

Enrolled
House Bill 3355

Sponsored by Representative KENNEMER, Senator MONNES ANDERSON, Representatives GREENLICK, MALSTROM; Representatives BARNHART, HACK, KOTEK, NOSSE, OLSON, STARK, WHISNANT, Senators DEMBROW, GIROD, KRUSE, MONROE, ROBLAN

CHAPTER

AN ACT

Relating to prescribing psychologists; creating new provisions; amending ORS 675.085 and 675.110; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 7 of this 2017 Act:

(1) “Certificate of prescriptive authority” means a conditional certificate of prescriptive authority or a full certificate of prescriptive authority issued under section 3 of this 2017 Act.

(2) “Collaboration” means a process that involves two or more persons working together, each contributing that person’s respective area of expertise to provide more comprehensive care than one person alone can provide.

(3) “Drug” has the meaning given that term in ORS 475.005.

(4) “Formulary” means drugs, other than opiate-based narcotics, that are used:

(a) In the treatment of mental disorders; or

(b) To manage side effects of drugs used in the treatment of mental disorders.

(5) “Licensed psychologist” means a person licensed to practice psychology under the provisions of ORS 675.010 to 675.150.

(6) “Prescribe” has the meaning given that term in ORS 677.010.

(7) “Prescribing nurse practitioner” means a person who is certified as a nurse practitioner under ORS 678.375 and who is qualified to practice in the specialties of psychiatric and mental health.

(8) “Prescribing physician” means a person who holds a degree of Doctor of Medicine or Doctor of Osteopathic Medicine and who holds a license to practice medicine or osteopathic medicine issued under ORS chapter 677.

(9) “Prescribing psychologist” means a licensed psychologist who has been issued a certificate of prescriptive authority under section 3 of this 2017 Act.

SECTION 2. (1) There is established within the State Board of Psychologist Examiners a Committee on Prescribing Psychologists. The committee consists of nine members appointed as follows:

(a) The State Board of Psychologist Examiners shall appoint:

(A) Three licensed psychologists, one of whom is a member of the State Board of Psychologist Examiners and one of whom has completed a clinical residency program; and

(B) One member of the public who is a consumer advocate for behavioral health services.

(b) The Oregon Medical Board shall appoint four prescribing physicians, at least one of whom is a psychiatrist, one of whom practices as a primary care physician and one of whom has expertise in the treatment of children.

(c) The Oregon State Board of Nursing shall appoint one prescribing nurse practitioner.

(2) The term of office for each member is three years, but each member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(3) The members of the committee shall elect one of the licensed psychologists appointed under subsection (1)(a) of this section as the chairperson of the committee.

(4) The committee shall:

(a) Review and make recommendations to the State Board of Psychologist Examiners on clinical residency programs proposed by applicants seeking a conditional certificate of prescriptive authority;

(b) Review and make recommendations to the State Board of Psychologist Examiners on applications submitted for certificates of prescriptive authority;

(c) Develop and make recommendations to the State Board of Psychologist Examiners regarding the formulary and make recommendations for annual revisions of the formulary;

(d) Develop and make recommendations to the State Board of Psychologist Examiners regarding standards, examinations and continuing education for prescribing psychologists; and

(e) Report to the State Board of Psychologist Examiners regarding the use of prescriptive authority by prescribing psychologists.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Official action by the committee requires the approval of a majority of the members of the committee.

(7) The committee may seek the assistance of a neutral third party in resolving disagreements among the committee members and facilitating the collaborative process.

(8) The committee shall meet at times and places specified by the call of the chairperson or a majority of the members of the committee.

(9) The committee may adopt rules necessary for the operation of the committee.

(10) The State Board of Psychologist Examiners shall provide staff support to the committee.

(11) Members of the committee are not entitled to compensation, but may be reimbursed from funds available to the State Board of Psychologist Examiners for actual and necessary travel and other expenses incurred by committee members in the performance of their official duties in the manner and amount provided in ORS 292.495.

SECTION 3. (1) In the manner provided in section 5 of this 2017 Act, the State Board of Psychologist Examiners may issue a certificate of prescriptive authority to a licensed psychologist that authorizes the licensed psychologist to prescribe drugs that are listed in the formulary.

(2)(a) A licensed psychologist may apply to the board for a conditional certificate of prescriptive authority if the psychologist:

(A) Has a master's degree in clinical psychopharmacology, including training in physical assessment, pathophysiology, psychopharmacology and clinical management, from a program designated by the American Psychological Association or its successor organization, when the association's standards and procedures have been approved by the board by rule;

(B) Has proposed a clinical residency program that has been reviewed by the Committee on Prescribing Psychologists and forwarded to the board with the committee's recommendation on the clinical residency program under section 4 of this 2017 Act;

(C) Has passed a national certification examination in psychopharmacology as specified by the board by rule; and

(D) Pays the fees required by the board by rule.

(b) A prescribing psychologist who holds a conditional certificate of prescriptive authority may prescribe a drug only if a prescribing physician or a prescribing nurse practitioner has specifically approved the prescription in writing, in accordance with rules adopted under section 7 of this 2017 Act.

