Chapter 677

1957 REPLACEMENT PART

Physicians and Surgeons

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677.010 Definitions. (1) As used in this chapter, unless the context or a specially applicable definition requires otherwise:

(a) "Abortion" means the expulsion of the foetus at a period of uterogestation so early that it has not acquired the power of sustaining an independent life. It shall be conclusively presumed for the purpose of this chapter that the foetus has not acquired such power earlier than 150 days after gestation, and a disputable presumption of lack of such power shall arise if the expulsion takes place earlier than 240 days after gestation.

(b) "Board" means the Board of Medical Examiners for the State of Oregon.

(c) "Diagnose" means to examine another person in any manner to determine the source or nature of a disease or other abnormal physical or mental condition, or to hold oneself out or represent that a person is so examining another person. It is not necessary that the examination be made in the presence of such other person; it may be made on information supplied either directly or indirectly by such other person.

(d) "Drug" means all medicines and preparations for internal or external use of man, and all substances intended to be used for the cure, mitigation or prevention of diseases or abnormalities of man, which are recognized in the latest editions of the United States Pharmacopoeia or National Formulary, or otherwise established as drugs.

(e) "Fraud or misrepresentation" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression is knowingly given.

(f) "Manifestly incurable condition, sickness, disease or injury" means one that is declared so incurable by competent physicians and surgeons.

(g) "Medicine" means any drug, drugs, chemicals, compounds or preparations thereof, in suitable form for use, (or which are intended and which may readily be put in such form), as a curative or remedial substance by man, either internally or externally.

(h) "Prescribe" means to direct, order or designate the use of or manner of using.

(i) "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine or detrimental to the best interest of the public.

(2) The exemptions provided for in ORS 677.060 shall also apply to and govern the provisions of this section.

677.020 Practice of medicine without license prohibited. Except as provided in ORS 677.060, no person shall practice medicine or surgery in this state without being licensed so to do by the State Board of Medical Examiners.

677.030 What constitutes the practice of medicine and surgery. A person is regarded as practicing medicine and surgery if he does one of the following:

(1) Advertise, or hold out to the public, or represent in any manner that he is authorized to practice medicine or surgery in this state.

(2) For compensation directly or indirectly received or to be received, offer or undertake to prescribe, give or administer, any drug or medicine for the use of any other person.

(3) Offer or undertake to perform any surgical operation upon any person.

(4) Offer or undertake to diagnose, cure or treat in any manner, or by any means, methods, devices or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person.

(5) Append the letters "M. D." or "M. B." to his name, or use the words "Doctor" or "Physician" or "Surgeon" or "Psychoanalyst" or "Professor" or "Healer" or "Specialist," or any abbreviation or combination thereof, or any letters or words of similar import in connection with his name, or any trade name in which he is interested, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions mentioned in this section.

(6) Act as the representative or agent of any person in doing any of the things mentioned in subsections (1) to (5) of this section. [Amended by 1957 c.681 §1]

677.040 Enjoining unlicensed practice of medicine. The board may maintain a suit for an injunction against any person violating ORS 677.020. Any person who has been so enjoined may be punished for contempt by the court issuing the injunction. An injunction may be issued without proof of actual damage sustained by any person. An

injunction shall not relieve a person from criminal prosecution for violation of ORS 677.020.

677.050 Prohibited acts. No person shall:

(1) Knowingly make any false statement or representation on a material matter, or wilfully conceal any material fact, for the purpose of obtaining a license to practice medicine and surgery, or of securing a certificate of registration under this chapter.

(2) Sell or fraudulently obtain or furnish any medical and surgical diploma, license, record or registration, or aid or abet in the same.

(3) Practice medicine and surgery under cover of any diploma, license, record or registration illegally or fraudulently issued or obtained, or which has been revoked.

(4) Practice or advertise to practice medicine and surgery, under a false or assumed name, or under the name of any other person, or under any name other than his own true name.

677.060 Persons and practices not within scope of chapter. This chapter shall not be construed to affect or prevent the following:

(1) The practice of medicine and surgery in this state by any commissioned medical officer serving in the Armed Forces of the United States or Public Health Service, or any medical officer on duty with the United States Veterans' Administration, while any such medical officer is engaged in the performance of the actual duties prescribed for him by the laws and regulations of the United States.

(2) The practice of medicine and surgery by a duly appointed member of the resident staff, or by an intern while actually serving as such, in any legally incorporated hospital in this state recognized as standard by the State Board of Medical Examiners.

(3) The practice of medicine and surgery by anyone duly licensed so to practice in a neighboring state, who resides near the boundary of this state, and whose practice extends into this state, but who does not maintain an office or appoint a place to meet patients or receive calls within this state.

(4) The meeting in this state of any legally licensed practitioner of medicine and surgery of any other state or country with a duly licensed practitioner of medicine and surgery in this state, for consultation.

