Chapter 676

1993 EDITION

Health Professions Generally

USE OF TITLES IMPORTING HEALTH CARE PROFESSION

676.100 Definitions for ORS 676.100 to 676.130

676.110 Practitioner to designate particular business or profession

676.120 Use of business or professional designation by unlicensed person prohibited; use of deceased licensee's name

676.130 Enforcement of ORS 676.100 to 676.120

ENJOINING PRACTICE AFTER SUSPENSION OR REVOCATION OF LICENSE

676.210 Practice of health care profession after suspension or revocation of license prohibited

676.220 Enjoining health care professional from practicing after suspension or revocation of license

676.230 Injunction as cumulative remedy

DIRECT ENTRY MIDWIFERY

(Temporary provisions relating to direct entry midwifery are compiled as notes following ORS 676.230)

MISCELLANEOUS

676.310 Fees for laboratory testing; itemized billing; failure to comply considered unprofessional conduct

PENALTIES

676.990 Penalties

CROSS REFERENCES

Acupuncturists law, nonapplicability, 677.761

Claim of professional negligence, notice to licensing board, 30.278

Denial, suspension or revocation of license prohibited solely because of criminal conviction, 670.280

Health care provider liability for complying with advance directive, attorney-in-fact for health care, etc., 127.505 to 127.660

Health certificate, signature by physician licensed by Board of Medical Examiners only, 433.010

Malpractice, certain limitations on actions or suits, 12.110

Medical care furnished to employees of public contractor, right to recover, 279.540

Medical records, access and review, 192.550

Mortality or morbidity studies, furnishing information for, 432.060

Notice by health care provider that intoxicated person is about to drive, 441.827

Professional corporations, generally, Ch. 58

Report of insurance claim against health practitioners required by insurer to licensing board, 742.400

Reports:

- Child abuse, suspected, Ch. 418
- Death or injury, Ch. 146
- Diseases, 433.004
- Elderly abuse, 410.630
- Long-term facility resident abuse, reporting, 441.640
- Nervous disorders, chronic, 807.710

State agencies, generally Ch. 182

Workers' compensation cases, sanctions for unethical acts or improper treatment, 656.254

Workers' Compensation Law, continuing education requirement for medical providers, 656.329

676.110

Designation of:

- Chiropractic, 684.015
- Dentist, 679.040
- Naturopath, 685.020
- Optometrist, 683.020
- Osteopath, 677.085
- Physician, 677.085
- Podiatric physician and surgeon, 677.810
- Veterinarian, 686.020

Notice to patient of ownership interest in employment relationship in physical therapy practice required, 688.125

676.010 [Amended by 1967 c.470 §64; repealed by 1973 c.31 §5]

676.020 [Amended by 1953 c.203 §1; 1957 c.212 §1; repealed by 1973 c.31 §5]

676.030 [Amended by 1957 c.212 §2; 1967 c.470 §65; repealed by 1973 c.31 §5]

676.035 [1967 c.184 §1; 1971 c.15 §1; repealed by 1973 c.31 §5]

676.040 [Amended by 1957 c.212 §3; repealed by 1973 c.31 §5]

676.050 [Amended by 1953 c.203 §2; 1957 c.212 §4; repealed by 1973 c.31 §5]

676.060 [Repealed by 1973 c.31 §5]

676.070 [Repealed by 1973 c.31 §5]

676.080 [Repealed by 1973 c.31 §5]

676.090 [Repealed by 1973 c.31 §5]

USE OF TITLES IMPORTING HEALTH CARE PROFESSION

676.100 Definitions for ORS 676.100 to 676.130. As used in ORS 676.100 to 676.130, unless the context requires otherwise, "person" means and includes any "clinic," "institute," "specialist" or any group or combination of persons.

676.110 Practitioner to designate particular business or profession. Any person practicing a health care profession who uses the title "doctor," or any contraction thereof, "clinic," "institute," "specialist" or any other assumed or artificial name or title, in connection with the business or profession, on any written or printed matter, or in connection with any advertising, billboards, signs or professional notices, shall add after the name of the person, or after any such assumed or artificial names, one of the following respective designations in letters or print which shall be at least one-fourth the size of the largest letters used in the title or name, and in material, color, type or illumination to give display and legibility of at least one-fourth that of the title or name:

(1) In the case of a person practicing podiatry, the word "podiatrist" or the words "podiatric physician" or "podiatric physician and surgeon."

(2) In the case of a person practicing chiropractic, the word "chiropractor" or the words "chiropractic physician."

(3) In the case of a person practicing dentistry, the word "dentist" or "dentistry."

(4) In the case of a person practicing naturopathic medicine, the word "naturopath" or the words "naturopathic physician."

(5) In the case of a person practicing optometry, the word "optometrist" or the words "doctor of optometry."

