

Chapter 677

1993 EDITION

Regulation of Medicine, Podiatry and Related Medical Services

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OCCUPATIONS AND PROFESSIONS

**PHYSICIANS AND SURGEONS;
PODIATRIC PHYSICIANS
AND SURGEONS**

(General Provisions)

677.010 Definitions. As used in this chapter, subject to the exemptions in ORS 677.060 and unless the context requires otherwise:

(1) "Approved internship" means the first year of post-graduate training served in a hospital that is approved by the board or by the Accreditation Council of Graduate Medical Education, the American Osteopathic Association or the Royal College of Physicians and Surgeons of Canada.

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

(3) "Diagnose" means to examine another person in any manner to determine the source or nature of a disease or other 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.

(4) "Dispense" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(5) "Dispensing physician" means a physician who purchases prescription drugs for the purpose of dispensing them to patients or other individuals entitled to receive the prescription drug and who dispenses them accordingly.

(6) "Drug" means all medicines and preparations for internal or external use of humans, intended to be used for the cure, mitigation or prevention of diseases or abnormalities of humans, which are recognized in any published United States Pharmacopoeia or National Formulary, or otherwise established as a drug.

(7) "Fellow" means an individual who has not qualified under ORS 677.100 (1) and (2) and who is pursuing some special line of study as part of a supervised program of a school of medicine, a hospital approved for internship or residency training, or an institution for medical research or education that provides for a period of study under the supervision of a responsible member of that hospital or institution, such school, hospital or institution having been approved by the board.

(8) "Impaired physician" means a physician who is unable to practice medicine with reasonable skill and safety by reason of mental illness; physical illness, including, but not limited to, physical deterioration that adversely affects cognition, motor or perceptive skill; or habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.

(9) "Intern" means an individual who has entered into a hospital or hospitals for the first year of post-graduate training.

(10) "License" means permission to practice, whether by license, registration or certification.

(11) "Licensee" means an individual holding a valid license issued by the board.

(12) "Physician" means any person who holds a degree of Doctor of Medicine or Doctor of Osteopathy.

(13) "Podiatric physician and surgeon" means a podiatric physician and surgeon licensed under ORS 677.805 to 677.880 to treat ailments of the human foot.

(14) "Prescribe" means to direct, order or designate the use of or manner of using by spoken or written words or other means.

(15) "Resident" means an individual who, after the first year of post-graduate training, in order to qualify for some particular specialty in the field of medicine, pursues a special line of study as part of a supervised program of a hospital approved by the board.

(16) "Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules. [Amended by 1961 c.400 §1; 1967 c.470 §3; 1979 c.778 §1; 1981 c.220 §2; 1983 c.486 §2; 1985 c.322 §9; 1989 c.830 §1]

677.012 [1971 c.649 §2; renumbered 677.495]

677.015 Statement of purpose. Recognizing that to practice medicine is not a natural right of any person but is a privilege granted by legislative authority, it is necessary in the interests of the health, safety and welfare of the people of this state to provide for the granting of that privilege and the regulation of its use, to the end that the public is protected from the practice of medicine by unauthorized or unqualified persons and from unprofessional conduct by persons licensed to practice under this chapter. [1967 c.470 §2]

677.020 [Repealed by 1967 c.470 §68]

677.030 [Amended by 1957 c.681 §1; 1967 c.470 §8; renumbered 677.085]

677.040 [Amended by 1967 c.470 §59; renumbered 677.325]

677.050 [Amended by 1967 c.470 §7; renumbered 677.080]

677.055 [1971 c.649 §4; renumbered 677.505]

677.060 Persons and practices not within scope of chapter. This chapter does not affect or prevent the following:

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

(2) The meeting in this state of any licensed practitioner of medicine of any other state or country with a licensed practitioner of medicine in this state, for consultation.

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

(4) The domestic administration of family remedies.

(5) The practice of dentistry, pharmacy, nursing, optometry, psychology, clinical social work, chiropractic, naturopathic medicine or cosmetic therapy, by any person authorized by this state. Nothing in ORS 677.085 (5) prevents 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.

(6) 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. Nothing in this chapter interferes in any manner with the individual's right to select the practitioner or mode of treatment of an individual's choice, or interferes with the right of the person so employed to give the treatment so chosen if public health laws and rules are complied with.

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

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

(9) The practice of physiotherapy, electrotherapy or hydrotherapy carried on by

a duly licensed practitioner of medicine, naturopathic medicine or chiropractic, or by ancillary personnel certified by the State Board of Chiropractic Examiners, pursuant to ORS 684.155 (1)(c)(A), to provide physiotherapy, electrotherapy or hydrotherapy and working under the direction of a chiropractic physician.

(10) The practice or use of massage, Swedish movement, physical culture, or other natural methods requiring use of the hands. [Amended by 1953 c.159 §6; 1955 c.157 §1; 1961 c.400 §2; 1967 c.470 §4; 1975 c.776 §4; 1983 c.486 §3; 1987 c.726 §10; 1989 c.830 §2; 1991 c.67 §181]

677.065 [1971 c.649 §3; 1979 c.778 §2; 1981 c.220 §3; 1981 c.693 §28; renumbered 677.515]

677.070 [Amended by 1967 c.470 §5; 1983 c.486 §4; repealed by 1989 c.830 §49]

677.075 [Formerly 677.340; repealed by 1989 c.830 §49]

677.080 Prohibited acts. No person shall:

(1) Knowingly make any false statement or representation on a matter, or willfully conceal any fact material to the right of the person to practice medicine or to obtain a license 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) Impersonate anyone to whom a license has been granted by the board.

(4) Except as provided in ORS 677.060, practice medicine in this state without a license required by this chapter. [Formerly 677.050; 1983 c.486 §5]

677.085 What constitutes practice of medicine. A person is practicing medicine if the person does one or more of the following:

(1) Advertise, hold out to the public or represent in any manner that the person is authorized to practice medicine 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) Except as provided in ORS 677.060, append the letters "M.D." or "D.O." to the name of the person, or use the words "Doctor," "Physician," "Surgeon," or any abbreviation or combination thereof, or any letters

or words of similar import in connection with the name of the person, or any trade name in which the person 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. [Formerly 677.030; 1989 c.830 §3]

677.087 Physicians and podiatric physicians and surgeons required to perform agreed upon surgery personally. (1) Any physician or podiatric physician and surgeon having agreed with a patient to perform any surgical operation or procedure, shall perform the surgery personally or, prior to surgery, shall inform the patient that the physician or podiatric physician and surgeon will not be performing the surgery.

(2) This section shall not apply when the physician or podiatric physician and surgeon, because of an emergency, cannot personally notify the patient that the physician or podiatric physician and surgeon will not be performing the surgery. [1977 c.520 §2; 1983 c.486 §6]

677.089 Physicians dispensing prescription drugs to do so personally; records; required labeling information. (1) Prescription drugs dispensed by a physician shall be personally dispensed by the physician. Nonjudgmental dispensing functions may be delegated to staff assistants when the accuracy and completeness of the prescription is verified by the physician.

(2) The dispensing physician shall maintain records of receipt and distribution of prescription drugs. These records shall be readily accessible and subject to inspection by the board.

(3) The dispensing physician shall label prescription drugs with the following information:

- (a) Name of patient;
- (b) The name and address of the dispensing physician;
- (c) Date of dispensing;
- (d) The name of the drug but if the dispensed drug does not have a brand name, the prescription label shall indicate the generic name of the drug dispensed along with the name of the drug distributor or manufacturer, its quantity per unit and the directions for its use stated in the prescription. However, if the drug is a compound, the quantity per unit need not be stated;

(e) Cautionary statements, if any, as required by law; and

(f) When applicable and as determined by the State Board of Pharmacy, an expiration date after which the patient should not use the drug.

(4) Prescription drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act unless the patient requests a noncomplying container. [1985 c.322 §11]

Note: 677.089 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 677 but was not made a part of any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

677.090 [1971 c.649 §6; renumbered 677.520]

677.095 Duty of care. A physician or podiatric physician and surgeon licensed to practice medicine or podiatry by the Board of Medical Examiners for the State of Oregon has the duty to use that degree of care, skill and diligence which is used by ordinarily careful physicians or podiatric physicians and surgeons in the same or similar circumstances in the community of the physician or podiatric physician and surgeon or a similar community. [1975 c.796 §10d; 1983 c.486 §7]

Note: 677.095 and 677.097 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 677 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

677.097 Procedure to obtain informed consent of patient. (1) In order to obtain the informed consent of a patient, a physician or podiatric physician and surgeon shall explain the following:

(a) In general terms the procedure or treatment to be undertaken;

(b) That there may be alternative procedures or methods of treatment, if any; and

(c) That there are risks, if any, to the procedure or treatment.

(2) After giving the explanation specified in subsection (1) of this section, the physician or podiatric physician and surgeon shall ask the patient if the patient wants a more detailed explanation. If the patient requests further explanation, the physician or podiatric physician and surgeon shall disclose in substantial detail the procedure, the viable alternatives and the material risks unless to do so would be materially detrimental to the patient. In determining that further explanation would be materially detrimental the physician or podiatric physician and surgeon shall give due consideration to the standards of practice of reasonable medical or podiatric practitioners in the same or a similar community under the same or similar circumstances. [1977 c.657 §1; 1983 c.486 §8]

Note: See note under 677.095.

677.098 [1979 c.268 §2; repealed by 1989 c.830 §49]

677.099 Notice of participation or non-participation in Medicare assignment program. (1) A physician currently a participating physician in the Medicare assignment

program under 42 U.S.C. 1395 (b)(3)(B) II shall post a notice reading:

(Physician's name) is participating in the Medicare Assignment Program. The physician will not charge you fees above the Medicare determined annual deductible and the per visit copayment. Ask your physician for more information concerning your fees.

(2) A physician not currently a participating physician in the Medicare assignment program under 42 U.S.C. 1395 (b)(3)(B) II shall post a notice reading:

(Physician's name) is not participating in the Medicare Assignment Program and may legally charge you fees in addition to the Medicare determined annual deductible and per visit copayment. Ask your physician for more information concerning your fees.

(3) The Board of Medical Examiners for the State of Oregon shall establish by rule the dimension and design for the printing and posting of the sign so as to assure that it can be seen and read by Medicare beneficiaries.