(5) The furnishing of medical or surgical assistance in cases of emergency requiring immediate attention.

(6) The domestic administration of family remedies.

(7) The practice authorized by ORS 681.020 by osteopathic physicians and surgeons.

(8) The practice of dentistry, pharmacy, optometry, chiropractic, naturopathy, chiropody or cosmetic therapy, by any person legally authorized by this state; and nothing contained in subsection (5) of ORS 677.030 shall be construed as an inhibition against the use of the words "Doctor" or "Specialist," or any abbreviation or combination thereof, or any letters or words of similar import by any person duly licensed to practice optometry within Oregon.

(9) The practice of the religion of persons who endeavor to prevent or cure disease or suffering by prayer or other spiritual means in accordance with the tenets of any church; nor shall anything in this chapter be construed as to interfere in any manner with the individual's right to select the practitioner or mode of treatment of his choice, or to interfere with the right of the person so employed to give the treatment so chosen; provided that sanitary laws, rules and regulations are complied with.

(10) The selling of lenses, artificial eyes, limbs or surgical instruments or other apparatus or appliances of a similar character.

(11) The selling of drugs, medicines and chemicals by licensed pharmacists in accordance with the laws of this state.

(12) Professional or domestic nursing.

(13) The sale by duly licensed vendors or manufacturers of proprietary medicine, ointments, salves or cosmetics in the original packages bearing duly certified and accepted trade-marks or the sale of mineral waters or mineral substances in their native state or condition or dissolved in pure water.

(14) The sale or rent or use for hire of any device or appliance, the sale of which is not prohibited by the laws of Oregon, or the laws of the United States.

(15) The practice of physiotherapy, electrotherapy or hydrotherapy carried on, by or under the direction of duly licensed practitioners of medicine and surgery or osteopathy and surgery or chiropractic, or any other method of practice which may become legalized in this state. [Amended by 1953 c.159 §6; 1955 c.157 §1]

677.070 Chapter not applicable to regulation of other healing arts. This chapter is designed solely for the regulation of the practice of medicine and surgery and does not apply to the regulation of the other healing arts.

677.080 to 677.090 [Reserved for expansion]

677.100 Qualification of applicants for license. (1) Applicants who desire to take the examination for license to practice medicine and surgery in this state, except as otherwise provided in subsection (2) of this section, must possess the following qualifications:

(a) Have had at least two years' premedical education in a college or university whose standing is satisfactory to the board.

(b) Have graduated from a medical school or college which at the time of the graduation of such applicant required at least four full terms of instruction of eight months each, and which school or college was on the approved list of the Council on Medical Education and Hospitals of the American Medical Association, and was approved by the Oregon State Board of Medical Examiners at the time of his graduation.

(c) Have completed an internship of at least one year in a hospital which is approved for internship by the American Medical Association. However, if it is made to appear to the board that any applicant has served, by reason of a national emergency, any shorter period of internship in a hospital which is approved for internship by the American Medical Association subsequent to September 15, 1940, and thereafter completes the one-year period as a resident in any such hospital or as a commissioned medical officer of the Armed Forces of the United States, the applicant may be deemed qualified as to internship.

(d) Have complied with ORS 676.010 to 676.090.

(e) Have complied with any other reasonable rule or regulation of the board which applies to all similar applicants for the privilege of taking an examination to practice medicine and surgery in this state.

(2) If an applicant establishes that he has complied with ORS 676.010 to 676.090 and that he has qualifications which are the equivalent of the qualifications required by paragraphs (a), (b), (c) and (e) of subsection (1) of this section, the applicant shall be deemed to satisfy the requirements of subsection (1) of this section.

(3) Applicants to take an examination to practice medicine and surgery must make written application to the board showing the compliance with the provisions of this section and ORS 677.110 to 677.130 and the rules of the board and containing such further information as the rules of the board may require. [Amended by 1957 c.681 §11]

677.110 Scope and administration of examination. (1) Applicants who comply with the provisions of ORS 677.100 and pay the required examination fee shall be admitted to an examination in the subjects set out in subsection (3) of this section of sufficient severity to test the applicant's fitness to practice medicine and surgery. The examination shall be by written or printed questions and answers, and shall be conducted in such a manner as to keep the identity of the applicant concealed from the person correcting the examination paper. In all such examinations, 75 percent in each subject shall be considered to be a passing grade.

(2) If an applicant fails the examination, the board may permit him to take a subsequent examination, if he has otherwise complied with the law and the rules of the board. After any applicant satisfactorily passes the examination in the required subjects, and otherwise complies with the law and the rules and regulations of the board, the board shall grant a license to the applicant to practice medicine and surgery in Oregon.