(3) A licensed psychologist may apply to the board for a full certificate of prescriptive authority if the licensed psychologist:

(a) Has completed a clinical residency program:

(A) Approved by the board after taking into account the committee's recommendation on the clinical residency program under section 4 of this 2017 Act; or

(B) In another state that is equivalent to a clinical residency program in Oregon approved by the board;

(b) Has passed a national certification examination in psychopharmacology as specified by the board by rule; and

(c) Pays the fees required by the board by rule.

(4) A certificate of prescriptive authority issued under this section does not authorize the licensed psychologist to prescribe narcotic drugs. However, a licensed psychologist who holds a certificate of prescriptive authority, and who is adequately trained, may prescribe partial opiate antagonists.

(5) A certificate of prescriptive authority issued under this section expires every two years. Taking into account the recommendations made by the committee under section 2 of this 2017 Act, the board shall adopt rules to establish the requirements and fee for renewal of a certificate of prescriptive authority.

(6) Taking into account the recommendations made by the committee under section 2 of this 2017 Act, the board shall adopt rules to establish standards and continuing education requirements for prescribing psychologists.

(7) The board shall provide a report on the practice of prescribing psychologists to a legislative committee related to health care on or before March 31 of each odd-numbered year.

SECTION 4. (1) A clinical residency program for certifying a prescribing psychologist under section 3 of this 2017 Act must include 24 months of training in conjunction with a longitudinal outpatient experience that:

(a) Requires the licensed psychologist to collaborate with at least one prescribing physician or prescribing nurse practitioner when the licensed psychologist is providing the clinical service of prescribing drugs to a patient.

(b) Is completed pursuant to a residency contract that is approved by the Committee on Prescribing Psychologists before the licensed psychologist begins the clinical residency program.

(c) Includes the following components:

(A) At least 12 months of clinical experience in a general medical health setting in direct collaboration with a prescribing physician or a prescribing nurse practitioner; and

(B) If the licensed psychologist intends to practice with a specialized population, at least three months of clinical experience in a specialized setting such as a general pediatric setting, a pain treatment setting, a general geriatric setting, an addiction treatment setting or a general neurology setting.

(2)(a) The committee shall review all clinical residency programs proposed by applicants under section 3 of this 2017 Act on an individual basis and recommend to the State Board

of Psychologist Examiners whether to accept or reject the proposed clinical residency program, taking into account each applicant's experience and other qualifications.

(b) Notwithstanding subsection (1) of this section, the committee may recommend acceptance of a clinical residency program that does not meet the requirements of subsection (1) of this section if the committee determines that the applicant's experience and other qualifications and the clinical residency program proposed by the applicant combine to satisfy the requirements of subsection (1) of this section.

SECTION 5. (1) The Committee on Prescribing Psychologists shall meet at least once each quarter, unless the committee has no business to conduct.

(2)(a) If the committee recommends approval of an application for a certificate of prescriptive authority under section 3 of this 2017 Act and the State Board of Psychologist Examiners accepts the recommendation, the board shall issue the certificate of prescriptive authority within 30 days of the date of acceptance.

(b) If the board refuses to issue a certificate of prescriptive authority based on the recommendation of the committee or based on the rejection by the board of the committee's recommendation to approve an application for a certificate of prescriptive authority under section 3 of this 2017 Act, the applicant may request a contested case hearing under ORS chapter 183.

SECTION 6. (1) In the manner prescribed by ORS chapter 183 for contested cases, the State Board of Psychologist Examiners may deny, suspend, limit or revoke a certificate of prescriptive authority upon proof of a prescribing psychologist's inappropriate use of prescriptive authority.

(2) When the board receives a complaint about a prescribing psychologist, the board shall forward the complaint to the Committee on Prescribing Psychologists for a recommendation on disciplinary action. The board may accept or reject the recommendation of the committee.

SECTION 7. (1) Taking into account the recommendations made by the Committee on Prescribing Psychologists under section 2 of this 2017 Act, the State Board of Psychologist Examiners shall adopt rules requiring:

(a) A prescribing psychologist to practice in a general medical setting, such as a patient centered primary care home, as defined in ORS 414.025, or other health care facility where general medical health care providers are on the premises, to ensure that:

(A) Necessary medical examinations are conducted;

(B) The prescribed drug is appropriate for the patient's medical condition; and

(C) The prescribing psychologist and the primary care physician or the nurse practitioner discuss, in a timely manner, any significant changes in the patient's medical or psychological condition.

(b) A prescribing psychologist with a conditional certificate of prescriptive authority to obtain the specific written approval of a prescribing physician or a prescribing nurse practitioner for each prescription the prescribing psychologist writes.

(2) A primary care physician or a nurse practitioner who collaborates with a prescribing psychologist as required by rules adopted under this section is not liable for any injury resulting from the care provided by the prescribing psychologist that was the subject of the collaboration, unless the injury results from the gross negligence or reckless, wanton or intentional misconduct of the primary care physician or the nurse practitioner.