(4) If the physician has reasonable cause to believe that the patient cannot read the sign or cannot comprehend its content, the physician shall endeavor to explain the meaning of the notice. [1987 c.379 §§2,3,4,5]

(Licensing)

677.100 Qualifications of applicant for license. (1) An applicant for a license to practice medicine in this state, except as otherwise provided in subsection (2) of this section, must possess the following qualifications:

(a) Have attended and graduated from a school of medicine.

(b) Have satisfactorily completed the following post-graduate requirement:

(A) Satisfactory completion of an approved rotating internship if a graduate of an approved school of medicine;

(B) One year of training in an approved program if a graduate of an approved school of medicine; or

(C) Three years of training in an approved program if a graduate of an unapproved school of medicine.

(c) Have complied with each rule of the Board of Medical Examiners for the State of Oregon which applies to all similar appli-

cants for a license to practice medicine in this state.

(d) Have provided evidence sufficient to prove to the satisfaction of the board that the applicant is of good moral character. For purposes of this section, the lack of good moral character may be established by reference to acts or conduct that reflect moral turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. The acts or conduct in question must be rationally connected to the applicant's fitness to practice medicine.

(2) If an applicant establishes that the applicant is of good moral character and has qualifications which the board determines are the equivalent of the qualifications required by paragraphs (a) to (c) of subsection (1) of this section, the applicant satisfies the requirements of subsection (1) of this section.

(3) An applicant for a license to practice medicine must make written application to the board showing compliance with this section, ORS 677.110, 677.120 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; 1967 c.470 §9; 1973 c.31 §1; 1983 c.486 §9; 1985 c.322 §3; 1989 c.830 §4]

677.105 [1961 c.400 §4; repealed by 1967 c.470 §68]

677.110 Scope and administration of examination; certificate in lieu of examination. (1) Applicants who satisfy the requirements of ORS 677.100 shall be admitted to an examination in subjects covered in schools of medicine that grant degrees of Doctor of Medicine or Doctor of Osteopathy. The examination shall be sufficient to test the applicant's fitness to practice medicine. The examination shall be conducted in such a manner as to conceal the identity of the applicant until all examinations have been scored. In all such examinations an average score of not less than 75 is required for passing. The board may require the applicant to take and pass the Federation Licensing Examination, also known as FLEX.

(2) The Board of Medical Examiners for the State of Oregon may accept a certificate issued by the National Board of Medical Examiners of the United States or the National Board of Examiners for Osteopathic Physicians and Surgeons or the Medical Council of Canada or successful completion of the United States Medical Licensing Examination in lieu of its own examination.

(3) If an applicant fails the examination, the board may permit the applicant to take a subsequent examination, if the applicant

has otherwise complied with the law and the rules of the board.

(4) After any applicant satisfactorily passes the examination in the required subjects, and otherwise complies with the law and the rules of the board, the board shall grant a license to the applicant to practice medicine in Oregon. [Amended by 1953 c.159 §6; 1957 c.681 §2; 1967 c.470 §10; 1975 c.776 §5; 1985 c.322 §8; 1989 c.830 §5; 1991 c.485 §3; 1993 c.16 §1]

677.120 Reciprocity. (1) A physician and surgeon who lawfully has been issued a license to practice in another state or territory of the United States or the District of Columbia, the qualifications and licensing examinations of which are substantially similar to those of the State of Oregon, may be licensed by the Board of Medical Examiners for the State of Oregon to practice medicine in this state without taking an examination, except when an examination is required under subsection (2) of this section.

(2) The person described in subsection (1) of this section, whose application is based on a license issued in another state or territory or the District of Columbia, or by certification of the National Board of Medical Examiners of the United States or the National Board of Examiners for Osteopathic Physicians and Surgeons or the Medical Council of Canada or successful completion of the United States Medical Licensing Examination, 10 years or more prior to the filing of an application with the board or who has ceased the practice of medicine for 12 or more consecutive months, may be required by the board to take an examination. [Amended by 1957 c.681 §3; 1967 c.470 §16; 1973 c.31 §2; 1983 c.486 §10; 1987 c.377 §1; 1989 c.830 §6; 1993 c.16 §2]

677.125 Reciprocal agreements. The board may enter into agreements with medical or osteopathic examining boards of other states and territories of the United States, and the District of Columbia, having qualifications and standards at least as high as those of this state, providing for reciprocal licensing in this state, without further examination, of persons who have been licensed upon written examination in the other state or territory. Approval of these agreements by any other officer or agency of this state is not required. [1967 c.470 §18]

677.130 [Amended by 1967 c.470 §19; renumbered 677.145]

677.132 Limited license. (1) When a need exists, the Board of Medical Examiners for the State of Oregon may issue a limited license for a specified period to an applicant who possesses the qualifications prescribed by the rules of the board. The board shall supervise the activities of the holder of a limited license and impose such restrictions

as it finds necessary. Each person holding a limited license must obtain an unlimited license at the earliest time possible. After such time the board shall refuse to renew a limited license at the end of a specified period if it determines that the holder thereof is not pursuing diligently an attempt to become qualified for a license.

(2) The board by rule shall prescribe the types of and limitations upon licenses issued under this section.

(3) A person licensed under this section is subject to all the provisions of this chapter and to all the rules of the board, has the same duties and responsibilities and is subject to the same penalties and sanctions as any other person licensed under this chapter. [1967 c.470 §12; 1973 c.31 §3; 1983 c.486 §11; 1989 c.830 §7]

677.134 [1967 c.470 §13; 1975 c.776 §6; 1983 c.486 §12; repealed by 1989 c.830 §49]

677.136 [1967 c.470 §14; repealed by 1989 c.830 §49]

677.138 [1967 c.470 §15; 1983 c.486 §13; repealed by 1989 c.830 §49]

677.140 [Amended by 1957 c.681 §4; repealed by 1967 c.470 §68]

677.145 [Formerly 677.130; 1975 c.776 §11; 1979 c.292 §1; 1983 c.486 §14; repealed by 1989 c.830 §49]

677.150 [Amended by 1953 c.159 §6; 1959 c.154 §1; 1967 c.470 §21; 1983 c.486 §15; repealed by 1989 c.830 §49]

677.160 [Amended by 1967 c.470 §22; 1983 c.486 §16; 1987 c.377 §2; repealed by 1989 c.830 §49]

677.170 [Amended by 1953 c.159 §6; 1967 c.470 §23; 1975 c.776 §7; 1983 c.486 §17; repealed by 1989 c.830 §49]

677.172 Change of location of practice; effect. (1) Any person licensed to practice under this chapter who changes location during the period between any two registration dates shall notify the board of the change within 30 days after such change.

(2) Any person who is newly licensed by the board to practice under this chapter during the period between any two registration dates shall immediately register and pay the registration fee for that period.

(3)(a) Any person licensed under this chapter who changes location of practice to some other state or country shall be listed by the board as inactive. Absence from the state of a person licensed by the board does not affect the validity of the license if the licensee notifies the board of such absence from the state and pays the inactive registration fee during such absence.

(b) Before resuming practice in the state, the licensee shall notify the board of the intention to resume active practice in the state and obtain a certificate of active registration for the renewal period during which the licensee returns. The fee shall be the active registration fee less any inactive registration fee previously paid for that renewal period.

(c) The licensee shall file an affidavit with the board describing medically related activities during the period of inactive registration. If, in the judgment of the board, the conduct of the licensee has been, during the period of inactive registration, such that the licensee would have been denied a license if applying for an initial license, the board may deny active registration and may take further action as appropriate. [1991 c.485 §2]

Note: 677.172 was added to and made a part of ORS chapter 677 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

677.175 Retirement; cessation of practice. (1) A person licensed to practice under this chapter may retire from practice by notifying the Board of Medical Examiners for the State of Oregon in writing of such intention to retire. Upon receipt of this notice the board shall record the fact that the person is retired and excuse such person from further payment of registration fees. During the period of retirement no such person may practice. If a retired licensee desires to return to practice, the licensee shall apply to the board in writing for active registration. The board shall take action on the application as if the licensee were listed by the board as inactive and applying for active registration.

(2) If a person licensed to practice under this chapter ceases to practice for a period of 12 or more consecutive months, the board in its discretion may require the person to prove to its satisfaction that the licensee has maintained competence.

(3) The surrender, retirement or other forfeiture, expiration or cancellation of a license issued by the board shall not deprive the board of its authority to institute or continue a disciplinary action against the licensee upon any ground provided by law. [1967 c.470 §25; 1983 c.486 §18; 1989 c.830 §8; 1991 c.485 §4]

677.180 [Amended by 1967 c.470 §26; 1983 c.486 §19; repealed by 1989 c.830 §49]

677.184 License to show degree held; display of license; use of degree on stationery and in displays. (1) On each license issued by it, the Board of Medical Examiners for the State of Oregon shall enter after the name of the person holding the license the degree to which the person is entitled by reason of the diploma of graduation from a school of medicine which, at the time of the graduation of such person, was approved by the board for purposes of ORS 677.100.

(2) The license shall be displayed in a prominent place in the licensee's office.

(3) In every letter, business card, advertisement, prescription blank, sign, public listing or display in connection with the

profession of the person, each person licensed to practice medicine in this state shall designate the degree appearing on the license of the person pursuant to subsection (1) of this section. Action taken by the board under ORS 677.190 for failure to comply with this subsection does not relieve a person from criminal prosecution for violation of ORS 676.100 to 676.120. [1967 c.470 §28; 1983 c.486 §20; 1989 c.830 §9]

677.188 Definitions for ORS 677.190. As used in ORS 677.190, unless the context requires otherwise:

(1) "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 knowingly is given.

(2) "Fraudulent claim" means a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false.

(3) "Manifestly incurable condition, sickness, disease or injury" means one that is declared to be incurable by competent physicians and surgeons or by other recognized authority.

