

D R A F T

SUMMARY

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

SECTION 1. ORS 676.185 is amended to read:

676.185. As used in ORS 676.185 to 676.200:

(1) “Direct supervisor” means the individual who is responsible for:

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

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

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

(2) “Health profession licensing board” means:

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

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

(3) “Impaired professional” means a licensee who is unable to practice

1 with professional skill and safety by reason of habitual or excessive use or
2 abuse of drugs, alcohol or other substances that impair ability or by reason
3 of a mental health disorder.

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

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

7 (a) Criminal behavior;

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

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

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

13 (e) Violation of a restriction on a licensee's practice imposed by *[the]* **an**
14 impaired health professional program established under ORS 676.190 or the
15 licensee's health profession licensing board;

16 (f) Civil commitment for mental illness;

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

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

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

21 676.190. (1)(a) The Oregon Health Authority, **for licensees not regulated**
22 **by a health profession licensing board listed in paragraph (b) of this**
23 **subsection**, shall establish or contract to establish an impaired health pro-
24 fessional program.

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

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

31 (a) Enroll licensees of participating health profession licensing boards

1 who have been diagnosed with alcohol or substance abuse or a mental health
2 disorder;

3 (b) Require that a licensee sign a written consent prior to enrollment in
4 the program allowing disclosure and exchange of information between the
5 program, the licensee's board, the licensee's employer, evaluators and treat-
6 ment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

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

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

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

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

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

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

20 [(2)] (3) The lists submitted under subsection [(1)(f)] (2)(f) of this section
21 are exempt from disclosure as a public record under ORS 192.410 to 192.505.

22 [(3)] (4) When the program reports substantial noncompliance under sub-
23 section [(1)(e)] (2)(e) of this section to a licensee's board, the report must
24 include:

25 (a) A description of the substantial noncompliance;

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

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

30 (d) The licensee's employment status.

31 [(4)] (5) The program may not diagnose or treat licensees enrolled in the

1 program.

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

4 (a) Require the licensee to consent to disclosure and exchange of infor-
5 mation between the program, the licensee's board, the licensee's employer,
6 evaluators and treatment programs or providers, in compliance with ORS
7 179.505 and 42 C.F.R. part 2;

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

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

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

14 (B) Approved by the program if the licensee's board has granted the pro-
15 gram that authority;

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

18 (e) Require the licensee to agree to participate in a recommended treat-
19 ment plan;

20 (f) Contain limits on the licensee's practice of the licensee's health pro-
21 fession;

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

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

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

31 (j) Require the licensee to report applications for licensure in other

states, changes in employment and changes in practice setting; and

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

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

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

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

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

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

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

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

[(8)] **(9)(a)** The authority shall arrange for an independent third party to

1 **conduct an** audit **of** the program every four years to ensure compliance with
2 program guidelines. The authority shall report the results of the audit to the
3 Legislative Assembly **in the manner provided by ORS 192.245, to** the
4 Governor and **to** the health profession licensing boards. The report may not
5 contain individually identifiable information about licensees.

6 **(b) The health profession licensing boards listed in subsection (1)(b)**
7 **of this section shall arrange for an independent third party to conduct**
8 **an audit every four years of an impaired health professional program**
9 **for the licensees of those health profession licensing boards to ensure**
10 **compliance with program guidelines. The health profession licensing**
11 **boards listed in subsection (1)(b) of this section shall report the results**
12 **of the audit to the Legislative Assembly in the manner provided by**
13 **ORS 192.245 and to the Governor. The report may not contain individ-**
14 **ually identifiable information about licensees.**

15 (9) The authority may adopt rules to carry out this section.

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

17 676.200. (1)(a) A health profession licensing board that is authorized by
18 law to take disciplinary action against licensees may adopt rules opting to
19 participate in [*the*] **an** impaired health professional program established un-
20 der ORS 676.190 and may contract with or designate one or more programs
21 to deliver therapeutic services to its licensees.