(3) The examination of applicants to practice medicine and surgery shall be an examination in anatomy, physiology, biochemistry, surgery, obstetrics and gynecology, pharmacology and materia medica, medicine, pathology, bacteriology, public health and preventive medicine, medical jurisprudence, pediatrics and such other branches as the board may deem advisable. [Amended by 1953 c.159 §6; 1957 c.681 §2]

677.120 Reciprocity. (1) A legally licensed physician and surgeon who has been issued a license to practice in another state or territory of the United States whose qualifications are substantially similar to those of the State of Oregon may be permitted by the board to practice his profession in this state, without taking an examination, except when an oral examination is required under subsection (5) of this section, upon compliance with ORS 676.010 to 676.090.

(2) Such permission shall be evidenced by certificate or indorsement on the license of such person or by the issuance of a new license by the board.

(3) The certification, indorsement or issuance of a new license shall be at the sole discretion of the board and the board may provide such rules or regulations governing such admission as may seem necessary or desirable to the board; but such person shall not be permitted to practice medicine and surgery in this state unless the license issued in another state or territory was issued after an examination substantially similar to the examination provided for applicants to practice medicine and surgery in this state.

(4) The board may, at its discretion, accept a certificate of successful examination issued by the National Board of Medical Examiners of the United States chartered under the laws of the District of Columbia in lieu of its own examination.

(5) The person described in subsection (1) of this section, when his application is based on a license issued in another state or territory, or by certification of the National Board of Medical Examiners of the United States, five years or more prior to the filing of his application with the Oregon board, may be required, at the discretion of the board, to take an oral examination. This oral examination shall be given by a group consisting of one or more members of the board and a nonmember designated by the board who is licensed to practice as a physician and surgeon in Oregon. [Amended by 1957 c.681 §3]

677.130 Fees. The fees for licensure to practice medicine and surgery in this state shall be no less than the following:

(1) Twenty-five dollars upon the first application to take an examination to practice.

(2) Ten dollars for any subsequent application for the examination provided for under subsection (1) of this section.

(3) Twenty-five dollars upon application for a certification, indorsement or reciprocity based upon a certificate of successful examination issued by the National Board of Medical Examiners of the United States.

(4) One hundred dollars for a license by reciprocity, certification or indorsement, based upon license issued by a sister state.

677.140 Filing of license with county clerk; transmission of copy of judgment of conviction. Each person receiving a license to practice medicine and surgery in this state shall file it or a copy thereof with the county clerk in each county in which he carries on a substantial portion of his practice. The county clerk shall file the license or copy thereof, and enter a memorandum thereof, giving the date of the license, the name of the person to whom it is issued and the date of such filing, in a book to be provided and kept for that purpose. The county clerk shall also, on or before February 1 of each year, furnish to the secretary of the board a list of all licenses filed in his office during the preceding year, and upon notice to him of the death of a person so licensed, or of the suspension or revocation of the license granted to such person, the county clerk shall enter at the appropriate place in the record kept by him a memorandum of such facts, so that the record kept by the county clerk corresponds with the records of the board as kept by the secretary. The absence of such record of any license claimed to be held by any person shall be prima facie evidence that no such license has been issued. The county clerk of any county shall upon request of the secretary of the board furnish a complete list of all such licenses on file in his office. In case any licentiate is convicted of a crime, the clerk of the court in which such conviction shall be had shall send to the secretary of the board a certified copy of such judgment. [Amended by 1957 c.681 §4]

677.150 Annual registration of licensees. (1) Every person licensed to practice medicine and surgery or hereafter licensed to practice medicine and surgery in this state shall apply for annual registration and register annually with the board and shall pay each year an annual registration fee of $15 to the board.

(2) The application shall be made upon a blank form, which form shall be mailed to such persons by the secretary of the board, not later than October 15 of each year.

(3) In the application the applicant shall state his full name, his business and residence addresses, the date and number of his license and such other facts for the identification of the applicant and his license as the board deems necessary.

(4) The application for annual registration shall be filed with the secretary of the board on or before December 1 of each

year and shall be accompanied with the $15 registration fee.

(5) For good and sufficient reason the board may waive the payment of the annual registration fee for a reasonable time.

(6) On or before January 1 of each year the secretary of the board shall mail to the persons who have complied with this section a certificate of annual registration which shall remain in effect no longer than December 31 of such year.

(7) It shall be the duty of every physician and surgeon to display such certificate or receipt in some conspicuous place in his office. [Amended by 1953 c.159 §6]

677.160 Failure to procure annual certificate of registration. (1) Any person licensed to practice medicine and surgery in this state who fails or neglects to comply with the provisions of ORS 677.150 shall be notified by the secretary of the board of his delinquency. If such person fails or neglects to apply for registration and accompany his application with the required registration fees and any penalties provided for by this chapter within 30 days after notice of such delinquency mailed by the secretary of the board to his last known address, the license of such person shall be automatically revoked.