(4) "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine or podiatry, or detrimental to the best interests of the public, and includes:

(a) Any conduct or practice contrary to recognized standards of ethics of the medical or podiatric profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair a physician's or podiatric physician and surgeon's ability safely and skillfully to practice medicine or podiatry;

(b) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards; and

(c) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies; administration of unnecessary treatment; employment of outmoded, unproved or unscientific treatments; failure to obtain consultations when failing to do so is not consistent with the standard of care; or otherwise utilizing medical service for diagnosis or treatment which is or may be considered inappropriate or unnecessary. [1967 c.470 §29; 1969 c.684 §14; 1975 c.796 §1; 1983 c.486 §21; 1987 c.377 §3]

677.190 Grounds for suspending, revoking or refusing to grant license, reg-

istration or certification. The Board of Medical Examiners for the State of Oregon may refuse to grant, or may suspend or revoke a license to practice issued under this chapter for any of the following reasons:

(1) Unprofessional or dishonorable conduct.

(2) Employing any person to solicit patients for the licensee.

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

(4) Obtaining any fee by fraud or misrepresentation.

(5) Willfully or negligently divulging a professional secret.

(6) Conviction of any offense punishable by incarceration in a Department of Corrections institution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(7) Habitual or excessive use of intoxicants, drugs or controlled substances.

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

(9) Making false or misleading statements regarding skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of any disease or other condition of the human body or mind.

(10) Impersonating another licensee licensed under this chapter or permitting or allowing any person to use the license.

(11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the board.

(12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.," "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that intentionally tends to deceive or mislead the public, or that is untruthful.

(13) 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.

(14) Gross negligence or repeated negligence in the practice of medicine or podiatry.

(15) Manifest incapacity to practice medicine or podiatry including failing a competency examination ordered by the board.

(16) Disciplinary action by another state of a license to practice, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the disciplinary action of the state is conclusive evidence thereof.

(17) Failing to designate the degree appearing on the license under circumstances described in ORS 677.184 (3).

(18) Willfully violating any provision of this chapter or any rule adopted by the board, board order, or failing to comply with a board request pursuant to ORS 677.320.

(19) Failing to report the change of the location of practice of the licensee as required by ORS 677.228.

(20) Adjudication of or admission to a hospital for mental illness or imprisonment as provided in ORS 677.225.

(21) Making a fraudulent claim.

(22)(a) Performing psychosurgery.

(b) For purposes of this subsection and ORS 426.385, "psychosurgery" means any operation designed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering the thoughts, emotions or behavior of a human being. "Psychosurgery" does not include procedures which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

(23) Refusing an invitation for an informal interview with the board requested under ORS 677.415.

(24) Violation of Federal Controlled Substance Act.

(25) Prescribing controlled substances without a legitimate medical purpose or prescribing controlled substances without following accepted procedures for examination of patients or prescribing controlled substances without following accepted procedures for record keeping.

(26) Failure by the licensee to report to the board any adverse action taken against a licensee by another licensing jurisdiction, any peer review body, any health care institution, any professional or medical society or association, any governmental agency, any law enforcement agency, or any court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(27) Failure by the licensee to notify the board of a licensee's voluntary resignation

from the staff of a health care institution or voluntary limitation of a licensee's staff privileges at such institution if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or mental or physical impairment. [Amended by 1957 c.681 §5; 1961 c.400 §5; 1967 c.470 §30; 1969 c.684 §15; 1973 c.616 §16; 1975 c.776 §8; 1975 c.796 §2a; 1979 c.744 §50; 1981 c.372 §4; 1983 c.470 §4; 1983 c.486 §22; 1987 c.320 §244; 1989 c.830 §10; 1991 c.485 §5]

677.200 Disciplinary procedure. Except as provided in ORS 677.202 or 677.205 (1)(a), any proceeding for disciplinary action of a licensee licensed under this chapter shall be substantially in accord with the following procedure:

(1) A written complaint of some person, not excluding members or employees of the Board of Medical Examiners for the State of Oregon, shall be verified and filed with the board.

(2) A hearing shall be given to the accused in accordance with ORS 183.310 to 183.550 as a contested case. [Amended by 1957 c.681 §6; 1961 c.400 §6; 1967 c.470 §31; 1971 c.734 §118; 1983 c.486 §23; 1989 c.830 §11]

677.202 When procedure inapplicable. ORS 677.200 does not apply in cases where the license of a person to practice under this chapter has been suspended automatically as provided in ORS 677.225. [1967 c.470 §33; 1983 c.486 §24; 1989 c.830 §12; 1991 c.485 §6]

677.205 Grounds for discipline; action by board. (1) The Board of Medical Examiners for the State of Oregon may discipline as provided in this section any person licensed, registered or certified under this chapter who has:

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

(b) Been found to be in violation of one or more of the grounds for disciplinary action of a licensee as set forth in this chapter; or

(c) Had an automatic license suspension as provided in ORS 677.225.

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

- (a) Suspend judgment.
- (b) Place the licensee on probation.
- (c) Suspend the license.
- (d) Revoke the license.
- (e) Place limitations on the license.

(f) Take such other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed \$5,000, or both.

(3) In addition to the action authorized by subsection (2) of this section, the board may temporarily suspend a license without a hearing, simultaneously with the commencement of proceedings under ORS 677.200 if the board finds that evidence in its possession indicates that a continuation in practice of the licensee constitutes an immediate danger to the public.

(4) If the board places any licensee on 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 for the purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation, further proceedings shall be abated if the licensee has complied with the terms of the probation.

(5) If a license issued under this chapter is suspended, the holder of the license may not practice during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated by the board if the conditions for which the license was suspended no longer exist.

(6) The board shall enter each case of disciplinary action on its records.

(7) Civil penalties under this section shall be imposed as provided in ORS 183.090. [1957 c.681 §8; 1967 c.470 §34; 1975 c.796 §3; 1983 c.486 §25; 1989 c.830 §13; 1991 c.734 §71]

677.208 Hearing; judicial review. (1) Where the board proposes to refuse to issue a license, or refuses to restore an inactive registrant to an active registration, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550.

(2) Judicial review of orders under subsection (1) of this section shall be in accordance with ORS 183.310 to 183.550.

(3) If the final order of the court on review reverses the board's order of suspension or revocation, the board shall issue the license and reinstate appellant not later than the 30th day after the decision of the court. [1971 c.734 §120; 1975 c.776 §9]

677.210 [Amended by 1967 c.470 §35; repealed by 1971 c.734 §21]

677.215 [1967 c.470 §37; repealed by 1971 c.734 §21]

677.220 Issuance or restoration of license after denial or revocation. When-

ever a license issued under this chapter is denied or revoked for any cause, the Board of Medical Examiners for the State of Oregon may, after the lapse of two years from the date of such revocation, upon written application by the person formerly licensed, issue or restore the license. [Amended by 1967 c.470 §38; 1983 c.486 §26; 1989 c.830 §14]

677.225 Automatic suspension of license for mental illness or imprisonment; termination of suspension. (1) A person's license issued under this chapter is suspended automatically if:

(a) The licensee is adjudged to be mentally ill or is admitted on a voluntary basis to a treatment facility for mental illness and if the licensee's residence in the hospital exceeds 25 consecutive days; or

(b) The licensee is an inmate in a penal institution.

(2)(a) The clerk of the court ordering commitment or incarceration under paragraph (a) or (b) of subsection (1) of this section shall cause to be mailed to the board, as soon as possible, a certified copy of the court order. No fees are chargeable by the clerk for performing the duties prescribed by this paragraph.

(b) The administrator of the hospital to which a person with a license issued under this chapter has voluntarily applied for admission shall cause to be mailed to the Board of Medical Examiners for the State of Oregon as soon as possible, a certified copy of the record of the voluntary admission of such person.

(c) Written evidence received from the supervisory authority of a penal or mental institution that the licensee is an inmate or patient therein is prima facie evidence for the purpose of paragraph (a) or (b) of subsection (1) of this section.

(3) A suspension under this section may be terminated by the board when:

(a) The board receives evidence satisfactory to the board that the licensee is not mentally ill; or

(b) The board receives evidence satisfactory to the board that the licensee is no longer incarcerated; and

(c) The board is satisfied, with due regard for the public interest, that the licensee's privilege to practice may be restored. [1955 c.317 §1; 1961 c.257 §1; 1967 c.470 §39; 1983 c.486 §27; 1983 c.740 §250; 1989 c.830 §15]

677.228 Automatic lapse of license for failure to pay registration fee or report change of location; reinstatement. (1) A person's license to practice under this chapter automatically lapses if the licensee fails to:

(a) Pay the registration fee as required by rule of the Board of Medical Examiners for the State of Oregon.

(b) Notify the board of a change of location not later than the 30th day after such change.

(2) If a license issued automatically lapses under this section, the holder of the license shall not practice until the conditions for which the license automatically lapsed no longer exist.

(3) A person whose license has automatically lapsed under subsection (1)(a) of this section is reinstated automatically when the licensee pays the registration fee plus all late fees then due.

(4) A person whose license has automatically lapsed under subsection (1)(b) of this section is reinstated automatically if the board receives notification of the current and correct address of the licensee not later than the 10th day after such automatic lapse takes effect. Otherwise the lapse continues until terminated by the board. [1967 c.470 §41; 1983 c.486 §28; 1989 c.830 §16; 1993 c.16 §3]

677.230 [Repealed by 1967 c.470 §42 (677.235 enacted in lieu of 677.230)]

677.232 [1971 c.649 §8; 1979 c.292 §2; renumbered 677.525]

(Board of Medical Examiners)

677.235 Board of Medical Examiners; membership; terms; vacancies; confirmation. (1) The Board of Medical Examiners for the State of Oregon consists of 11 members appointed by the Governor. Seven of the members shall be appointed from among persons having the degree of Doctor of Medicine, and two from among persons having the degree of Doctor of Osteopathy. In addition to the nine named persons described, there shall be appointed two public members representing health consumers. All persons appointed must have been residents of this state for at least seven years. The physician members must have been in the active practice of their profession for at least five years immediately preceding their appointment. Neither the public members nor any person within the immediate family of the public members shall be employed as a health professional or in any health-related industry. The public members shall be members of the investigative committee of the board.

(2) Not later than February 1 of each year, the Oregon Medical Association shall nominate three qualified physicians for each physician member of the board whose term expires in that year, and shall certify its nominees to the Governor. Not later than February 1 of each odd-numbered year, the Osteopathic Physicians and Surgeons of Ore-

gon, Inc. shall nominate three physicians possessing the degree of Doctor of Osteopathy and shall certify its nominees to the Governor. The Governor shall consider these nominees in selecting successors to retiring board members.