(6) In the case of a person licensed to practice medicine by the Board of Medical Examiners for the State of Oregon who holds the degree of Doctor of Osteopathy, or the equivalent, the word "osteopath" or the words "osteopathic physician" or "osteopathic physician and surgeon."

(7) In the case of a person licensed to practice medicine by the Board of Medical Examiners for the State of Oregon who holds the degree of Doctor of Medicine, or the equivalent, the word "physician" or the word "surgeon" or the words "physician and surgeon."

(8) In the case of a person practicing veterinary medicine, the word "veterinarian."

(9) In the case of a person practicing acupuncture, the word "acupuncturist." [Amended by 1967 c.470 §66; 1983 c.169 §29; 1983 c.486 §1a; 1983 c.769 §1; 1991 c.314 §4]

676.120 Use of business or professional designation by unlicensed person prohibited; use of deceased licensee's name. No person shall use any of the designations stated in ORS 676.110 (1) to (9), in connection with the name, business or profession of the person or in connection with an assumed or artificial name, or "clinic," "institute" or "specialist," unless the person is licensed under the laws of this state to practice the particular health care profession indicated by such designation, as stated in ORS 676.110. However, upon the death of any person duly licensed by any board empowered to license any practitioner of a health care profession, the executors of the estate or the heirs, assigns, associates or partners may retain the use of the decedent's name, where it appears other than as a part of an assumed name, for no more than one year after the death of such person or until the estate is settled, whichever is sooner. [Amended by 1953 c.137 §2; 1983 c.769 §2; 1991 c.314 §5]

676.130 Enforcement of ORS 676.100 to 676.120. Each board licensing any of the health care professions, within this state, shall notify the appropriate district attorney of any violation of ORS 676.100 to 676.120 which may be brought to the attention of such board. The district attorney of the county in which any violation of those sections takes place shall prosecute the violation upon being informed of the violation by any person or by one of such boards. [Amended by 1983 c.769 §3]

676.140 [Repealed by 1967 c.470 §68]

ENJOINING PRACTICE AFTER SUSPENSION OR REVOCATION OF LICENSE

676.210 Practice of health care profession after suspension or revocation of license prohibited. No person whose license has been revoked or suspended by any board

authorized by the statutes of the State of Oregon to issue licenses to practice a health care profession shall continue the practice of this profession after the order or decision of the board suspending or revoking the license of the person has been made. The license shall remain suspended or revoked until a final determination of an appeal from the decision or order of the board has been made by the court. [1953 c.592 §1; 1983 c.769 §4]

676.220 Enjoining health care professional from practicing after suspension or revocation of license. (1) If at any time the board suspending or revoking the license of any licentiate of a health care profession determines that such licentiate is continuing to practice the health care profession notwithstanding, the board shall in its own name bring an action to enjoin such licentiate.

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

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

DIRECT ENTRY MIDWIFERY

Note: Sections 1 to 19, chapter 362, Oregon Laws 1993, are repealed June 30, 1999. See section 26, chapter 362, Oregon Laws 1993. The text is set forth for the user's convenience.

Sec. 1. "Licensed direct entry midwife" defined. As used in this Act, "licensed direct entry midwife" means a person who:

(1) Supervises the conduct of labor and childbirth;

(2) Advises the parent as to the progress of the childbirth; and

(3) Renders prenatal, intrapartum and postpartum care. [1993 c.362 §1]

Sec. 2. State Board of Direct Entry Midwifery; establishment; appointment; membership. There is established within the Health Division the State Board of Direct Entry Midwifery consisting of seven members appointed by the Assistant Director for Health. Each member of the board shall serve a term of three years and until a successor is appointed and qualified. If there is a vacancy for any cause, the Assistant Director for Health shall make an appointment to become immediately effective for the unexpired term. The membership of the board shall include:

(1) Four licensed direct entry midwives.

(2) Two certified nurse midwives.

(3) One physician licensed under ORS chapter 677 involved at the time of appointment in obstetrical care or education. [1993 c.362 §2]

Sec. 3. Licensure standards; application; fees; payment for services under medical assistance programs. (1) The State Board of Direct Entry Midwifery shall establish standards for qualifications for the licensure of direct entry midwives. Such standards shall include:

(a) Sufficient knowledge in the following areas:

(A) Techniques in taking patient histories;

(B) Anatomy and physiology of the female reproductive system;

(C) Appropriate use of diagnostic testing;

(D) Necessity for referral;

(E) Pathology in childbirth;

(F) Mechanisms of labor;

(G) Aseptic techniques;

(H) Postpartum care;

(I) Examinations of newborn infants; and

(J) Family planning;

(b) Successful passage of written and oral examinations; and

(c) Participation in:

(A) 25 assisted deliveries;

(B) 25 deliveries for which the midwife was the primary care provider;

(C) 100 prenatal care visits;

(D) 25 newborn examinations; and

(E) 40 postnatal examinations;

(d) Current certification in cardiopulmonary resuscitation for infants and adults; and

(e) A written plan for emergency transport.