22 (b) A board may not establish the board's own impaired health profes-
23 sional program for the purpose of monitoring licensees of the board that have
24 been referred to the program.

25 (c) A board may adopt rules establishing additional requirements for
26 licensees referred to [*the*] **an** impaired health professional program estab-
27 lished under ORS 676.190 or a program with which the board has entered into
28 a contract or designated to deliver therapeutic services under subsection (1)
29 of this section.

30 (2) If a board participates in [*the*] **an** impaired health professional pro-
31 gram, the board shall establish by rule a procedure for referring licensees

1 to the program. The procedure must provide that, before the board refers a
2 licensee to the program, the board shall ensure that:

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

7 (b) The board has investigated to determine whether the licensee's pro-
8 fessional practice while impaired has presented or presents a danger to the
9 public; and

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

13 (3) A board that participates in [*the*] **an** impaired health professional
14 program shall review reports received from the program. If the board finds
15 that a licensee is substantially noncompliant with a diversion agreement
16 entered into under ORS 676.190, the board may suspend, restrict, modify or
17 revoke the licensee's license or end the licensee's participation in the im-
18 paired health professional program.

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

20 (a) Self-refers to or participates in the impaired health professional pro-
21 gram;

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

24 (c) Used controlled substances before entry into the impaired health pro-
25 fessional program, if the licensee did not practice while impaired.

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

27 179.505. (1) As used in this section:

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

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

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

4 (B) Units, programs or services designated, operated or maintained by a
5 public provider to provide health care or maintain written accounts of health
6 care provided to individuals.

7 (c) "Individually identifiable health information" means any health in-
8 formation that is:

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

10 (B) Identifiable to an individual, including demographic information that
11 identifies the individual, or for which there is a reasonable basis to believe
12 the information can be used to identify an individual, and that relates to:

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

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

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

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

19 (A) A person appointed as a guardian under ORS 125.305, 419B.372,
20 419C.481 or 419C.555 with authority to make medical and health care deci-
21 sions;

22 (B) A person appointed as a health care representative under ORS 127.505
23 to 127.660 or a representative under ORS 127.700 to 127.737 to make health
24 care decisions or mental health treatment decisions; and

25 (C) A person appointed as a personal representative under ORS chapter
26 113.

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

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

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

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

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

(A) Medication prescription and monitoring;

(B) Counseling session start and stop times;

(C) Modalities and frequencies of treatment furnished;

(D) Results of clinical tests; or

(E) Any summary of the following items:

(i) Diagnosis;

(ii) Functional status;

(iii) Treatment plan;

(iv) Symptoms;

(v) Prognosis; or

(vi) Progress to date.

(g) "Public provider" means:

(A) The Oregon State Hospital campuses;

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

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

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

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

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

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

drug addiction or mental or emotional disturbance;

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

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

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

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

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

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

(b) Name or title of the persons or organizations to which the information

1 is to be disclosed or that information may be disclosed to the public;

2 (c) Name of the individual;

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

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

10 (4) The content of any written account referred to in subsection (2) of this
11 section may be disclosed without an authorization:

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

13 (b) At the discretion of the responsible officer of the health care services
14 provider, which in the case of any Oregon Health Authority facility or
15 community mental health program is the Director of the Oregon Health Au-
16 thority, to persons engaged in scientific research, program evaluation, peer
17 review and fiscal audits. However, individual identities may not be disclosed
18 to such persons, except when the disclosure is essential to the research,
19 evaluation, review or audit and is consistent with state and federal law.

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

22 (5) When an individual's identity is disclosed under subsection (4) of this
23 section, a health care services provider shall prepare, and include in the
24 permanent records of the health care services provider, a written statement
25 indicating the reasons for the disclosure, the written accounts disclosed and
26 the recipients of the disclosure.