(3) Each member of the board shall serve for a term of four years beginning on March 1 of the year the member is appointed and ending February 28 of the fourth year thereafter, except the person having the degree of Doctor of Osteopathy appointed in 1990, who shall serve a one-year term. If a vacancy occurs on the board, another member possessing the same professional degree or fulfilling the same public capacity as the person whose position has been vacated shall be appointed as provided in this section to fill the unexpired term.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [1967 c.470 §43 (enacted in lieu of 677.230); 1971 c.650 §26; 1973 c.792 §33; 1979 c.388 §1; 1983 c.486 §28a; 1985 c.322 §4; 1989 c.830 §17]

677.240 Oaths, officers and meetings of board. (1) The members of the Board of Medical Examiners for the State of Oregon, before entering upon their duties as members, shall take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to perform well and faithfully and without partiality 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 board.

(2) The board shall elect annually from among its members a chairman, vice-chairman and secretary.

(3) The board shall hold meetings within the state at such times and places as shall be determined by the board.

(4) The chairman, vice-chairman or secretary may call a special meeting of the board upon at least 10 days' notice in writing to each member, to be held at any place designated by such officer.

(5) The board shall hold meetings for examination of applicants for licenses at least twice each year on such dates as the board considers advisable. Special meetings for the examination of applicants for licenses may be called in the same manner as other special meetings of the board. [Amended by 1967 c.470 §47; 1989 c.830 §18]

677.250 Records to be kept. The board shall keep a record of all the proceedings thereof, and also a record of all applicants for a license, together with their ages, the

time such applicants have spent in the study and practice of medicine, the name and location of all institutions granting to applicants degrees in medicine and such other information as the board may deem advisable. The record also shall show whether such applicants were rejected or licensed under this chapter. The record is prima facie evidence of all the matters therein recorded, and failure of a person's name to appear in the record is prima facie evidence that such person does not have a license to practice medicine in this state. [Amended by 1967 c.470 §48]

677.255 [1971 c.649 §5; renumbered 677.530]

677.257 [1981 c.327 §2; renumbered 677.750]

677.259 [1973 c.451 §2; 1975 c.442 §1; 1983 c.486 §29; renumbered 677.755]

677.260 [Repealed by 1967 c.470 §49 (677.265 enacted in lieu of 677.260)]

677.261 [1975 c.442 §5; 1983 c.486 §30; renumbered 677.760]

677.262 [1975 c.442 §3; 1983 c.486 §66; renumbered 677.765]

677.263 [1975 c.442 §4; 1979 c.292 §3; 1983 c.486 §31; renumbered 677.770]

677.265 Powers of board generally. In addition to any other powers granted by this chapter, the Board of Medical Examiners for the State of Oregon may:

(1) Adopt necessary and proper rules for administration of this chapter including but not limited to:

(a) Establishing fees and charges to carry out its legal responsibilities, subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges. Such fees and charges shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section shall not exceed the cost of administering the program or the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the board's budget, or as modified by the Emergency Board or future sessions of the Legislative Assembly.

(b) Establishing standards and tests to determine the moral, intellectual, educational, scientific, technical and professional qualifications required of applicants for licenses under this chapter.

(c) Enforcing the provisions of this chapter and exercising general supervision over the practice of medicine and podiatry within this state.

(2) Issue, deny, suspend and revoke licenses and limited licenses, assess costs of proceedings and fines and place licensees on probation as provided in this chapter.

(3) Use the gratuitous services and facilities of private organizations to receive the assistance and recommendations of such organizations in administering this chapter.

(4) Make its personnel and facilities available to other regulatory agencies of this state, or other bodies interested in the development and improvement of the practice of medicine or podiatry in this state, upon such terms and conditions for reimbursement as are agreed to by the board and the other agency or body.

(5) Appoint examiners, who need not be members of the board, and employ or contract with the American Public Health Association or the National Board of Medical Examiners or other organizations, agencies and persons to prepare examination questions and score examination papers.

(6) Determine the schools, colleges, universities, institutions and training acceptable in connection with licensing under this chapter. All residency, internship and other training programs carried on in this state by any hospital, institution or medical facility shall be subject to approval by the board. The board shall accept the approval by the American Osteopathic Association or the American Medical Association.

(7) Prescribe the time, place, method, manner, scope and subjects of examinations under this chapter.

(8) Prescribe all forms that it considers appropriate for the purposes of this chapter, and require the submission of photographs, fingerprints and relevant personal history data by applicants for licensure under this chapter.

(9) Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter. [1967 c.470 §50 (enacted in lieu of 677.260); 1975 c.776 §10; 1983 c.486 §34; 1989 c.830 §19; 1991 c.703 §22]

677.270 Proceedings upon refusal to testify or failure to obey rule, order or subpoena of board. If any licensee fails to comply with any lawful rule or order of the Board of Medical Examiners for the State of Oregon, or fails to obey any subpoena issued by the board, or refuses to testify concerning any matter on which the licensee may lawfully be interrogated by the board, the board may apply to any circuit court of this state, or the judge thereof, to compel obedience. The court or judge, upon such application, shall institute proceedings for contempt. The remedy provided in this section is in addition to, and not exclusive of, the authority of the board to discipline licensees for violations of

ORS 677.190 (18) and (23). [Amended by 1967 c.470 §51; 1983 c.486 §35; 1989 c.830 §20]

677.275 Executive director; hearing officers. The Board of Medical Examiners for the State of Oregon may appoint:

(1) An executive director, who need not be a member of the board, and fix the compensation. The executive director shall be under the supervision and control of the board, and may discharge all duties as provided in the rules of the board or as directed by the board.

(2) One or more hearing officers, who need not be members of the board, and fix their compensation. Each hearing officer is vested with the full authority of the board to schedule and conduct hearings on behalf and in the name of the board on all matters referred by the board, including issuance of licenses, proceedings for placing licensees on probation and for suspension and revocation of licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, the complete written transcript of the record of the hearing. This transcript shall contain all evidence introduced at the hearing and all pleas, motions and objections, and all rulings of the hearing officer. Each hearing officer may administer oaths and issue summonses, notices and subpoenas, but may not place any licensee on probation or issue, refuse, suspend or revoke a license. [1967 c.470 §53; 1983 c.486 §36; 1989 c.830 §21]

677.280 Employment of personnel; compensation and expenses of board members. (1) Subject to any applicable provisions of the State Personnel Relations Law, the Board of Medical Examiners for the State of Oregon may employ consultants, investigators and staff for the purpose of enforcing the laws relating to this chapter and securing evidence of violations thereof, and may fix the compensation therefor and incur necessary other expenses.

(2) The board members are entitled to compensation and expenses as provided in ORS 292.495. [Amended by 1967 c.470 §54; 1969 c.314 §78; 1989 c.829 §1; 1989 c.830 §22]

677.290 Disposition of receipts; revolving account; medical library. (1) All moneys received by the Board of Medical Examiners for the State of Oregon under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Board of Medical Examiners Account which is established. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

(2) Notwithstanding subsection (1) of this section the board may maintain a revolving

account in a sum not to exceed \$50,000 for the purpose of receiving and paying pass-through moneys relating to peer review pursuant to its duties under ORS 441.055 (6) and (7) and in administering programs pursuant to its duties under this chapter relating to the education and rehabilitation of licensees in the areas of chemical substance abuse, inappropriate prescribing and medical competence. The creation of and disbursement of moneys from the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account are continuously appropriated for purposes set forth in this subsection.

(3) Each year \$10 shall be paid to the Oregon Health Sciences University for each actively in-state registered physician under ORS 677.265 which amount is continuously appropriated to the Oregon Health Sciences University to be used in maintaining a circulating library of medical and surgical books and publications for the use of practitioners of medicine in this state, and when not so in use to be kept at the library of the School of Medicine and accessible to its students. The balance of the money received by the board is appropriated continuously and shall be used only for the administration and enforcement of this chapter, but any part of the balance may, upon the order of the board, be paid into the circulating library fund. [Amended by 1953 c.159 §6; 1967 c.470 §55; 1967 c.637 §§29,29a; 1973 c.427 §15; 1975 c.693 §18; 1979 c.27 §1; 1983 c.486 §37; 1989 c.830 §23]

677.300 [Amended by 1967 c.470 §56; 1973 c.427 §16; 1983 c.486 §38; repealed by 1989 c.830 §49]

677.305 Petty cash fund. The Board of Medical Examiners for the State of Oregon may maintain a petty cash fund in compliance with ORS 293.180 in the amount of \$5,000. [1955 c.282 §1; 1967 c.470 §57; 1983 c.486 §39; 1989 c.830 §24]

677.310 [Amended by 1967 c.470 §58; repealed by 1989 c.830 §49]

(Enforcement)

677.320 Investigation of complaints and suspected violations. (1) Upon the complaint of any citizen of this state, or upon its own initiative, the Board of Medical Examiners for the State of Oregon 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.

(2) In the conduct of investigations, the board or its designated representative may:

(a) Take evidence;

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

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

(d) Require answers to interrogatories; and

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

(3) In exercising its authority under subsection (2) of this section, the board may issue subpoenas over the signature of the executive director and the seal of the board in the name of the State of Oregon.

(4) In any proceeding under this section where the subpoena is addressed to a licensee of this board, it shall not be a defense that the material that is subject to the subpoena is protected under a patient and physician privilege. [Amended by 1983 c.486 §40; 1989 c.830 §25]

677.325 Enjoining unlicensed practice of medicine. The board may maintain a suit for an injunction against any person violating ORS 677.080 (4). 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 677.080 (4). [Formerly 677.040]

677.330 Duty of district attorney and Attorney General; jurisdiction of prosecutions. (1) The district attorney of each county shall prosecute any violation of this chapter occurring in the county. The board shall be represented by the Attorney General acting under ORS 180.140. Each district attorney shall bring to the attention of the grand jury of the county any acts complained of by the board as a violation of the provisions of this chapter.

(2) Upon any appeal to the Court of Appeals 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 Court of Appeals.