(2) In addition to any other penalties provided for by law, the board or the secretary of the board may require that a delinquent licensee pay a penalty, not to exceed $1 for each day he is delinquent, before issuing an annual registration certificate.

(3) All moneys received by the secretary from fees or penalties shall be discharged by him in carrying out and maintaining the provisions of this chapter, except as otherwise provided by law, and the board may collect such fees or penalties by law.

677.170 Duty of practitioner on changing location; commencing practice after January 1; effect of absence from state. (1) Any registered practitioner of medicine and surgery who changes his location during the period between any two annual registration dates shall, before practicing in his new location, notify the secretary of the board of the change in his location.

(2) Any person who desires to begin the practice of medicine and surgery in this state subsequent to January 1 in any year shall, before beginning such practice, register and pay the annual registration fee for that year as provided in this chapter.

(3) If any licensed practitioner of medicine and surgery changes his residence to some other state or country, and later resumes his residence in Oregon, his absence from the state shall not affect the validity of his license or registration if he notifies the board of his change of residence during his absence from the state and, except for the time served in the United States Armed Forces, pays an inactive registration fee of $5 per annum during such absence. Before resuming practice in this state, he shall notify the board of his intention to resume active practice and obtain a certificate of annual registration for the year he returns less the inactive registration fee previously paid for that year. No person is entitled to resume active practice in this state if, in the judgment of the State Board of Medical Examiners, the practitioner's conduct has been such, during his absence, that he would be denied a license if applying for an initial license to practice medicine and surgery in this state. [Amended by 1953 c.159 §6]

677.180 Publication of list of registered licensees. On or before March 1 of each year the secretary of the board shall cause to be published a list of persons to whom the certificates referred to in ORS 677.150 have been issued. The list shall be arranged alphabetically, and also by cities and towns. The names which are added to the registry list after it has been printed and distributed shall be reported quarterly to any person upon request.

677.190 Grounds for suspension or revocation of licenses by the board. The board may refuse to grant a license to any applicant who desires to practice medicine and surgery in this state or may suspend or revoke such licenses for any of the following reasons:

(1) Unprofessional or dishonorable conduct.

(2) The procuring or aiding or abetting in procuring an abortion unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another duly licensed medical physician and surgeon who is not an associate or relative of the physician or surgeon and who agrees that an abortion is necessary. The record of this consultation shall be in writing and shall be maintained in the hospital where the consultation occurred or in the offices of all

physicians and surgeons involved for a period of at least three years after the date of such abortion.

(3) The employing of what are popularly known as "cappers" or "steerers."

(4) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be permanently cured.

(5) The obtaining of any fee through fraud or misrepresentation.

(6) The wilful betraying of a professional secret.

(7) Conviction of any offense for which the punishment may be incarceration in a state penitentiary or in a federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(8) Habitual or excessive use of intoxicants or drugs.

(9) Fraud or misrepresentation in applying for or procuring a license to practice in this state, or in connection with applying for or procuring an annual registration.

(10) Making false or misleading statements regarding his skill or the efficacy or value of his medicine, treatment or remedy in the treatment of any disease or other abnormal condition of the human body or mind.

(11) Advertising in any manner, either in his own name or under the name of another person, or clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular, or other written or printed paper or document, professional superiority to or greater skill than that possessed by fellow physicians and surgeons, the restoration of "lost manhood," the treatment of private diseases peculiar to men or women, or the advertising or holding himself out to the public in any manner as a specialist in the diseases of the sexual organs or the diseases caused by sexual weakness, self-abuse or excessive indulgence.

(12) Advertising or holding himself out to treat diseases or other abnormal conditions of the human body by any secret formula, medicine, method, treatment or procedure.

(13) The use of any advertising in which untruthful, improper, misleading or deceptive statements are made.

(14) The advertising of any medicines or any means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

(15) The impersonation of another licensed practitioner or permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

(16) Aiding or abetting the practice of any of the healing arts by an unlicensed person or persons, or aiding or abetting any person who has a license to practice any of the healing arts to employ any method of diagnosis or treatment not within the scope of his license.

(17) The use of his name under the designation "doctor," or "Dr." or "M.D." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise.

(18) Insanity or mental disease as evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease, or as determined by an examination conducted by three impartial psychiatrists retained by the board. [Amended by 1957 c.681 §5]

677.200 Suspension or revocation of licenses by board. Except as provided in paragraph (a) of subsection (1) of ORS 677.205, any proceeding for suspension or revocation of a license to practice medicine and surgery shall be substantially in accord with the following procedure:

(1) A written complaint of some person under oath shall be filed with the secretary of the board. The complaint shall set forth the acts upon which the charge is based. A complaint following the terms of this chapter shall be sufficient, although the board shall have power to require that the complaint be made more definite and certain. The complaint shall not be filed later than three years from the date that the act complained of was committed by the licensee.