(2) Any person who desires to become licensed as a direct entry midwife shall submit an application to the board stating the applicant's qualifications for licensure. If the applicant meets the standards established under subsection (1) of this section and the applicant is not disqualified from licensure under section 10 of this Act, the board shall issue an annual license to the direct entry midwife. The board shall impose a fee for licensure and examination. The fees shall be established at a rate that meets the administrative costs of the program authorized by this Act but shall not exceed $250 for initial licensure and $250 for renewal.

(3) Any direct entry midwife licensed under this section is entitled to payment under the rules of the medical assistance program for services provided to any eligible recipient of medical assistance. [1993 c.362 §3]

Sec. 4. Licensing without examination; out-of-state license. A person licensed to practice direct entry midwifery under the laws of another state who demonstrates to the satisfaction of the State Board of Direct Entry Midwifery that the person has passed a written examination at least equal to the written examination required of persons eligible for licensure under this Act may have the written examination waived pursuant to standards of the board. [1993 c.362 §4]

Sec. 5. Record of proceedings and complaints. The State Board of Direct Entry Midwifery shall keep a record of its proceedings relating to the issuance, refusal, suspension and revocation of licenses. The board shall keep a record of all complaints received, including the date of receipt, name of licensee, name and address of each complainant and the nature of the complaint. [1993 c.362 §5]

Sec. 6. Officers; meetings; quorum; compensation and expenses. (1) The State Board of Direct Entry Midwifery shall elect a chairperson. The board shall adopt rules to govern the proceedings of the board. The board shall hold meetings at such times and places as

it determines. A majority of the members of the board shall constitute a quorum.

(2) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495. [1993 c.362 §6]

Sec. 7. Powers of board. In addition to the powers otherwise granted by this Act, the State Board of Direct Entry Midwifery may:

(1) Determine whether applicants meet the qualifications under this Act, conduct examinations and grant licenses to qualified applicants upon compliance with the rules of the board;

(2) Do any act necessary or proper to effect and carry out the duties required of the board by this Act; and

(3) Adopt rules for the administration of this Act. [1993 c.362 §7]

Sec. 8. Practice standards. The State Board of Direct Entry Midwifery shall develop practice standards that shall include but not be limited to:

(1) Maintenance of statistical records of births;

(2) Participation in peer review;

(3) Development of a written plan for emergency transport;

(4) Guidelines for equipment; and

(5) Maintenance of patient disclosure forms, which includes information regarding whether the midwife has malpractice insurance. [1993 c.362 §8]

Sec. 9. License renewal; requirements; inactive status; notice of renewal. (1) The State Board of Direct Entry Midwifery annually shall renew a license for a direct entry midwife upon receipt of the renewal application and fee and proof of current cardiopulmonary resuscitation certification for infants and adults, if the applicant is otherwise in compliance with the rules adopted by the board.

(2) The board shall establish a procedure for the renewal of licenses.

(3) The board shall prescribe requirements for license renewal including, but not limited to, continuing education. In addition to continuing education requirements, a midwife who has attended fewer than five births in the previous year shall be required to take an additional 10 hours of continuing education as prescribed by the board. All licensing requirements shall be approved by the board by rule.

(4) Any license that is not renewed at the end of the calendar year shall automatically revert to inactive status. The license may be reactivated only if the license holder meets other qualifications for reactivation as prescribed by the board by rule.

(5) Sixty days prior to the end of the calendar year, the board shall mail a notice of renewal to the last-known address of the license holder. [1993 c.362 §9]

Sec. 10. Disciplinary procedure; grounds for refusal to grant license; civil penalty. (1) The following acts shall be grounds for which the State Board of Direct Entry Midwifery may refuse to grant a license or may exercise disciplinary action against a licensed direct entry midwife:

(a) Procuring, attempting to procure, renewing or attempting to renew a license to practice direct entry midwifery by bribery or fraudulent misrepresentation.

(b) Having a license to practice direct entry midwifery revoked, suspended or denied by the licensing authority of another state, territory or country.

(c) Being convicted or found guilty, in any jurisdiction that authorizes direct entry midwives to practice in the jurisdiction, of a crime that directly relates to the practice of direct entry midwifery or to the ability to practice direct entry midwifery. A plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(d) Making or filing a false report or record that the license holder knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another to do so. Reports or records shall include only reports or records that are signed in the direct entry midwife's capacity as a licensed direct entry midwife.