SECTION 8. ORS 675.085 is amended to read:

675.085. (1) Upon receipt of a complaint under ORS 675.010 to 675.150, the State Board of Psychologist Examiners shall conduct an investigation as described under ORS 676.165.

(2) During an investigation of a prescribing psychologist, as defined in section 1 of this 2017 Act, the board may consult with and disclose investigatory information to the Committee on Prescribing Psychologists established in section 2 of this 2017 Act.

[2] (3) [Where] If the board proposes to refuse to issue a license or to impose [any] disciplinary action under ORS 675.070, **the board shall provide an opportunity for hearing** [shall be accorded] as [provided in] **required by** ORS chapter 183. The board shall render its decision within 30 days after the hearing.

[3] (4) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders [shall be as provided in] **must comply with the provisions of** ORS chapter 183.

SECTION 9. ORS 675.110, as amended by section 13, chapter 104, Oregon Laws 2017 (Enrolled House Bill 2319), is amended to read:

675.110. In addition to the powers otherwise granted under ORS 675.010 to 675.150, the State Board of Psychologist Examiners has all powers necessary or proper to:

(1) Determine qualifications of applicants to practice psychology in this state, prepare, conduct and grade examinations and license qualified applicants who comply with the provisions of ORS 675.010 to 675.150 and the rules of the board.

(2) Grant or deny renewal of licenses and renew licenses that have lapsed for nonpayment of the renewal fee, subject to the provisions of ORS 675.010 to 675.150.

(3) Suspend or revoke licenses, subject to ORS 675.010 to 675.150.

(4) Issue letters of reprimand and impose probationary periods with the authority to restrict the scope of practice of a licensed psychologist or to require practice under supervision.

(5) Impose civil penalties as provided in ORS 675.070.

(6) Restore licenses that have been suspended or revoked or voided by nonpayment of the renewal fee.

(7) Collect fees for application, examination and licensing of applicants, for renewal of licenses and for issuance of limited permits and use the fees to defray the expenses of the board as provided in ORS 675.140.

(8) Collect a delinquent renewal fee for licenses renewed after the deadline for renewal but before the grace period for renewal has expired.

(9) Investigate alleged violations of ORS 675.010 to 675.150.

(10) Issue subpoenas for the attendance of witnesses, take testimony, administer oaths or affirmations to witnesses, conduct hearings and require the production of relevant documents in all proceedings pertaining to the duties and powers of the board.

(11) Enforce ORS 675.010 to 675.150 and exercise general supervision over the practice of psychology in this state.

(12) Adopt a common seal.

(13) Formulate a code of professional conduct for the practice of psychology giving particular consideration to the Ethical Standards of Psychologists promulgated by the American Psychological Association.

(14) Establish standards of service and training and educational qualifications for rendering ethical psychological services in this state, including the formulation of standards for the issuance of licenses for areas of special competence.

(15) Formulate and enforce continuing education requirements for duly licensed psychologists to ensure the highest quality of professional services to the public.

(16) Deny renewal of a license, or renewal of a license that has lapsed for nonpayment of the renewal fee, unless the applicant completes, or provides documentation of previous completion of:

(a) A pain management education program approved by the board and developed in conjunction with the Pain Management Commission established under ORS 413.570; or

(b) An equivalent pain management education program, as determined by the board.

(17) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, require the fingerprints of a person who is:

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

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

(c) Under investigation by the board.

(18) Prescribe, in consultation with the Oregon Board of Licensed Professional Counselors and Therapists, the duties of the Director of the Mental Health Regulatory Agency.

(19) Issue, suspend, revoke or deny certificates of prescriptive authority under section 3 of this 2017 Act, and renew or deny renewal of certificates of prescriptive authority.

[(19)] (20) Subject to the applicable provisions of ORS chapter 183, adopt reasonable rules to carry out the provisions of ORS 675.010 to 675.150 and sections 1 to 7 of this 2017 Act.

SECTION 10. Notwithstanding the term of office specified by section 2 of this 2017 Act, the members first appointed to the Committee on Prescribing Psychologists shall determine by lot at the first meeting of the committee the initial terms of office for committee members as follows:

(1) Four shall serve for terms ending June 30, 2020.

(2) Five shall serve for terms ending June 30, 2021.

SECTION 11. Notwithstanding any other law limiting expenditures, the amount of \$55,762 is established for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses for the purposes of carrying out the provisions of section 2 of this 2017 Act from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Board of Psychologist Examiners.

SECTION 12. (1) Sections 2 to 7 of this 2017 Act and the amendments to ORS 675.085 and 675.110 by sections 8 and 9 of this 2017 Act become operative on July 1, 2018.

(2) The State Board of Psychologist Examiners may take any action before the operative date specified in subsection (1) of this section that is necessary for the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board by sections 2 to 7 of this 2017 Act and the amendments to ORS 675.085 and 675.110 by sections 8 and 9 of this 2017 Act.

SECTION 13. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House June 22, 2017

Received by Governor:

Repassed by House July 6, 2017

.....M.,....., 2017

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

.....
Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate July 3, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Peter Courtney, President of Senate

.....
Dennis Richardson, Secretary of State