(3) Justices' courts, district courts and the circuit courts have concurrent jurisdiction of prosecutions for the violation of this chapter. [Amended by 1967 c.470 §60; 1979 c.562 §30]

677.335 Official actions of board and personnel; privileges and immunities; scope of immunity of complainant. (1) Members of the Board of Medical Examiners for the State of Oregon, members of its administrative and investigative staff, medical consultants, and its attorneys acting as prosecutors or counsel shall have the same

privilege and immunities from civil and criminal proceedings arising by reason of official actions as prosecuting and judicial officers of the state.

(2) No person who has made a complaint as to the conduct of a licensee of the board or who has given information or testimony relative to a proposed or pending proceeding for misconduct against the licensee of the board, shall be answerable for any such act in any proceeding except for perjury committed by the person. [1975 c.776 §2; 1989 c.830 §26]

677.340 [Amended by 1967 c.470 §6; renumbered 677.075]

(Artificial Insemination)

677.355 "Artificial insemination" defined. As used in ORS 109.239 to 109.247, 677.355 to 677.370 and 677.990 (3), "artificial insemination" means introduction of semen into a woman's vagina, cervical canal or uterus through the use of instruments or other artificial means. [1977 c.686 §1]

Note: ORS 677.355 to 677.370 and 677.990 (3) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 677 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

677.360 Who may select donors and perform procedure. Only physicians licensed under this chapter and persons under their supervision may select artificial insemination donors and perform artificial insemination. [1977 c.686 §2]

Note: See note under 677.355.

677.365 Consent required; filing with State Registrar of Vital Statistics; notice to physician. (1) Artificial insemination shall not be performed upon a woman without her prior written request and consent and, if she is married, the prior written request and consent of her husband.

(2) Whenever a child is born who may have been conceived by the use of semen of a donor who is not the woman's husband, a copy of the request and consent required under subsection (1) of this section shall be filed by the physician who performs the artificial insemination with the State Registrar of Vital Statistics. The state registrar shall prescribe the form of reporting.

(3) The information filed under subsection (2) of this section shall be sealed by the state registrar and may be opened only upon an order of a court of competent jurisdiction:

(4) If the physician who performs the artificial insemination does not deliver the child conceived as a result of the use of semen of a donor who is not the woman's husband, it is the duty of the woman and the husband who consented pursuant to sub-

section (1) of this section to give that physician notice of the child's birth. The physician who performs the artificial insemination shall be relieved of all liability for noncompliance with subsection (2) of this section if the noncompliance results from lack of notice to the physician about the birth. [1977 c.686 §3]

Note: See note under 677.355.

677.370 Who may be donor. No semen shall be donated for use in artificial insemination by any person who:

(1) Has any disease or defect known by him to be transmissible by genes; or

(2) Knows or has reason to know he has a venereal disease. [1977 c.686 §4]

Note: See note under 677.355.

(Competency to Practice Medicine or Podiatry)

677.410 Voluntary limitation of license; removal of limitation. A licensee may request in writing to the board a limitation of license to practice medicine or podiatry, respectively. The board may grant such request for limitation and shall have authority, if it deems appropriate, to attach conditions to the license of the licensee within the provisions of ORS 677.205 and 677.410 to 677.425. Removal of a voluntary limitation on licensure to practice medicine or podiatry shall be determined by the board. [1975 c.796 §5; 1981 c.339 §1; 1983 c.486 §41]

677.415 Investigation of incompetence; reports to board; informal interview. (1) The Board of Medical Examiners for the State of Oregon on its own motion may investigate any evidence which appears to show that a licensee licensed by the board is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be an impaired physician unable safely to engage in the practice of medicine or podiatry.

(2) Any health care facility licensed under ORS 441.015 to 441.087 and 441.820, any licensee licensed by the board, the Oregon Medical Association, Inc., or any component society thereof, the Osteopathic Physicians and Surgeons of Oregon, Inc. or the Oregon Podiatric Medical Association shall, and any other person may, report to the board any information such licensee, association, society or person may have which appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be an impaired physician unable safely to engage in the practice of medicine or podiatry. However, a physician who is treating another physician for a mental disability shall have a duty to report the physician pa-

tient unless, in the opinion of the treating physician, the patient is not impaired.

(3) A licensee's voluntary resignation from the staff of a health care institution or voluntary limitation of the licensee's staff privileges at such an institution shall be promptly reported to the board by the institution and the licensee if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct or mental or physical impairment.

(4) If, in the opinion of the board, it appears that information provided to it under this section is or may be true, the board may order an informal interview with the licensee. [1975 c.796 §6; 1977 c.448 §11; 1981 c.339 §2; 1983 c.486 §42; 1985 c.322 §5; 1989 c.830 §27]

677.420 Competency examination; investigation; consent by licensee; assistance. (1) Notwithstanding any other provisions of this chapter, the Board of Medical Examiners for the State of Oregon may at any time direct and order a mental, physical or medical competency examination or any combination thereof, and make such investigation, including the taking of depositions or otherwise in order to fully inform itself with respect to the performance or conduct of a licensee.

(2) If the board has reasonable cause to believe that any licensee is or may be unable to practice medicine or podiatry with reasonable skill and safety to patients, the board shall cause a competency examination of such licensee for purposes of determining the fitness of the licensee to practice medicine or podiatry with reasonable skill and safety to patients.

(3) Any licensee by practicing or by filing a registration to practice medicine or podiatry shall be deemed to have given consent to submit to mental or physical examination when so directed by the board and, further, to have waived all objection to the admissibility of information derived from such mental or physical or medical competency examination on the grounds of privileged communication.

(4) The board may request any medical organization to assist the board in preparing for or conducting any medical competency examination that the board may consider appropriate. [1975 c.796 §7; 1981 c.339 §3; 1983 c.486 §43; 1989 c.830 §28]

677.425 Confidential information; immunity. (1) Any information provided to the Board of Medical Examiners for the State of Oregon pursuant to ORS 677.200, 677.205 or 677.410 to 677.425 is confidential and shall not be subject to public disclosure, nor shall

it be admissible as evidence in any judicial proceeding.

(2) Any person who reports or provides information to the board under ORS 677.205 and 677.410 to 677.425 and who provides information in good faith shall not be subject to an action for civil damages as a result thereof.

(3) Notwithstanding subsection (1) of this section, the board may provide, upon formal written request, confidential information to other state medical boards that have laws requiring that the requested information shall not be subject to public disclosure. [1975 c.796 §8; 1983 c.486 §44; 1989 c.830 §29; 1991 c.485 §7]

677.435 [1977 c.448 §§2,3,4; 1981 c.339 §4; repealed by 1987 c.774 §61]

677.450 Release of certain information to health care facilities. The board may release information received under ORS 441.820 concerning the revocation or restriction of a physician's or podiatric physician and surgeon's activities at a health care facility to any other health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.450 at which that physician or podiatric physician and surgeon holds or has applied for staff privileges or other right to practice medicine or podiatry at the facility. [1977 c.448 §5; 1981 c.339 §5]

677.455 Continuing podiatric education required; exemption. (1) Except as provided in subsection (2) of this section, all podiatric physicians and surgeons licensed under this chapter shall complete at least 50 hours in an approved program of continuing podiatric education every two calendar years and shall submit satisfactory evidence thereof to the Board of Medical Examiners for the State of Oregon when the license is renewed.

(2) The board may exempt a licensed podiatric physician and surgeon from the requirements of subsection (1) of this section upon a finding by the board that the podiatric physician and surgeon was unable to comply with the requirements because of extenuating circumstances. [1993 c.323 §4]

(Miscellaneous)

677.490 Fees when patient served or referred to diabetes self-management program. (1) If a physician refers a patient to diabetes self-management education services provided at a different time and place from other health services provided to the patient by the physician, the referring physician is entitled to receive no more than the total salary and benefits to personnel providing the services plus the cost of materials and services directly related to the services,

if any of these costs are paid by the physician; or

(2) If the referring physician personally provides the diabetes self-management education services, the physician is entitled to receive no more than the usual and customary charges for routine office visits of comparable duration. [1987 c.720 §6]

Note: 677.490 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 677 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

677.491 Reporting toy related injury or death. (1) Whenever any physician determines or reasonably suspects the injury or death of a person to be toy related, the physician shall, in accordance with rules adopted under subsection (5) of this section, report the physician's findings to the Director of the Department of Human Resources.

(2) The director of any hospital, health care facility, health maintenance organization, public health center, medical center or emergency medical treatment facility where any physician has made a determination or has a reasonable suspicion under subsection (1) of this section as to whether an injury or death is toy related, shall, in accordance with the rules adopted under subsection (5) of this section, report that physician's findings to the Director of the Department of Human Resources.

(3) The Director of the Department of Human Resources shall review, organize and keep a record of the information set forth in the reports of toy related injuries and deaths submitted by physicians under this section. The director, on a regular basis, shall make the information recorded under this section available to the United States Consumer Product Safety Commission for inclusion in its Injury or Potential Injury Incident Data Base. The information so recorded shall also be made available to the public for a fee determined by the director.

(4) If the Director of the Department of Human Resources determines that a specific toy or item poses an immediate danger or potential threat to the safety of the citizens of this state, the director shall immediately issue a public notice warning the public, retail sellers and distributors of the director's findings and recommendations concerning that toy or item.

(5) The Director of the Department of Human Resources shall adopt rules to implement this section. [1991 c.325 §1]

Note: 677.491 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 677 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PHYSICIAN ASSISTANTS

677.495 Definitions for ORS 677.495 to 677.550. As used in ORS 677.495 to 677.550, unless the context requires otherwise:

(1) "Committee" means the Physician Assistant Committee created in ORS 677.540.

(2) "Medically disadvantaged area" means an area of the state designated by the Director of Human Resources to be in need of primary health care providers.

(3) "Physician assistant" means a person who is registered as a physician assistant in accordance with ORS 677.505 to 677.525.