(e) Advertising falsely, misleadingly or deceptively.

(f) Engaging in unprofessional conduct including, but not limited to, any departure from or the failure to conform to the standards of practice of direct entry midwifery as established by the board, in which case actual injury need not be established.

(g) Being unable to practice midwifery with reasonable skill and safety to patients by reason of illness or use of controlled substances, alcohol or other materials or as a result of any mental or physical impairment. At reasonable intervals, a direct entry midwife described in this paragraph shall be afforded an opportunity to demonstrate that the direct entry midwife can resume the competent practice of direct entry midwifery with reasonable skill and safety.

(h) Willfully or repeatedly violating any provision of this Act, any rule of the board or any lawful order of the board previously entered in a disciplinary proceeding.

(2) When the board finds any person has violated any grounds set forth in subsection (1) of this section, the board may take one or more of the following disciplinary actions:

(a) Refuse to approve an application for licensure.

(b) Revoke or suspend a license.

(c) Impose a civil penalty not to exceed $1,000 for each count or separate offense.

(d) Issue a reprimand.

(e) Place the direct entry midwife on probation for a period of time and subject to conditions as the board may specify including, but not limited to, requiring the direct entry midwife to:

(A) Submit to treatment;

(B) Undertake further relevant education or training;

(C) Take an examination; or

(D) Work under the supervision of another licensed direct entry midwife or a physician licensed under ORS chapter 677 or 685.

(3) The board shall not reinstate the license of a direct entry midwife or cause a license to be issued to a person it considers unqualified until such time as the board is satisfied that the person has complied with all the terms and conditions set forth in subsection (2)(e) of this section and that the person is capable of safely engaging in the practice of direct entry midwifery.

(4) The board shall establish guidelines for the disposition of disciplinary cases involving specific types of violations. [1993 c.362 §10]

Sec. 11. When license required. (1) A license authorized by this Act is required only for purposes of reimbursement under medical assistance programs and is not required for the practice of direct entry midwifery in this state.

(2) Nothing in this Act is intended to require a direct entry midwife to become licensed as described in section 3 (2) of this Act. [1993 c.362 §11]

Sec. 12. Initial board members not required to be licensed. The persons first appointed to the State Board of Direct Entry Midwifery under section 2 of this Act are not required to be licensed as direct entry

midwives but must be qualified to be licensed. [1993 c.362 §12]

Sec. 13. Term of office. Notwithstanding the term of office specified by section 2 of this Act, of the members first appointed to the State Board of Direct Entry Midwifery:

(1) Three shall serve for a term ending June 30, 1995.

(2) Four shall serve for a term ending June 30, 1996. [1993 c.362 §13]

Sec. 14. When license without examination may be issued; conditions. Any person certified by the Oregon Midwifery Council as of January 1, 1994, who practices as a direct entry midwife may be licensed without examination if the person applies to the State Board of Direct Entry Midwifery before January 1, 1994, and meets the other requirements of this Act. [1993 c.362 §14]

Sec. 15. Collection of data on births. In cooperation with the State Board of Direct Entry Midwifery, the Health Division shall collect and report data on births for which a direct entry midwife was the primary care provider. The report shall distinguish outcomes between licensed direct entry midwives and direct entry midwives who are not licensed under this Act. [1993 c.362 §15]

Sec. 16. When use of title authorized. No person shall use the title "licensed direct entry midwife," any abbreviation thereof or the initials "L.D.M." unless the person possesses a valid license issued under this Act. [1993 c.362 §16]

Sec. 17. Confidentiality of information on discipline. (1) Any information provided to the State Board of Direct Entry Midwifery under section 10 of this Act is confidential and shall not be subject to public disclosure or admissible as evidence in any judicial proceeding.

(2) Any person who in good faith provides information to the board shall not be subject to an action for civil damages as a result thereof. [1993 c.362 §17]

Sec. 18. Board administrator; qualifications; appointment; compensation. (1) The Assistant Director for Health shall fix the qualifications of and appoint an administrator for the State Board of Direct Entry Midwifery who shall not be a member of the board. Subject to applicable provisions of the State Personnel Relations Law, the assistant director shall fix the compensation of the administrator who shall be in the unclassified service.

(2) The assistant director shall provide the board with such services and employees as the board requires to carry out its duties. [1993 c.362 §18]

Sec. 19. Use of fees. All moneys received by the Health Division under this Act shall be paid into the General Fund in the State Treasury and placed to the credit of the Health Division Account. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of this Act. [1993 c.362 §19]

MISCELLANEOUS

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

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

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

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

PENALTIES

676.990 Penalties. Violation of any of the provisions of ORS 676.100 to 676.130 is punishable, upon conviction, by a fine of not more than $250, or by imprisonment in the county jail for not more than 30 days, or by both.