(2) A hearing shall be given to the accused in accordance with the provisions of this chapter. A written notice stating the time and place of the hearing shall be served upon the accused at least 10 days before the date of the hearing. At the same time a copy of the complaint shall be served upon the accused. If the accused has removed from the state or absents himself so that service of the notice and copy of the complaint is impractical, the notice and copy of the complaint shall be mailed to the accused's last known postoffice address at least 20 days before the hearing.

(3) The hearing may be before the board or may be before a member or members designated by the president to take testi-

mony and conduct the hearing. Testimony shall be taken stenographically at the hearing and reduced to writing. A transcript of the testimony taken shall be made. If the hearing is before a member or members of the board designated by the president, a transcript of the testimony taken, together with any exhibits produced, shall be furnished to the entire board at its next regular or special meeting. The accused and his attorney may be present at the meeting at which the transcript is considered by the board and may be given an opportunity to sum up the accused's position and arguments before the board.

(4) In any hearings conducted under this section, the accused shall be granted the right to appear in person or by attorney and to introduce testimony in his behalf. He shall also have the right to have witnesses, books, papers and documents subpenaed for him by the board upon due application. Legal rules on introduction of evidence shall not bind the board or the member or members before whom the hearing is conducted. The board or the member or members conducting the hearing shall consider all testimony, exhibits, documents or evidence presented in support of the charges or by the accused. The board shall consider the credibility of any indirect evidence submitted. Any objections to testimony and the reasons therefor shall be noted in the record and transcribed along with the testimony.

(5) The board shall consider the complaint, answer, testimony, exhibits and all other documents introduced at the hearing and shall make findings of fact and a decision based thereon. The decision shall be in the form of a written order. The order shall be filed with the secretary of the board and a copy thereof served upon the accused as soon as feasible, unless the accused cannot be found within this state.

(6) Appearance of the accused at a hearing shall be a waiver of all procedural irregularities. Strict rules of pleading need not be followed but the practice shall conform as nearly as practical to equity suits. Service of any papers after the service of notice to appear and copy of the complaint upon the accused may be made upon any attorney who represents the accused. [Amended by 1957 c.681 §6]

677.205 Disciplinary action by board. (1) The board may discipline as provided in this section any person licensed to practice medicine and surgery who has:

(a) Admitted the facts of a complaint filed in accordance with subsection (1) of ORS 677.200 alleging facts which establish that the licentiate is guilty of violation of one or more of the grounds for suspension or revocation of his license as set forth in ORS 677.190; or

(b) Been found guilty in accordance with ORS 677.200 of violation of one or more of the grounds for suspension or revocation of licenses as set forth in ORS 677.190.

(2) In disciplining a licentiate as authorized by subsection (1) of this section, the board may use any of the following methods:

(a) Suspend judgment.

(b) Place the licentiate upon probation.

(c) Suspend the licentiate's privilege to practice.

(d) Revoke the licentiate's license.

(e) Take such other action in relation to disciplining as the board in its discretion may deem proper.

(3) If the board places any licentiate upon probation as set forth in paragraph (b) of subsection (2) of this section, the board may determine and may at any time modify the conditions of the probation and may include among them any reasonable condition for the purpose of protection of the public or the rehabilitation of the licentiate or both. Upon expiration of the term of probation, the license shall be reinstated by the board if the holder of the license furnishes the board with evidence that he is of good moral character and has complied with the terms of probation. If such evidence fails to establish to the satisfaction of the board that the licentiate is of good moral character, or if such evidence shows that he has not complied with the terms of the probation, the board shall revoke the license of the licentiate.

(4) If a license is suspended, the holder of the license is not entitled to practice during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated by the board if the holder of the license furnishes the board with evidence that he is of good moral character and that he has not practiced medicine in this state during the term of suspension. If such evidence fails to establish to the satisfaction of the board that the holder is of good moral character or if such evidence shows he has practiced medicine in this state

during the term of suspension, the board shall revoke the license of the licentiate.

(5) The secretary of the board shall enter each case of disciplinary action on his records and shall certify the fact of suspension or revocation under the seal of the board to the county clerk of each county in which the license of the person is recorded. The county clerk shall thereupon comply with ORS 677.140 or 681.095, as the case may be, by writing the following upon the margin or across the face of his register of the license: "The holder of this license was on the —— day of ———— suspended for ————", or, "This license was revoked on the —— day of ————", as the case may be, giving the day, month and year of such revocation or length of suspension in accordance with the certification to him by the secretary. [1957 c.681 §8]

677.210 Appeal from action of board. If the board refuses to grant a license to an applicant or suspends or revokes the license of a physician and surgeon, the applicant or licentiate may appeal from the decision of the board in the following manner:

(1) Within 30 days of the filing of the decision, the appellant shall file a notice of appeal with the secretary of the board. The notice shall be in substantially the following form:

To Board of Medical Examiners of the State of Oregon:

Please take notice that ——— hereby appeals from the order of revocation (suspension) heretofore filed with the secretary of said board on or about the ——— day of ———, 19—.