(4) "Supervision" means the routine direction and regular review by the supervising physician, as determined to be appropriate by the Board of Medical Examiners for the State of Oregon, of the medical services provided by the physician assistant. The practice description shall provide for the maintenance of direct, verbal communication either in person or by means described in ORS 677.515 (4)(b) but the description shall not require the physical presence at all times of the supervising physician. [Formerly 677.012; 1983 c.486 §45; 1987 c.660 §24; 1989 c.830 §30]

677.500 Policy. It is the intent of the Legislative Assembly in requiring the certification of physician assistants that there be reasonable utilization of the physician assistant by the supervising physician. [1981 c.220 §9; 1989 c.830 §31]

677.505 Application of provisions governing physician assistants to other health professions. (1) ORS 677.495 and 677.505 to 677.525 are not intended to alter or affect ORS chapter 678, regarding the practice of nursing; ORS chapter 679, regarding the practice of dentistry; ORS 680.010 to 680.170, regarding the practice of dental hygienists and auxiliaries; or ORS 683.010 to 683.335, regarding the practice of optometry.

(2) ORS 677.495 and 677.505 to 677.530 do not require an employee of a person licensed to practice medicine under this chapter, or of a medical clinic or hospital to be registered under ORS 677.495 and 677.505 to 677.525, unless the employee is employed as a physician assistant in which case the employee shall be registered under ORS 677.495 and 677.505 to 677.525. [Formerly 677.055]

677.510 Approval of board required before using services of physician assistant; term of approval; request for hearing; supervision; emergency drug dispensing authority. (1) A person licensed to practice medicine under this chapter shall not use the services of a physician assistant without the prior approval of the board. The application shall state the name of the phy-

sician assistant, describe the manner and extent to which the physician assistant's services would be used and supervised, state the education, training and experience of the physician assistant and provide such other information in such a form as the board may require.

(2) The board may approve or reject an application, or it may modify the proposed use of the services of the assistant and approve the application as modified. Approval shall be valid for no more than one year but may be renewed annually. When it appears to the board that the services of a physician assistant are being used in a manner inconsistent with the approval granted, the board may withdraw its approval. If a hearing is requested by the physician or the physician assistant upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with ORS 677.200.

(3) A supervising physician may have a different specialty from the physician assistant. A physician assistant may have two supervising physicians. A supervising physician may have two physician assistants. A physician assistant may render services in an emergency room, a nursing home or a corrections institution, if the site is included in the practice description.

(4) A certified physician assistant may make application to the board for emergency drug dispensing authority. The board shall consider the criteria adopted by the committee under ORS 677.545 (4) in reviewing the application. Such emergency dispensing shall be of drugs prepared by a licensed pharmacist. [1971 c.649 §7; 1981 c.220 §10]

677.515 Medical services rendered by physician assistant. (1) This chapter does not prohibit a person from rendering medical services:

(a) If the person has satisfactorily completed a training program, approved by the Board of Medical Examiners for the State of Oregon, for physician assistants;

(b) If the services are rendered under the supervision and control of a person licensed under this chapter to practice medicine and the use of the assistant's services has been approved by the board as provided by ORS 677.510; and

(c) If the person is registered as a physician assistant as provided by ORS 677.495 and 677.505 to 677.525.

(2) This chapter does not prohibit a student enrolled in an approved program for training physician assistants from rendering medical services if the services are rendered in the course of the program.

(3) Notwithstanding subsections (1) and (2) of this section, the degree of independent judgment that the physician assistant may exercise shall be determined by the supervising physician and the physician assistant in accordance with a practice description approved by the board.

(4) A physician assistant may provide medical services to ambulatory patients in a medical care setting where the supervising physician does not regularly practice only if the following conditions exist:

(a) The medical care setting is located in a medically disadvantaged area;

(b) Direct communication either in person or by telephone, radio, radiotelephone, television or similar means is maintained; and

(c) The medical services provided by the physician assistant are reviewed by the supervising physician on a regularly scheduled basis as determined by the board.

(5) A supervising physician, upon the approval of the board and in accordance with the rules established by the board, may delegate to the physician assistant the authority to administer and dispense limited emergency medications and to prescribe medications pursuant to this section and ORS 677.535 to 677.550. Neither the board nor the committee shall limit the privilege of administering, dispensing and prescribing to medically disadvantaged areas. All prescriptions written pursuant to this subsection shall bear the name, office address and telephone number of the supervising physician.

(6) Nothing in this chapter is intended to require or prohibit a physician assistant from practicing in a hospital licensed pursuant to ORS 441.015 to 441.097.

(7) Prescriptions for medications prescribed by a physician assistant in accordance with this section and ORS 475.005, 677.010, 677.500, 677.510 and 677.535 to 677.550 and dispensed by a licensed pharmacist may be filled by the pharmacist according to the terms of the prescription, and the filling of such a prescription shall not constitute evidence of negligence on the part of the pharmacist if the prescription was dispensed within the reasonable and prudent practice of pharmacy. [Formerly 677.065; 1985 c.747 §52; 1989 c.830 §32; 1993 c.571 §27]

677.520 Performance of medical services by unregistered physician assistant prohibited. Performance of any medical services by a physician assistant after the termination of registration by the Board of Medical Examiners for the State of Oregon, after expiration of temporary registration or in the absence of renewal of registration constitutes the unauthorized practice of

medicine and subjects the assistant to the penalties provided in ORS 677.990. [Formerly 677.090; 1983 c.486 §67; 1989 c.830 §33]

677.525 Fees; how determined. Every physician assistant shall pay to the Board of Medical Examiners for the State of Oregon nonrefundable fees as determined by the board pursuant to ORS 677.265. [Formerly 677.232; 1983 c.486 §48; 1989 c.830 §34]

677.530 [Formerly 677.255; repealed by 1989 c.830 §49]

677.532 [1983 c.486 §47; repealed by 1989 c.830 §49]

677.535 Limited certification. The Board of Medical Examiners for the State of Oregon may grant limited certification to a physician assistant if:

(1) The applicant meets the qualifications of the board, the application file is complete and no derogatory information has been submitted but board approval is pending; or

(2) The physician assistant is changing employment. [1981 c.220 §8; 1983 c.486 §48a; 1989 c.830 §35]

677.540 Physician Assistant Committee; appointment; term. (1) There is created a Physician Assistant Committee which shall consist of five members. Members of the committee shall be appointed as follows:

(a) The Board of Medical Examiners for the State of Oregon shall appoint one of its members and one physician. One of the two must supervise a physician assistant.

(b) The Oregon Society of Physician Assistants shall appoint two physician assistants.

(c) The State Board of Pharmacy shall appoint one pharmacist.

(2) The term of each member of the committee shall be for three years. A member shall serve until a successor is appointed. If a vacancy occurs, it shall be filled for the unexpired term by a person with the same qualifications as the retiring member.

(3) If any vacancy under subsection (1) of this section is not filled within 45 days, the Governor shall make the necessary appointment from the category which is vacant.

(4) The committee shall elect its own chairperson with such powers and duties as the committee shall fix.

(5) A quorum of the committee shall be three members. The committee shall hold a meeting at least once quarterly and at such other times the committee considers advisable to review requests for prescription and dispensing privileges and to review applications for certification or renewal.

(6) The chairperson may call a special meeting of the Physician Assistant Committee upon at least 10 days' notice in writing

to each member, to be held at any place designated by the chairperson.

(7) The committee members are entitled to compensation and expenses as provided in ORS 292.495. [1981 c.220 §5; 1989 c.830 §36]

677.545 Duties of committee. The Physician Assistant Committee shall:

(1) Review all applications for physician assistants' certification and for renewal thereof.

(2) Review applications of physician assistants for dispensing privileges.

(3) Recommend approval or disapproval of applications submitted under subsection (1) or (2) of this section to the Board of Medical Examiners for the State of Oregon.

(4) Recommend criteria to be used in granting dispensing privileges under ORS 677.515.

(5) Recommend the formulary for prescriptive privileges which may include all or parts of Schedules III, IV and V controlled substances and the procedures for physician assistants and supervising physicians to follow in exercising the prescriptive privileges.

(6) Recommend the approval, disapproval or modification of the application for prescriptive privileges for any physician assistant. [1981 c.220 §7; 1989 c.830 §37]

677.550 Designation by board of different medically disadvantaged areas. If it appears to the Board of Medical Examiners for the State of Oregon that an area would be better served by applying different criteria than applied by the Director of Human Resources to determine a medically disadvantaged area, the board may designate areas different than those designated by the Office of Health Policy as medically disadvantaged areas. [1981 c.220 §6; 1987 c.660 §25; 1989 c.830 §38]

677.610 [1975 c.695 §2; 1977 c.581 §3; 1983 c.486 §49; repealed by 1989 c.782 §40]

DIVERSION PROGRAM

677.615 Diversion Program Supervisory Council. (1) There is established a Diversion Program Supervisory Council consisting of five members appointed by the board for the purpose of developing and implementing a diversion program for chemically dependent licensees regulated under this chapter. No current board member or staff shall serve on the council.

(2) The term of office of each member is two years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the

board shall make an appointment to become immediately effective for the unexpired term.

(3) The members of the council must be citizens of this state who are familiar with the recognition, intervention, assessment and treatment of chemically dependent persons.

(4) A member of the council is entitled to compensation and expenses as provided in ORS 292.495, except that the compensation for the time spent in performance of official duties shall be the same as the compensation received by members of the Board of Medical Examiners.

(5) The council shall select one of its members as chairperson and another as vice-chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the council determines.

(6) A majority of the members of the council constitutes a quorum for the transaction of business. [1989 c.705 §1]

677.620 [1975 c.695 §11; repealed by 1989 c.782 §40]

677.625 Medical director; appointment; duties. (1) Subject to the approval of the board, the Diversion Program Supervisory Council shall appoint a medical director to serve at the pleasure of the council. The medical director shall be an employee of the board.

(2) The medical director shall administer, under the control and supervision of the council, the diversion program for chemically dependent licensees.

(3) The board shall appoint such employees as may be necessary to carry out the duties of the council, as assigned by the medical director. [1989 c.705 §2]

677.630 [1975 c.695 §15; repealed by 1983 c.486 §68]

677.635 Contract for services to chemically dependent licensees. The board may enter into contracts to provide services for chemically dependent licensees and may, in accordance with ORS 183.310 to 183.550, adopt rules necessary for the administration of a diversion program for chemically dependent licensees. [1989 c.705 §3]

677.640 [1975 c.695 §12; 1983 c.486 §50; repealed by 1989 c.782 §40]

677.645 Referral in addition to or in lieu of discipline. (1) In addition to or in lieu of any disciplinary action under ORS 677.205, the board may refer a licensee who is chemically dependent to a diversion program administered by the Diversion Program Supervisory Council.