27 (6) The content of any written account referred to in subsection (2) of this
28 section and held by a health care services provider currently engaged in the
29 treatment of an individual may be disclosed to officers or employees of that
30 provider, its agents or cooperating health care services providers who are
31 currently acting within the official scope of their duties to evaluate treat-

1 ment programs, to diagnose or treat or to assist in diagnosing or treating
2 an individual when the written account is to be used in the course of diag-
3 nosing or treating the individual. Nothing in this subsection prevents the
4 transfer of written accounts referred to in subsection (2) of this section
5 among health care services providers, the Department of Corrections, the
6 Oregon Health Authority or a local correctional facility when the transfer
7 is necessary or beneficial to the treatment of an individual.

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

18 (8)(a) When an action, suit, claim, arbitration or proceeding involves the
19 Oregon Health Authority or an institution operated by the authority, noth-
20 ing in this section prohibits the disclosure of any written account referred
21 to in subsection (2) of this section to the Department of Justice, Oregon
22 Department of Administrative Services, or their agents.

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

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

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

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

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

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

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

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

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

(10) A health care services provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, an individual or a personal representative of the individual may not be denied access to written accounts concerning the individual because of inability to pay.

(11) A written account referred to in subsection (2) of this section may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual or to conduct any investigations of the individual.

If the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.

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

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

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

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

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

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

(b) A health care services provider may use or disclose psychotherapy notes without obtaining an authorization from the individual or a personal

representative of the individual to carry out the following treatment, payment and health care operations:

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

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

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

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

(18) A health care services provider may disclose information contained in a written account if the conditions of ORS 192.567 (1) to (5) are met.

SECTION 5. ORS 687.081 is amended to read:

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

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

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

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

(d) Is licensed under ORS 687.051 or holds a permit under ORS 687.059 and is habitually intemperate in the use of alcoholic beverages or is addicted

1 to the use of habit-forming drugs or controlled substances.

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

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

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

7 (h) Whether permitted to operate a massage facility or applying for a
8 permit to operate a massage facility, fails to meet a requirement under ORS
9 687.059.

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

11 (j) Engages in unprofessional or dishonorable conduct.

12 (k) Has been the subject of disciplinary action as a massage therapist or
13 operator of a massage facility by another state or territory of the United
14 States or by a foreign country and the board determines that the cause of
15 the disciplinary action would be a violation under ORS 687.011 to 687.250,
16 687.895 or 687.991 or the rules of the board if the cause of the disciplinary
17 action had occurred in this state.

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

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

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

25 (c) Individual or peer supervision.

26 (d) Any other condition that the board considers necessary for the pro-
27 tection of the public or the rehabilitation of the licensee or permittee.

28 (3) If the board determines that the continued practice of massage by a
29 licensee or the continued operation of a massage facility by a permittee
30 constitutes a serious danger to the public, the board may impose an emer-
31 gency suspension of the license or permit without a hearing. Simultaneous

with the order of suspension, the board shall institute proceedings for a hearing as provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless and until the licensee or permittee obtains injunctive relief from a court of competent jurisdiction or the board determines that the suspension is no longer necessary for the protection of the public.

(4) In addition to or instead of the discipline described in subsection (1) of this section, the board may impose a civil penalty under ORS 687.250. Civil penalties under this subsection shall be imposed pursuant to ORS 183.745.

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

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

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

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

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

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

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

(7) The board shall adopt a code of ethical standards for massage therapists and shall take appropriate measures to ensure that all applicants and massage therapists are aware of those standards.

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

(9) Information that the board obtains as part of an investigation into the conduct of a person or as part of a contested case proceeding, consent order or stipulated agreement involving the conduct of a person is confidential as

1 provided under ORS 676.175.

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

3 678.112. Persons licensed to practice nursing who elect not to participate
4 in [*the*] **an** impaired health professional program established under ORS
5 676.190 or who fail to comply with the terms of participation shall be re-
6 ported to the Oregon State Board of Nursing for formal disciplinary action
7 under ORS 678.111.

8 **SECTION 7.** **This 2016 Act being necessary for the immediate pres-**
9 **ervation of the public peace, health and safety, an emergency is de-**
10 **clared to exist, and this 2016 Act takes effect on its passage.**

11