Please have the secretary proceed immediately to file said appeal in the circuit court of the State of Oregon as provided for by law.

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(2) At the same time, appellant shall also file a bond satisfactory to the secretary of the board in form and amount, running to the State of Oregon, conditioned for the speedy prosecution of the appeal and the payment of such costs as may be adjudged against him upon appeal.

(3) Within 10 days after filing the notice of appeal and bond, the secretary shall file with the clerk of the circuit court of the county in which the hearing to revoke the license of the appellant was held, the following documents:

(a) Copy of the complaint, notice to appear and any other documents in the nature of pleadings filed by the board.

(b) The answer and any other documents in the nature of pleadings filed by the accused.

(c) Appeal bond.

(d) Transcript of testimony, exhibits and any documents in the possession of the board which have any relevancy on the appeal.

(4) Upon the filing of such records the clerk of the court shall set the appeal for hearing, and notify the appellant and the board of the time and place of the hearing, which shall be before a judge of that court.

(5) On appeal the court shall be confined to the record certified by the secretary of the board. The court shall consider the record so certified, and may affirm or reverse the order of revocation or suspension entered by the board.

(6) The court may reverse the order of the board only on any one or all of the following grounds:

(a) The complaint does not state sufficient grounds for the action of the board.

(b) There is no legal evidence to support the action of the board.

(c) The board did not have jurisdiction of the matter or the accused.

(7) If the court reverses the order of the board, the board shall issue the usual license to practice which had been revoked, and do all things necessary to reinstate appellant, within 30 days from the decree of the court, unless the board appeals.

(8) Either the board or the accused may appeal from the decision of the circuit court to the Supreme Court of Oregon, within 30 days of the entering of the decision, in like manner as in civil actions.

(9) No person whose license has been revoked or suspended by the board shall practice medicine and surgery pending the decision of the court upon appeal from the decision or order of the board.

677.220 Restoration of license to practice. Whenever the license of a practitioner of medicine and surgery is revoked or annulled for any cause, the Board of Medical Examiners may, in its discretion, after the lapse of six months from the date of such revocation or annulment, upon written application and after a hearing, restore to such former practitioner the right to practice in this state.

677.225 Automatic suspension of licenses; termination of suspension. (1) A person's license to practice medicine and surgery in this state shall be suspended automatically if:

(a) After August 3, 1955, he is adjudged to be mentally ill or admitted on a voluntary basis to any state hospital which treats or cares for the mentally ill; or

(b) On August 3, 1955, he is a patient committed or admitted to any state hospital which treats or cares for the mentally ill.

(2) (a) The clerk of the court making the order of commitment shall cause to be mailed to the State Board of Medical Examiners, as soon as possible, a certified copy of the court order adjudging the person to be mentally ill. The clerk shall also record such memorandum as is required under ORS 677.140 in the case of a suspension of license by the State Board of Medical Examiners. No fees are chargeable by the clerk for performing the duties prescribed by this subsection.

(b) The superintendent of the state hospital to which a person licensed to practice medicine and surgery in this state has voluntarily applied for admission shall cause to be mailed to the State Board of Medical Examiners, as soon as possible, a certified copy of the record of the voluntary admission of such person. Upon receipt of the copy of the record of voluntary admission by the State Board of Medical Examiners, the secretary of the board shall give notice of the suspension resulting under subsection (1) of this section to the appropriate county clerk as in the case of a suspension of a license by the board.

(3) A suspension under this section may be terminated by the board; but the suspension shall continue and the board shall not restore to the former practitioner the privilege to practice in this state until:

(a) The board receives competent evidence that the former practitioner is not mentally ill; and

(b) The board is satisfied, with due regard for the public interest, that the former practitioner's privilege to practice may be safely restored. [1955 c.317 §1]

677.230 Board of Medical Examiners; members; number; appointment; qualifications; terms; filling vacancies. The Governor shall appoint six persons from among the most competent physicians and surgeons of the state, all of whom shall have been residents of the state for seven years and of at least five years' practical experience in their profession, who shall be known as the Board of Medical Examiners for the State of Oregon, each one of whom shall hold his office for five years, and each until his successor is appointed and qualified. On or before February 1 of each year, the Oregon State Medical Society shall nominate three qualified physicians and surgeons and shall certify such nominees to the Governor on or before that date. From such list or from other physicians having the necessary qualifications the Governor shall select the successor to the retiring board member. If a vacancy occurs in the board, another member shall be appointed as provided in this section to fill the unexpired term.

677.240 Oaths, officers and meetings of members of the board. (1) The members of the board shall, before entering upon their duties as members, take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to well and faithfully and without partiality perform the duties of such office according to the best of their knowledge and ability. The oaths shall be filed and preserved of record in the office of the secretary of the board.