(2) The council shall report to the board and provide all pertinent information concerning any licensee who is referred to the council under subsection (1) of this section

and fails to complete the diversion program or fails to participate in the diversion program in good faith. [1989 c.705 §4]

677.650 [1975 c.695 §13; 1983 c.486 §51; repealed by 1989 c.782 §40]

677.655 Confidentiality of records and information; effect of successful completion of program. (1) All records of the supervisory council are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial proceeding.

(2) The members, employees, contractors and past or present clients of the council shall not be subject to the disclosure requirements in ORS 677.415, nor shall they disclose information or be examined regarding any participant in the program.

(3) Any licensee who in good faith voluntarily participates in an approved diversion program and successfully completes the program shall not be subject to disciplinary investigation or sanctions unless the licensee is suspected of a violation of this chapter other than ORS 677.190 (7). [1989 c.705 §5]

677.660 [1975 c.695 §10; repealed by 1983 c.486 §68]

677.665 Immunity from civil liability. The board, the Diversion Program Supervisory Council, and their members, employees and contractors shall be immune from any civil liability arising from good faith actions taken pursuant to ORS 677.615 to 677.677. [1989 c.705 §6]

677.670 [1975 c.695 §14; 1979 c.292 §4; 1983 c.486 §52; 1989 c.830 §39; repealed by 1989 c.782 §40]

677.675 [1983 c.486 §55; renumbered 823.215 in 1989]

677.677 Rulemaking authority of board; fees and charges. In addition to any other powers granted by ORS 677.615 to 677.677, the board may adopt necessary and proper rules for administration of ORS 677.615 to 677.677 including, but not limited to, establishing fees and charges to carry out its legal responsibilities, subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges. The fees and charges established under this section shall not exceed the cost of administering the program of the Diversion Program Supervisory Council, as authorized by the Legislative Assembly within the board's budget, or as the budget may be modified by the Emergency Board, and shall be maintained in an account separate from other funds of the board. [1989 c.705 §7; 1991 c.703 §23]

677.680 [1975 c.695 §16; 1979 c.165 §1; 1983 c.486 §53; 1989 c.830 §40; repealed by 1989 c.782 §40]

677.690 [1975 c.695 §17; 1983 c.486 §56; repealed by 1989 c.782 §40 and 1989 c.830 §49]

677.700 [1975 c.695 §18; 1983 c.486 §57; repealed by 1989 c.782 §40]

677.750 [Formerly 677.257; repealed by 1991 c.204 §2]

677.755 [Formerly 677.259; 1991 c.204 §1; 1991 c.314 §1; repealed by 1993 c.378 §7]

ACUPUNCTURISTS

677.757 Definitions for ORS 677.757 to 677.770. As used in ORS 677.757 to 677.770:

(1)(a) "Acupuncture" means an Oriental health care practice used to promote health and to treat neurological, organic or functional disorders by the stimulation of specific points on the surface of the body by the insertion of needles. "Acupuncture" includes the treatment method of moxibustion, as well as the use of electrical, thermal, mechanical or magnetic devices, with or without needles, to stimulate acupuncture points and acupuncture meridians and to induce acupuncture anesthesia or analgesia.

(b) The practice of acupuncture also includes the following modalities as authorized by the Board of Medical Examiners for the State of Oregon:

(A) Traditional and modern techniques of diagnosis and evaluation;

(B) Oriental massage, exercise and related therapeutic methods; and

(C) The use of Oriental pharmacopoeia, vitamins, minerals and dietary advice.

(2) "Oriental pharmacopoeia" means a list of herbs described in traditional Oriental texts commonly used in accredited schools of Oriental medicine if the texts are approved by the Board of Medical Examiners for the State of Oregon. [1993 c.378 §1]

677.759 License required; qualifications; effect of using certain terms. (1) No person shall practice acupuncture without first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Board of Medical Examiners for the State of Oregon except as provided in subsection (2) of this section.

(2) Notwithstanding subsection (1) of this section, the board may issue a license to practice acupuncture to an individual licensed to practice acupuncture in another state or territory of the United States if the individual is licensed to practice medicine and surgery or acupuncture in the other state or territory. The board shall not issue such a license unless the requirements of the other state or territory are similar to the requirements of this state.

(3) The board shall examine the qualifications of an applicant and determine who shall be authorized to practice acupuncture.

(4) Using the term "acupuncture," "acupuncturist," "Oriental medicine" or any other term, title, name or abbreviation indi-

cating that an individual is qualified or licensed to practice acupuncture is prima facie evidence of practicing acupuncture.

(5) In addition to the powers and duties of the board described in this chapter, the board shall adopt rules consistent with ORS 677.757 to 677.770 governing the issuance of a license to practice acupuncture. [1993 c.378 §2]

677.760 [Formerly 677.261; repealed by 1989 c.830 §49]

677.761 Persons and practices not within scope of ORS 677.757 to 677.770. Nothing in ORS 677.757 to 677.770 is intended to:

(1) Prevent, limit or interfere with an individual licensed or certified by the Board of Medical Examiners for the State of Oregon from practicing health care other than acupuncture within the scope of the license or certification of the individual.

(2) Limit any other licensed or certified health care practitioner from practicing acupressure or other therapy within the scope of the license or certification of the individual.

(3) Limit the activities of any person who engages in the business of providing Oriental massage, exercise and related therapeutic methods or who provides substances listed in an Oriental pharmacopoeia, or vitamins or minerals or dietary advice, so long as the activities of the person are not otherwise prohibited by law. [1993 c.378 §5]

Note: 677.761 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 677. See Preface to Oregon Revised Statutes for further explanation.

677.765 Unauthorized practice by acupuncturist. Performance of acupuncture without licensure or after the termination of licensure by the Board of Medical Examiners for the State of Oregon or in the absence of renewal of licensure constitutes the unauthorized practice of medicine and subjects the person to the penalties provided by ORS 677.990. [Formerly 677.262; 1989 c.830 §41; 1991 c.314 §2; 1993 c.378 §3]

677.770 Fees. Every physician or surgeon or other person licensed as an acupuncturist shall pay to the Board of Medical Examiners for the State of Oregon nonrefundable fees as determined by the board pursuant to ORS 677.265. [Formerly 677.263; 1989 c.830 §42; 1993 c.378 §4]

677.775 [1983 c.486 §33; repealed by 1989 c.830 §49]

PODIATRY

(General Provisions)

677.805 Definitions for ORS 677.805 to 677.855. As used in ORS 677.805 to 677.855:

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

(2) "Council" means the Advisory Council on Podiatry.

(3) "Podiatric physician and surgeon" means a podiatric physician and surgeon whose practice is limited to treating ailments of the human foot.

(4) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in ORS 441.055 (2) or in an ambulatory surgical center certified by the Health Division and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the entire foot. [Formerly 682.010]

Note: 677.805 to 677.855 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 677 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

677.810 License required to practice; podiatry. (1) No person shall practice podiatry without first obtaining from the board a license authorizing the practice of podiatry in this state, except as otherwise provided in ORS 677.805 to 677.855.

(2) It shall be deemed prima facie evidence of practicing podiatry within the meaning of ORS 677.805 to 677.855 if any person uses the name or title podiatrist, podiatric physician and surgeon, chiroprapist, D.S.C., D.P.M., D.P., foot expert, foot specialist, foot correctionist, or any other word, abbreviation or title indicating that the person was or is qualified and licensed to practice podiatry. [Formerly 682.020]

Note: See note under 677.805.

677.815 Application of ORS 677.805 to 677.855. (1) ORS 677.805 to 677.855 does not prevent:

(a) Any person, firm or corporation from manufacturing, selling, fitting or adjusting any shoe or appliance designed and intended to equalize pressure on different parts of the foot.

(b) The sale by licensed druggists of plasters, salves and lotions for the relief and cure of corns, warts, callosities and bunions.

(2) ORS 677.805 to 677.855 shall not be construed to apply to or interfere with:

(a) The practice of any person whose religion treats or administers to the sick or

suffering by purely spiritual means, nor with any individual's selection of any such person.

(b) Physicians licensed by the Board of Medical Examiners for the State of Oregon, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. [Formerly 682.030; 1987 c.158 §140]

Note: See note under 677.805.

(Licensing)

677.820 Qualifications of applicants.

All applicants for a license to practice podiatry under ORS 677.805 to 677.855 shall:

(1) Have attained the age of 18 years.

(2) Be of good moral character.

(3) Have graduated from an approved podiatry school or college.

(4) Have satisfactorily completed one year of post-graduate training served in a program that is approved by the board pursuant to standards adopted by the board by rule.

(5) As used in this section, "approved podiatry school or college" means any school or college offering a full-time resident program of study in podiatry leading to a degree of Doctor of Podiatric Medicine, such program having been fully accredited or conditionally approved by the American Podiatric Medical Association or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules. [Formerly 682.040; 1985 c.322 §6; 1989 c.830 §43; 1993 c.323 §1]

Note: See note under 677.805.

677.825 Examination of applicants; issuing license; fees; reexamination. Any person desiring a license to practice podiatry shall be examined by the board in subjects which the board may deem advisable. If the applicant possesses the qualifications required by ORS 677.820 and passes the examination prescribed, the applicant shall be issued a license by the board to practice podiatry in this state. Each applicant shall submit an application for examination and the required examination fee to the board. Any applicant failing in the examination, and being refused a license, is entitled to a reexamination upon the payment of an additional examination fee. [Formerly 682.050; 1985 c.322 §7]

Note: See note under 677.805.

677.830 Reciprocal licensing; use of national board examination. (1) Notwithstanding the provisions of ORS 677.825, the board may issue a license to practice podiatry without a written examination of the applicant if the applicant has a license to practice podiatry issued by a licensing

agency of another state or territory of the United States and the applicant complies with the other provisions of ORS 677.805 to 677.855. Such a license shall not be issued unless the requirements, including the examination for such license are substantially similar to the requirements of this state for a license to practice podiatry. The board shall adopt rules governing the issuance of licenses to persons applying under this section. The license may be evidenced by a certificate of the board indorsed on the license issued by the other state or territory, or by issuance of a license as otherwise provided by ORS 677.805 to 677.855.

