the protection of the public.

44 (4) In addition to or instead of the discipline described in subsection (1) of this section, the board  
45 may impose a civil penalty under ORS 687.250. Civil penalties under this subsection shall be imposed

1 pursuant to ORS 183.745.

2 (5) Prior to imposing a sanction authorized under this section, the board shall consider, but is  
3 not limited to considering, the following factors:

4 (a) The person's past history in observing the provisions of ORS 687.011 to 687.250, 687.895 and  
5 687.991 and the rules of the board;

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

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

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

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

11 (6) In addition to the sanctions authorized by this section, the board may assess against a person  
12 the reasonable costs of a disciplinary action taken against the person.

13 (7) The board shall adopt a code of ethical standards for massage therapists and shall take ap-  
14 propriate measures to ensure that all applicants and massage therapists are aware of those stan-  
15 dards.

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

18 (9) Information that the board obtains as part of an investigation into the conduct of a person  
19 or as part of a contested case proceeding, consent order or stipulated agreement involving the  
20 conduct of a person is confidential as provided under ORS 676.175.

21 **SECTION 6.** ORS 678.112 is amended to read:

22 678.112. Persons licensed to practice nursing who elect not to participate in *[the]* **an** impaired  
23 health professional program established under ORS 676.190 or who fail to comply with the terms of  
24 participation shall be reported to the Oregon State Board of Nursing for formal disciplinary action  
25 under ORS 678.111.

26 **SECTION 7. This 2016 Act being necessary for the immediate preservation of the public**  
27 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**  
28 **on its passage.**

29