(2) The board shall elect from among its members a president, secretary and treasurer.

(3) The board shall hold meetings at Portland, Oregon, at such times and places as shall be determined by the board.

(4) The president or secretary may call special meetings of the board upon at least 10 days' notice in writing to each member.

(5) The board shall hold meetings for examination of applicants for licenses at least twice each year at Portland, Oregon, on such dates as the board may from time to time deem advisable. Special meetings for the examination of applicants for licenses may be called in the same manner as other special meetings of the board.

677.250 Records and register to be kept. The board shall keep a record of all the proceedings thereof, and also a record or register of all applicants for a license, together with their ages, the time such applicants have spent in the study and practice of medicine and surgery, if they have practiced at all, the name and location of all institutions granting to applicants degrees or certificates

of lectures in medicine or surgery and such other information as the board may deem advisable. The record or register also shall show whether such applicants were rejected or licensed under this chapter. The books and register shall be prima facie evidence of all the matters therein recorded, and failure of a person's name to appear on the books and register shall be prima facie evidence that such person does not have a license to practice medicine or surgery in this state.

677.260 Powers of board generally. (1) The board shall have the following powers, in addition to the powers otherwise granted in this chapter, and shall have all powers necessary or proper to carry granted powers into effect:

(a) To make such rules and regulations not inconsistent with the laws of this state as are deemed necessary or proper to carry out the lawful powers and duties of the board.

(b) To make such rules and regulations as may be necessary or proper to determine the qualifications of applicants for licensure to practice medicine and surgery in this state, and to establish educational, moral and professional standards for such applicants, subject to laws of this state.

(c) To adopt a common seal.

(d) To employ such inspectors, special agents, investigators, clerical assistance, attorney, accountant and special counsel as are deemed necessary to carry into effect the provisions of this chapter. The board shall have the authority to employ special counsel to represent it in any court, or to advise it on any matter connected with its duties, or to assist in the prosecution of any criminal case for the violation of this chapter, or to perform other legal services for the board.

(e) To purchase such liability insurance as is deemed advisable by the board.

(f) Any member of the board may issue subpenas for the attendance of witnesses, take testimony, administer oaths or affirmations to witnesses, conduct hearings, require the production of papers, in all proceedings pertaining to the duties and powers of the board.

(g) To determine qualification of applicants to practice medicine or surgery or both in this state, to conduct examinations and grant licenses to qualified applicants upon complying with this chapter and the rules and regulations of the board.

(h) To grant licenses to physicians and surgeons by certification, indorsement or reciprocity subject to the provisions of this chapter and the rules and regulations of the board.

(i) To refuse to issue licenses and to suspend or revoke licenses to practice medicine and surgery within this state in accordance with the provisions of this chapter and the rules and regulations of the board.

(j) To make provision for annual registration of physicians and surgeons and to collect the annual registration fee and any penalties provided for in this chapter and to make provision for and collect fees for application, examination or license of physicians and surgeons.

(k) To restore the license of any practitioner of medicine and surgery which has been revoked in accordance with ORS 677.220.

(L) To investigate alleged violations of this chapter in accordance with ORS 677.320.

(m) To enforce the provisions of this chapter and to exercise general supervision over the practice of medicine and surgery within this state.

(2) The exemptions provided for in ORS 677.060 shall also apply to and govern the provisions of this section and ORS 677.270.

677.270 Proceedings upon refusal to testify or failure to obey rule, order or subpena of board. If any person fails to comply with any lawful rule, regulation or order of the board, or fails to obey any subpena issued by a member of the board, or refuses to testify concerning any matter on which he may lawfully be interrogated by the board, the secretary may apply to any circuit court of this state, or the judge thereof, to compel obedience thereto. The court or judge, upon such application, shall compel obedience by proceedings for contempt as in a case of failure to obey a lawful judgment, decree, order or process of the court.

677.280 Employment of personnel; compensation of board members. Subject to any applicable provisions of the State Civil Service Law, the board shall have power to employ inspectors, special agents and investigators for the purpose of enforcing the laws relating to medicine and surgery and securing evidence of violations thereof, and necessary clerical assistants, and to fix the compensation therefor, and to incur such other expenses as it may deem necessary. The State

Board of Medical Examiners shall fix the salary of the secretary, unless otherwise provided in ORS 292.317, and the sum to be paid to other members of the board for each and every day of actual employment in the discharge of their official duties, who shall also receive the necessary traveling and other expenses incurred by them.