(2) The board may accept a certificate of successful examination issued by the National Board of Podiatry Examiners in lieu of a written examination given by the board.

(3) The board may require an applicant under subsection (1) or (2) of this section to take an oral examination conducted by one or more members of the board. [Formerly 682.055]

Note: See note under 677.805.

677.835 [Formerly 682.060; repealed by 1989 c.830 §49]

677.840 Fees. Every podiatric physician and surgeon shall pay to the Board of Medical Examiners for the State of Oregon nonrefundable fees as determined by the board pursuant to ORS 677.265. [Formerly 682.065; 1989 c.830 §44]

Note: See note under 677.805.

677.845 [Formerly 682.080; repealed by 1989 c.830 §49]

677.850 [Formerly 682.090; repealed by 1989 c.830 §49]

(Advisory Council)

677.855 Advisory Council on Podiatry; members; confirmation; terms of office.

(1) An advisory council to consist of five persons and to be known as the Advisory Council on Podiatry hereby is created to advise the Board of Medical Examiners for the State of Oregon in carrying out the purposes and enforcing the provisions of ORS 677.805 to 677.855. Members of the council shall be appointed for three-year terms, but none shall serve more than three consecutive terms without the lapse of at least one term.

(2) Of the members of the council to be appointed by the Governor:

(a) Three shall be podiatrists who have been residents of this state for at least two years and have held licenses as podiatrists for no less than two years.

(b) One shall be appointed from among members of the general public.

(3) The board shall appoint as the fifth member of the council a member of the board who is also a physician.

(4) If a vacancy occurs, the Governor or the board shall appoint a member, as appropriate, to serve for the unexpired term.

(5) All appointments of members of the council by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(6) Not later than February 1 of each year, the Oregon Podiatric Medical Association shall nominate three qualified podiatrists for appointment to the vacancy under paragraph (a) of subsection (2) of this section of the member of the council whose term expires in that year, and shall certify its nominees to the Governor. The Governor may make the appointment from among the nominees whose names were submitted by the Oregon Podiatric Medical Association.

(7) Members are entitled to compensation and expenses as provided in ORS 292.495.

(8) The board may delegate to the council any of its duties under ORS 677.805 to 677.855. [Formerly 682.150; 1989 c.830 §45]

Note: See note under 677.805.

677.860 [Formerly 682.160; repealed by 1989 c.830 §49]

RESPIRATORY CARE PRACTITIONERS

677.861 Definitions for ORS 677.861 to 677.878. As used in ORS 677.861 to 677.878:

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

(2) "Committee" means the Respiratory Care Practitioners Committee created under ORS 677.873.

(3) "Performance of respiratory care" means respiratory care in accordance with the prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following:

(a) Except for the purpose of anesthesia, administration of medical gases, aerosols and humidification;

(b) Environmental control mechanisms and hyperbaric therapy;

(c) Pharmacologic agents related to respiratory care procedures;

(d) Mechanical or physiological ventilatory support;

(e) Bronchopulmonary hygiene;

(f) Cardiopulmonary resuscitation;

(g) Maintenance of the natural airway;

(h) Maintenance of artificial airways;

(i) Specific diagnostic and testing techniques employed in the medical management

of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions and pulmonary function testing; and

(j) Hemodynamic and other related physiologic measurements of the cardiopulmonary system.

(4) "Practice of respiratory care" includes, but is not limited to:

(a) Direct and indirect respiratory care services, including but not limited to the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician;

(b) Transcription and implementation of the written or verbal orders of a physician pertaining to the practice of respiratory care;

(c) Observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibits abnormal characteristics;

(d) Implementation based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of this state; and

(e) The initiation of emergency procedures under the rules of the board or as otherwise permitted in ORS 677.861 to 677.878.

(5) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency who is a physician licensed by the State of Oregon who has special interest and knowledge in the diagnosis and treatment of respiratory problems.

(6) "Respiratory care" means care by the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under a qualified medical director.

(7) "Respiratory care practitioner" means a person licensed under ORS 677.861 to 677.878. [1991 c.772 §2]

677.862 Practice of respiratory care by unlicensed practitioner prohibited. (1) No person shall practice respiratory care or

claim to be a respiratory care practitioner unless the person is licensed under ORS 677.861 to 677.878.

(2) Nothing in ORS 677.861 to 677.878 is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of this state.

(3) Nothing in ORS 677.861 to 677.878 prohibits:

(a) The practice of respiratory care by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Council on Allied Health Education or their successors.

(b) Self-care by a patient, or gratuitous care by a friend or family member who does not claim to be a respiratory care practitioner.

(c) Respiratory care services rendered in the course of an emergency.

(4) Persons in the military services or working in federal facilities are exempt from the provisions of ORS 677.861 to 677.878 when functioning in the course of assigned duties. [1991 c.772 §4]

677.864 Location of practice. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place considered appropriate or necessary by the Board of Medical Examiners for the State of Oregon in accordance with the prescription or verbal order of a physician and shall be performed under a qualified medical director. [1991 c.772 §3]

677.865 [Formerly 682.170; repealed by 1989 c.830 §49]

677.866 Duties of Board of Medical Examiners. The Board of Medical Examiners for the State of Oregon shall:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of license and reciprocal licenses.

(2) Adopt rules that are necessary to conduct its business, carry out its duties and administer ORS 677.861 to 677.878.

(3) Examine, approve, issue, deny, revoke, suspend and renew licenses to practice respiratory care under this chapter.

(4) Maintain a public record of persons licensed to practice respiratory therapy under ORS 677.861 to 677.878.

(5) Establish standards of professional responsibility and practice for persons licensed under ORS 677.861 to 677.878.

(6) Select a licensing examination that meets the standards of the National Com-

mission for Health Certifying Agencies or an equivalent that is nationally recognized in testing respiratory care competencies.

(7) Establish continuing education requirements for renewal of a license.

(8) Provide for waivers of examinations, grandfathering requirements and temporary licenses as considered appropriate.

(9) Establish examination and licensing fees, renewal fees and fees for duplicate licenses. Subject to the review of the Oregon Department of Administrative Services, the fees and charges established under this subsection shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as recognized by the Legislative Assembly in the board's budget, as the budget may be modified by the Emergency Board. [1991 c.772 §8]

677.868 Application for license; examination. (1) An applicant for a license to practice respiratory care shall submit to the Board of Medical Examiners for the State of Oregon written evidence, verified by oath, that the applicant:

(a) Is at least 18 years of age;

(b) Has completed an approved four-year high school course of study or the equivalent thereof determined by the appropriate educational agency; and

(c) Has completed a respiratory care educational program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education or their successor organizations, as approved by the board.

(2) The applicant shall be required to pass an examination, whereupon the board may issue to the applicant a license to practice respiratory care.

(3) The board may issue a license to practice respiratory care by indorsement to:

(a) An applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are considered by the board to be equivalent to those required in this state.

(b) An applicant holding a credential conferred by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician (CRTT) or as a Registered Respiratory Therapist (RRT), or both, providing such credential has not been suspended or revoked. [1991 c.772 §10]

677.869 Fees. Every licensed respiratory care practitioner shall pay to the Board of

Medical Examiners for the State of Oregon nonrefundable fees as determined by the board pursuant to ORS 677.265. [1991 c.772 §11]

677.870 [Formerly 682.191; repealed by 1989 c.830 §49]

677.871 Limitations on license. Nothing in ORS 677.861 to 677.878 is intended to permit the practice of medicine by a person licensed to practice respiratory care unless the person is also licensed to practice medicine. [1991 c.772 §13]

677.873 Respiratory Care Practitioners Committee; membership; terms. (1) There is created a Respiratory Care Practitioners Committee consisting of five members who shall be appointed by the Board of Medical Examiners for the State of Oregon. Each member of the committee shall be a citizen of the United States and a resident of this state. Two members shall be physicians licensed by the board. Three members shall be engaged in the practice of respiratory care for a period of not less than five years immediately preceding their appointment to the committee and may be appointed from among nominees of the Oregon Society for Respiratory Care.

(2) The term of office of a member of the committee shall be four years and a member may be reappointed to serve not more than two full terms. Vacancies in the committee shall be filled by appointment by the board for the balance of an unexpired term and each member shall serve until a successor is appointed and qualified.

(3) The board may remove any member from the committee for neglect of any duty required by law or for incompetency or unethical or dishonorable conduct.

(4) Members of the committee shall be entitled to compensation and expenses as provided in ORS 292.495. [1991 c.772 §5]

677.874 Duties of committee. The Respiratory Care Practitioners Committee shall:

(1) Review and recommend approval or disapproval of all applications submitted to the Board of Medical Examiners for the State of Oregon for respiratory care practitioner licensing and for renewal thereof.

(2) Recommend to the board standards of professional responsibility and practice for licensed respiratory care practitioners, including continuing education requirements.

(3) Recommend to the board licensing examinations, waivers of examinations, grandfathering requirements and temporary licenses as considered appropriate. [1991 c.772 §7]

677.875 [Formerly 682.200; repealed by 1989 c.830 §49]

677.876 Liability. Members of the Respiratory Care Practitioners Committee shall enjoy the same rights of protection from personal liability as those enjoyed by other employees of the state for actions taken while acting under the provisions of ORS 677.861 to 677.878 and in the course of their duties. [1991 c.772 §9]

677.878 Short title. A person holding a license to practice respiratory care in this state may use the title "Licensed Respiratory Care Practitioner" and the abbreviation "LRCP." [1991 c.772 §12]

677.880 [Formerly 682.210; repealed by 1989 c.830 §49]

PENALTIES

677.990 Penalties. (1) Violation of any provision of this chapter is a misdemeanor. In any prosecution for such violation, it shall

be sufficient to sustain a conviction to show a single act of conduct in violation of any of the provisions of this chapter and it shall not be necessary to show a general course of such conduct.

(2) Any person who practices medicine without being licensed under this chapter as prohibited in ORS 677.080 (4) commits a Class C felony.

(3) A person who violates the provisions of ORS 677.360 to 677.370 commits a Class C misdemeanor. [Amended by 1967 c.470 §61; (2) enacted as 1975 c.695 §19; (3) enacted as 1977 c.686 §8; (4) formerly 682.990; 1989 c.782 §37; 1989 c.830 §46]

Note: See note under 677.355.