677.290 Disposition of receipts. (1) The money received by the State Board of Medical Examiners shall be paid to the treasurer of the board who shall transmit it to the State Treasurer, to be deposited by him in the General Fund, and 10 percent thereof shall be subject to appropriation for general state purposes. Two dollars of the amount paid into the board as annual registration fees under the provisions of this chapter shall be and become automatically appropriated to the University of Oregon Medical School to be used in building up and maintaining a circulating library of medical and surgical books and publications for the use of practitioners of medicine and surgery in this state, and when not so in use to be kept at the library of the medical school and accessible to its students. The balance of the money transmitted to the State Treasurer shall be credited as and shall constitute an appropriation from the General Fund in favor of the board to be used in the payment of the necessary expenses incurred by authority of the board, but any part of the balance may, upon the order of the board, become appropriated to the circulating library fund.

(2) The treasurer of the board shall transmit to the State Treasurer with each remittance of money a statement showing on what account such money was collected by the board. [Amended by 1953 c.159 §6]

677.300 Disposition of fines. All fines imposed and collected under this chapter shall be paid into the treasury of the county in which the suits, actions or proceedings have been commenced. All moneys thus paid into the treasury, over and above the amount necessary to reimburse the county for any expense incurred by the county, in any suit, action or proceedings brought under the provisions of this chapter shall be paid into the State Treasury before January 1 of each year and become a part of the fund to be used by the Board of Medical Examiners in the enforcement of the provisions of this chapter, and shall be used for no other purpose.

677.305 Petty cash fund of board. The State Board of Medical Examiners may establish a petty cash fund in the amount of $100. The board may authorize designated persons to make disbursements from the petty cash fund in any case where it is necessary to make an immediate cash payment which is payable from the moneys appropriated to the board. Disbursements from the petty cash fund shall be made only by the persons so designated, in payment of claims authorized by law. When the person designated by the board files with the Secretary of State verified vouchers covering disbursements from the petty cash fund, accompanied by an itemized statement showing in detail the names of the persons to whom and the purposes for which such disbursements were made as authorized by this section, the Secretary of State shall issue his warrants on the State Treasurer, in favor of the person designated by the board, payable out of the moneys in the General Fund appropriated in favor of the board for use in the payment of its necessary expenses. The payment of such warrants shall be credited to the petty cash fund. The verified vouchers covering disbursements shall bear the approval of the individual designated by the board. [1955 c.282 §1]

677.310 Treasurer's bond. The treasurer of the board shall give a bond in a sum to be fixed by the board running to the State of Oregon conditioned upon the faithful discharge of his duties, and the proper accounting for and paying over all moneys coming into his possession as treasurer. The bond shall be approved by the board. The premium of the bond shall be paid from any moneys available for the expenses of the board.

677.320 Investigation of complaints and suspected violations. Upon the complaint of any citizen of this state, or upon its own initiative, the board may investigate any alleged violation of this chapter. If, after the investigation, the board has reason to believe that any person is subject to prosecution criminally for the violation of this chapter, it shall lay the facts before the proper district attorney.

677.330 Duty of district attorney and Attorney General; courts having jurisdiction of prosecutions for violations. (1) The district attorney of each county shall prosecute any violation of this chapter occurring in his

county, and may be called upon by the board to represent the board upon any appeal to the circuit court of his county from any decision or action of the board. Each district attorney shall bring to the attention of the grand jury of his county any acts complained of by the board as a violation of the provisions of this chapter.

(2) Upon any appeal to the Supreme Court of this state in any of the proceedings referred to in subsection (1) of this section, the Attorney General shall assist the district attorney in the trial of the cause in the Supreme Court.

(3) Justices' courts, district courts and the circuit courts have concurrent jurisdiction of prosecutions for the violation of this chapter.

677.340 Retroactivity of chapter. This chapter is not intended to be retroactive, and nothing contained in this chapter shall affect the validity or authorize the cancelation of a license issued prior to May 28, 1927, to any practitioner of medicine and surgery on account of anything that has occurred before May 28, 1927. But this section shall not be construed to prevent the revocation of any such license on any ground which was a cause for revocation before May 28, 1927.

677.990 Penalties. (1) Any person who is found guilty of a misdemeanor under this chapter shall be punished by a fine of not less than $200 and not more than $500, or by imprisonment in the county jail for not longer than six months, or by both. If a person is found guilty of a misdemeanor under this chapter a second time, it shall be mandatory upon the part of the court, upon conviction, to sentence him to the county jail for not less than 10 days in addition to whatever other fine or imprisonment is permitted by this chapter.

(2) Violation of ORS 677.020 or 677.030 is a misdemeanor. In any prosecution for the violation of any of the provisions of those sections, it shall be sufficient to sustain a conviction to show a single act of conduct in violation of any of the provisions of those sections and it shall not be necessary to show a general course of such conduct.

(3) Violation of any of the provisions of ORS 677.050 is a misdemeanor.

(4) Any practicing physician required by this chapter to procure a certificate of annual registration who fails to procure such certificate within 90 days after the date he is required to obtain the certificate is guilty of a misdemeanor.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel