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MASSAGE THERAPISTS

(Generally)

687.010 [Repealed by 1955 c.492 §15]

687.011 Definitions. As used in ORS 687.011 to 687.250, 687.895 and 687.991:

(1) "Board" means the State Board of Massage Therapists.

(2) "Certified class" means a class that is approved by the board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450;

- (b) By a community college and approved by the State Board of Education; or
- (c) In another state and licensed or approved by the appropriate agency in that state.
- (3) “Fraud or misrepresentation” means knowingly giving misinformation or a false impression through the intentional misstatement of, concealment of or failure to make known a material fact or by other means.
- (4) “Manual” means the use of the hands or the feet, or both, or any part of the body in the performance of massage.
- (5) “Massage” or “massage therapy” means the use on the human body of pressure, friction, stroking, tapping or kneading, vibration or stretching by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps and external baths, and with or without lubricants such as salts, powders, liquids or creams for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.
- (6) “Massage therapist” means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.
- (7) “Practice of massage” means the performance of massage:
 - (a) For purposes other than sexual contact, as defined in ORS 167.002 (5); and
 - (b) For compensation.
- (8) “Preceptor” means a licensed massage therapist who contracts with an approved school or program of massage to provide direct on-site clinical supervision of a massage student enrolled in a certified class.
- (9) “Supervision” means:
 - (a) The process of overseeing and directing the training of massage students as set forth in rules of the board;
 - (b) The process of overseeing and directing a licensee being disciplined by the board; or
 - (c) Voluntary consultation with, and education of, less experienced licensed massage therapists or practitioners in related fields.
- (10) “Treatment” means the selection, application and practice of massage or massage therapy essential to the effective execution and management of a plan of care.
- (11) “Unprofessional or dishonorable conduct” means a behavior, practice or condition that is contrary to the ethical standards adopted by the board. [1955 c.492 §1; 1977 c.507 §1; 1979 c.89 §1; 1985 c.82 §1; 1987 c.158 §144; 1989 c.841 §1; 1993 c.45 §295; 1995 c.343 §60; 1997 c.626 §2; 1999 c.39 §9; 1999 c.537 §5]

687.020 [Repealed by 1955 c.492 §15]

687.021 Practice of massage without license prohibited; injunction against violation. (1) No person shall engage in or purport to be in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists.

- (2) It is unlawful to advertise by printed publication or otherwise:
 - (a) The giving of massage treatments in this state by a person not licensed under ORS 687.011 to 687.250, 687.895 and 687.991; or
 - (b) The use of “massage” in the business name unless the person providing the massage is licensed under ORS 687.011 to 687.250, 687.895 and 687.991.
- (3) The Attorney General, the prosecuting attorney of any county or the board, in its own name, may maintain an action for an injunction against any person violating this section. An injunction may be issued without proof of actual damage sustained by any person. An injunction does not relieve a person from criminal prosecution for violation of this section or from any other civil, criminal or disciplinary remedy. [1955 c.492 §2; 1971 c.650 §36; 1977 c.507 §2; 1979 c.89 §2; 1985 c.82 §2; 1989 c.841 §2; 1997 c.626 §3; 1999 c.537 §6]

687.030 [Amended by 1953 c.438 §2; repealed by 1955 c.492 §15]

687.031 Application of ORS 687.011 to 687.250, 687.895 and 687.991. (1) ORS 687.011 to 687.250, 687.895 and 687.991 do not apply to:

- (a) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person.
- (b) Trainers of any amateur, semiprofessional or professional athlete or athletic team.
- (c) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions.

- (d) Massage practiced at the athletic department of any school or college.
 - (e) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor if:
 - (A) Any charge for the massage does not exceed the cost incurred in providing the massage; and
 - (B) The student is not compensated.
 - (f) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage school premises or program sites, under the supervision of an approved instructor or preceptor, if:
 - (A) The student is clearly identified as a student to any member of the public receiving massage services; and
 - (B) The student is not compensated.
 - (g) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign country and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:
 - (A) Presenting educational or clinical programs, lectures, seminars or workshops;
 - (B) Furnishing massage services during an emergency as part of a disaster response team; or
 - (C) Consulting with a massage therapist licensed in this state regarding massage practices or services.
 - (h) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling.
- (2) A nonresident practitioner performing massage under subsection (1)(g) of this section must obtain a temporary practice permit if practicing in this state for a total of more than 30 days in a calendar year. Applications shall be accompanied by the application fee provided for in ORS 687.071. A temporary practice permit shall allow the nonresident practitioner to practice massage in this state for a maximum of 180 days in a calendar year. [1955 c.492 §12; 1985 c.82 §3; 1993 c.564 §1; 1997 c.626 §4; 1999 c.537 §7]

687.040 [Repealed by 1955 c.492 §15]

(Licensing)

687.041 Applications for licenses. (1) Applications to the State Board of Massage Therapists for a massage therapist license shall be made on forms provided by the board and shall contain the information required to assure the board of the applicant's eligibility for a license. The application fee provided for in ORS 687.071 shall accompany the application.

(2) An applicant shall state on the application whether the applicant has ever been arrested for or convicted of a crime exclusive of minor traffic offenses and if so, where and when.

(3) The board may require that an applicant submit to fingerprinting. It may also require the photograph of the applicant.

(4) All law enforcement agencies in this state shall cooperate with the board in the administration of ORS 687.011 to 687.250, 687.895 and 687.991 and shall, when requested, investigate and report to the board their findings regarding the arrest or conviction of the applicant for crimes within or outside this state. [1955 c.492 §3; 1957 c.166 §1; 1977 c.507 §6; 1979 c.89 §3; 1989 c.841 §3; 1997 c.626 §5; 1999 c.537 §8]

687.050 [Repealed by 1955 c.492 §15]

687.051 Qualifications of applicants; continuing education; license renewal; inactive status. (1) To be eligible for issuance of an initial license in this state as a massage therapist after January 1, 1999, the applicant shall:

(a) Furnish the State Board of Massage Therapists with any personal references required by rule of the board.

(b) Have attained the age of 18 years.

(c) Furnish the board with educational certificates or transcripts required by law or rule of the board including but not limited to proof of certification in cardiopulmonary resuscitation and the subjects listed in paragraph (d) of this subsection.

(d) Have completed a minimum of 500 contact hours of certified classes in the following subjects: Anatomy and physiology, kinesiology, pathology, hydrotherapy, theory and hands-on practice of massage and bodywork techniques and professional practices, including client communication and boundaries, professional and business ethics and

sanitation. The board by rule may set the minimum number of required hours for each subject.

(e) Pass an examination prepared and conducted by the board or its authorized representative establishing competency and ability to engage in the practice of massage. The examination shall be administered in the English language and may be in written, oral or practical form and may test the applicant for the required level of knowledge and skill in any subject related to massage and bodywork. The board may accept passage of a board-approved national standardized examination as meeting the written examination requirement contained in this paragraph.

(f) Submit the application with payment for licensing within one year after notification of having passed the qualifying examination.

(2) An applicant must be a person of good moral character. For purposes of this section, the lack of good moral character may be established by reference to acts or conduct reflecting moral turpitude or to acts or conduct that would cause a reasonable person to have substantial doubts about the applicant's ability to practice massage in accordance with ORS 687.011 to 687.250, 687.895 and 687.991 and rules of the board.

(3) The board may require that an applicant furnish evidence satisfactory to the board that the applicant can safely and competently practice the profession of massage. The board may consider evidence including, but not limited to, indications of impairment by alcohol or controlled substances or behavior, practices or conduct that would be considered unprofessional or dishonorable conduct if engaged in by a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991.

(4) To be eligible for biennial renewal, a renewal applicant shall submit evidence to the board, as determined by the board by rule, that the applicant has completed a minimum of 12 hours of board-approved continuing education.

(5) To be eligible for inactive status, a licensed massage therapist must not be practicing massage in this state. [1955 c.492 §4; 1957 c.166 §2; 1977 c.507 §7; 1979 c.89 §4; 1985 c.82 §4; 1989 c.841 §4; 1995 c.23 §1; 1997 c.32 §1; 1997 c.176 §1; 1997 c.626 §§6,6a; 1999 c.537 §9]

687.055 [1977 c.507 §5; 1985 c.82 §6; repealed by 1989 c.841 §14]

687.057 License by indorsement or reciprocity. (1) The State Board of Massage Therapists may license by indorsement or reciprocity any individual who applies, meets the requirements established by the board and, on the date of making application, is a massage therapist licensed under the laws of any other state or territory of the United States or by a foreign country if the requirements in the state, territory or country where the applicant is licensed are not less than those required in ORS 687.011 to 687.250, 687.895 and 687.991. The board shall adopt rules for determining the necessity of an examination based on educational preparation, successful completion of other examinations, work experience and the number of years in active practice of massage.

(2) The board may license by indorsement any individual who applies and successfully completes a practical examination if the individual is already licensed under a law of this state to do an act included in the definition of massage in ORS 687.011.

(3) The board may enter into an agreement with the appropriate regulatory body of any other state, territory or foreign country for reciprocal licensing if the board determines that the qualifications and standards of the other state, territory or foreign country are not less than those required in ORS 687.011 to 687.250, 687.895 and 687.991. [1977 c.507 §18; 1985 c.82 §7; 1989 c.841 §5; 1997 c.626 §7; 1999 c.326 §1; 1999 c.537 §10]

687.060 [Repealed by 1955 c.492 §15]

687.061 Expiration and renewal of license; sanctions for practicing without valid license. (1) Licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991 expire on December 31 of all even-numbered years for massage therapists and may be renewed every other year thereafter on application to the State Board of Massage Therapists and payment of the renewal fee by December 1 of the license year. If the renewal fee is not paid by December 1, a delinquent fee shall be paid. Renewal of licenses may be made within three years after the date of expiration upon payment of the renewal fee for the license year plus the delinquent fee.

(2) An individual who practices massage without holding a valid unexpired license issued under ORS 687.011 to 687.250, 687.895 and 687.991 is subject to disciplinary action and civil penalty by the board, injunction and criminal prosecution. No disciplinary action, civil penalty or criminal proceeding shall be initiated under this section after the date that a renewal and delinquency fee is paid. However, payment of a renewal and delinquency fee does not stay any disciplinary action, civil penalty or criminal proceeding already assessed or initiated. [1955 c.492 §5; 1977 c.507 §8; 1979 c.89 §5; 1985 c.82 §8; 1989 c.841 §6; 1997 c.626 §8; 1999 c.537 §11]

687.070 [Repealed by 1955 c.492 §15]

687.071 Fees; examinations; disposition and use of moneys. (1) The State Board of Massage Therapists shall impose fees for the following:

- (a) Massage therapist license.
- (b) Examinations and reexaminations.
- (c) Inactive status.
- (d) Delinquency in renewal of a license.
- (e) Temporary practice permit.
- (f) Application for massage license examination.

(2) If the effective period of the initial massage therapist license is to be less than 12 months by reason of the statutorily required expiration date, the required license fee shall be prorated to represent one-half of the biennial rate.

(3) The board shall examine or reexamine any applicant for a massage therapist license who pays a fee for each examination and who meets the requirements of ORS 687.051.

(4) All moneys received by the board shall be paid into the account created by the board under ORS 182.470 and are appropriated continuously to the board and shall be used only for the administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991. [1955 c.492 §6; 1957 c.166 §3; 1973 c.427 §32; 1977 c.217 §1; 1977 c.507 §9; 1979 c.89 §6; 1983 c.227 §1; 1989 c.841 §7; 1991 c.703 §30; 1993 c.18 §148; 1997 c.626 §9; 1999 c.326 §2; 1999 c.537 §12; 1999 c.1084 §14]

687.075 Criminal identification information available to board. (1) The State Board of Massage Therapists may request and the Department of State Police shall furnish to the board information on an individual that the department possesses in its central bureau of criminal identification, including but not limited to manual or computerized information, if criminal offender information is required for purposes of board licensing or disciplinary activities.

(2) After furnishing the information obtained under subsection (1) of this section, the department shall conduct nationwide criminal records checks through the Federal Bureau of Investigation of individuals described in subsection (1) of this section, including their fingerprints, and shall report the results to the board.

(3) The bureau shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the bureau policy authorizing return or destruction of the fingerprint cards is changed, the board shall cease to send the cards to the bureau but shall continue to process the information through other available resources.

(4) If the bureau returns the fingerprint cards to the department, the department shall return the fingerprint cards to the board. The board shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(5) For purposes of receiving the information described in this section, the board is considered to be a “designated agency” under ORS 181.010 to 181.560 and 181.715 to 181.730 and the rules adopted under ORS 181.555. [1997 c.626 §1; 1999 c.537 §13]

Note: 687.075 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 687 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

687.080 [Repealed by 1955 c.492 §15]

687.081 Grounds for denial, suspension or revocation of license or refusal to renew license; probation; civil penalties; complaint investigation. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on probation if the licensee:

- (a) Has violated any 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 any false representation or statement to the board in order to induce or prevent action by the board.
- (c) Has a physical or mental condition that makes the licensee unable to conduct safely the practice of massage.
- (d) Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of habit-forming drugs or controlled substances.

- (e) Has misrepresented to any patron any services rendered.
 - (f) Has been convicted of a crime that bears a demonstrable relationship to the practice of massage.
 - (g) Fails to meet with any requirement under ORS 687.051.
 - (h) Violates any provision of ORS 167.002 to 167.027.
 - (i) Engages in unprofessional or dishonorable conduct.
 - (j) Has been the subject of disciplinary action as a massage therapist by any other state or territory of the United States or by a foreign country and the board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or rules of the board if it occurred in this state.
- (2) If the board places a licensee on probation pursuant to subsection (1) of this section, the board may impose and at any time modify the following conditions of probation:
- (a) Limitation on the allowed scope of practice.
 - (b) If the board finds that the licensee is physically or mentally impaired, a requirement for successful completion of appropriate treatment as determined by the board.
 - (c) Individual or peer supervision.
 - (d) Such other conditions as the board may deem necessary for the protection of the public and the rehabilitation of the licensee.
- (3) If the board determines that a licensee's continued practice constitutes a serious danger to the public, the board may impose an emergency suspension of the license 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 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 the discipline described in subsection (1) of this section, the board may impose a civil penalty as provided under ORS 687.250. Civil penalties under this subsection shall be imposed pursuant to ORS 183.090.
- (5) Prior to imposing any of the sanctions authorized under this section, the board shall consider, but is not limited to, 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 adopted pursuant thereto;
 - (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 licensee the costs associated with the disciplinary action taken against the licensee.
- (7) The board shall adopt a code of ethical standards for practitioners of massage and shall take appropriate measures to ensure that all applicants and practitioners of massage 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 licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175. [1955 c.492 §9; 1977 c.507 §10; 1979 c.89 §7; 1979 c.744 §58; 1985 c.82 §9; 1989 c.841 §8; 1997 c.627 §§1,1a; 1997 c.791 §42a; 1999 c.537 §14]

687.086 License denial procedure; review of rules and board orders. (1) If the State Board of Massage Therapists proposes to impose any of the sanctions authorized in ORS 687.081 or take other disciplinary action, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550. Hearings under this section must be conducted by a hearing officer assigned from the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS 183.310 to 183.550. [1971 c.734 §138; 1977 c.507 §11; 1997 c.626 §11; 1997 c.627 §2; 1999 c.537 §15; 1999 c.849 §166; 1999 c.1084 §15]

Note: The amendments to 687.086 by section 167, chapter 849, Oregon Laws 1999, and section 15a, chapter 1084, Oregon Laws 1999, become operative January 1, 2004. See section 168, chapter 849, Oregon Laws 1999, and section 15b, chapter 1084, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's

convenience.

687.086. (1) If the State Board of Massage Therapists proposes to impose any of the sanctions authorized in ORS 687.081 or take other disciplinary action, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550. Hearings under this section must be conducted by a hearing officer designated by the board.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS 183.310 to 183.550.

687.087 [1989 c.841 §§9,12; 1991 c.734 §74; renumbered 687.895 in 1991]

687.090 [Repealed by 1955 c.492 §15]

687.091 [1955 c.492 §10; repealed by 1971 c.734 §21]

687.100 [Repealed by 1955 c.492 §15]

687.101 [1955 c.492 §11; repealed by 1971 c.734 §21]

687.110 [Repealed by 1955 c.492 §15]

687.111 [1955 c.492 §8; 1977 c.507 §12; 1979 c.89 §8; 1981 c.398 §1; 1985 c.82 §10; repealed by 1989 c.841 §14]

(State Board)

687.115 State Board of Massage Therapists; members; appointment; terms; meetings; compensation; administrator. (1) The State Board of Massage Therapists shall operate as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The board shall be composed of seven members, four of whom shall be licensed massage therapists and three of whom shall be members of the public, including one public member selected from a health related field, who shall be appointed by the Governor for terms of four years. Members serve at the option of the Governor.

(2) Members are entitled to compensation and expenses as determined by the board.

(3) The board may:

(a) Hold meetings at times and locations determined by the board.

(b) Hire, define the duties and fix the salary of an administrator who may hire and define the duties and provide supervision and evaluation of other employees as necessary to carry out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. The administrator, with approval of the board, may also employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board. [1971 c.650 §37; 1973 c.792 §42; 1977 c.217 §2; 1977 c.507 §13; 1985 c.82 §11; 1989 c.69 §2; 1997 c.177 §1; 1997 c.626 §12; 1997 c.632 §11; 1999 c.537 §16; 1999 c.1084 §16]

687.120 [Repealed by 1955 c.492 §15]

687.121 Rules. The State Board of Massage Therapists may adopt rules:

(1) Establishing reasonable standards concerning the sanitary, hygienic and healthful conditions of premises and facilities used by massage therapists.

(2) Relating to the methods and procedures used in the practice of massage.

(3) Governing the examination and investigation of applicants for the licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991 and the issuance, renewal, suspension and revocation of such licenses.

(4) Setting standards for certifying classes under ORS 687.051.

(5) Requiring that massage therapists supply the board with the accurate, current address or addresses where they practice massage.

(6) Fixing the educational, training and experience requirements for licensing by indorsement or reciprocity.

(7) Establishing requirements for issuance and retention of an inactive license.

(8) Regarding any matter that the board reasonably considers necessary and proper for the administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991. [1955 c.492 §7; 1977 c.507 §14; 1985 c.82 §12; 1989 c.841 §13; 1997 c.626 §13; 1999 c.537 §17]

687.122 Investigation of violations; power of board; subpoenas. (1) Upon the complaint of any citizen of this state, or upon its own motion, the State Board of Massage Therapists may investigate any alleged violation of ORS 687.011 to 687.250, 687.895 and 687.991.

(2) In the conduct of investigations, the board may:

(a) Take evidence;

(b) Take the depositions of witnesses, including the person charged, in the manner provided by law in civil cases;

(c) Compel the appearance of witnesses, including the person charged, before the board in person the same as in civil cases;

(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 board chairperson and the seal of the board in the name of the State of Oregon.

(4) If a person fails to comply with a subpoena issued under this section, the judge of the circuit court shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court. [1989 c.843 §8; 1997 c.626 §14; 1999 c.537 §18]

687.123 Inspection of premises. Upon complaint about the premises on which a massage therapist practices massage, the State Board of Massage Therapists or its authorized representative may inspect such premises in order to determine whether the premises meet the standards set by order of the board under ORS 687.121 (1). [1989 c.841 §17; 1999 c.537 §19]

687.125 [1977 c.507 §17; 1997 c.626 §15; renumbered 687.890 in 1997]

687.130 [Repealed by 1955 c.492 §15]

687.135 [1977 c.507 §4; repealed by 1989 c.841 §14]

687.140 [Repealed by 1955 c.492 §15]

687.150 [Repealed by 1955 c.492 §15]

687.160 [Repealed by 1955 c.492 §15]

687.170 [Repealed by 1955 c.492 §15]

687.180 [Repealed by 1955 c.492 §15]

687.190 [Repealed by 1955 c.492 §15]

687.200 [Repealed by 1955 c.492 §15]

687.210 [Repealed by 1955 c.492 §15]

687.220 [Repealed by 1955 c.492 §15]

687.230 [Repealed by 1955 c.492 §15]

687.240 [Repealed by 1955 c.492 §15]

687.250 Enforcement; civil penalty. (1) The State Board of Massage Therapists shall report to the proper district attorney all cases that in the judgment of the board warrant criminal prosecution under ORS 687.991.

(2) The board may, in its own name, assess a civil penalty against any licensed or unlicensed person violating a provision of ORS 687.011 to 687.250, 687.895 and 687.991. The board may assess the civil penalty instead of or in addition to disciplinary action under ORS 687.081, an injunction issued under ORS 687.021 or criminal prosecution by the district attorney under this section. The amount of the civil penalty may not exceed \$1,000 for any single violation. Except as the board may otherwise provide under ORS 182.462 (5), moneys collected through the assessment of civil penalties by the board under this subsection or ORS 687.081 shall be deposited into the account created by the board pursuant to ORS 182.470 and are continuously appropriated to the board for carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991. [Formerly 687.890]

DIRECT ENTRY MIDWIVES

(Generally)

687.405 “Licensed direct entry midwife” defined.

As used in ORS 687.405 to 687.495, “licensed direct entry midwife” means a person who:

- (1) Supervises the conduct of labor and childbirth;
- (2) Advises the parent as to the progress of the childbirth; and
- (3) Renders prenatal, intrapartum and postpartum care. [1993 c.362 §1]

687.410 When use of title authorized. No person shall use the title “licensed direct entry midwife,” any abbreviation thereof or the initials “L.D.M.” unless the person possesses a valid license issued under ORS 687.405 to 687.495. [1993 c.362 §16]

687.415 When license required. (1) A license authorized by ORS 687.405 to 687.495 is required only for purposes of reimbursement under medical assistance programs and is not required for the practice of direct entry midwifery in this state.

(2) Nothing in ORS 687.405 to 687.495 is intended to require a direct entry midwife to become licensed as described in ORS 687.420 (2). [1993 c.362 §11]

(Licensing)

687.420 Standards for licensing; application; payment by medical assistance program for services provided by licensed midwife. (1) The State Board of Direct Entry Midwifery shall establish standards for qualifications for the licensure of direct entry midwives. Such standards shall include:

- (a) Sufficient knowledge in the following areas:
 - (A) Techniques in taking patient histories;
 - (B) Anatomy and physiology of the female reproductive system;
 - (C) Appropriate use of diagnostic testing;
 - (D) Necessity for referral;
 - (E) Pathology in childbirth;
 - (F) Mechanisms of labor;
 - (G) Aseptic techniques;
 - (H) Postpartum care;
 - (I) Examinations of newborn infants; and
 - (J) Family planning;
- (b) Successful passage of written and oral examinations; and
- (c) Participation in:
 - (A) 25 assisted deliveries;
 - (B) 25 deliveries for which the midwife was the primary care provider;
 - (C) 100 prenatal care visits;
 - (D) 25 newborn examinations; and
 - (E) 40 postnatal examinations;

- (d) Current certification in cardiopulmonary resuscitation for infants and adults; and
- (e) A written plan for emergency transport.

(2) Any person who desires to become licensed as a direct entry midwife shall submit an application to the Health Licensing Office stating the applicant's qualifications for licensure. If the applicant meets the standards established under subsection (1) of this section and the applicant is not disqualified from licensure under ORS 687.450, the office shall issue an annual license to the direct entry midwife. The office shall impose a fee for licensure and examination in the amount established pursuant to ORS 687.435.

(3) Any direct entry midwife licensed under this section is entitled to payment under the rules of the medical assistance program for services provided to any eligible recipient of medical assistance. [1993 c.362 §3; 1997 c.690 §5; 2001 c.53 §1]

687.425 Renewal of license; effect of failure to renew. (1) A license issued by the Health Licensing Office for a direct entry midwife shall expire after one year. The office shall renew a license upon receipt of the renewal application and fee and proof of current cardiopulmonary resuscitation certification for infants and adults, if the applicant is otherwise in compliance with the rules adopted by the State Board of Direct Entry Midwifery and the office.

(2) The office shall establish a procedure for the renewal of licenses. Notwithstanding subsection (1) of this section, the office may vary the renewal date of a license by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

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

(4) Any license that is not renewed shall automatically revert to inactive status. The license may be reactivated only if the license holder meets other qualifications for reactivation as prescribed by the Health Licensing Office in consultation with the State Board of Direct Entry Midwifery.

(5) The Health Licensing Office may mail a notice of renewal to the last-known address of the license holder. [1993 c.362 §9; 2001 c.53 §5; 2001 c.274 §3; 2001 c.462 §4]

687.430 Waiver of required written examination. A person licensed to practice direct entry midwifery under the laws of another state who demonstrates to the satisfaction of the Health Licensing Office that the person has passed a written examination at least equal to the written examination required of persons eligible for licensure under ORS 687.405 to 687.495 may have the written examination waived pursuant to standards of the board. [1993 c.362 §4; 2001 c.53 §2]

687.435 Fees. (1) The Health Licensing Office shall establish fees and charges to carry out the duties, functions and powers of the State Board of Direct Entry Midwifery. Fees and charges established pursuant to this section shall not exceed the following:

- (a) License application, \$100;
- (b) Initial license, \$2,000;
- (c) Annual renewal for active license, \$2,000;
- (d) Written examination, \$500;
- (e) Oral examination, \$150;
- (f) Late fee, \$50;
- (g) Duplicate license, \$25;
- (h) Reciprocity license, \$500; and
- (i) License reactivation, \$500.

(2) Fees and charges established pursuant to subsection (1) of this section shall be subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting fees and charges. The 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 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 of future sessions of the Legislative Assembly. [1997 c.690 §4; 1999 c.885 §25; 1999 c.990 §3]

687.440 Use of fees. All moneys received by the Health Licensing Office under ORS 687.405 to 687.495 shall be paid into the General Fund in the State Treasury and placed to the credit of the Health Licensing Office Account. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of ORS 687.405 to 687.495. [1993 c.362 §19; 1999 c.885 §24]

687.450 Grounds for denial, suspension or revocation of license or refusal to issue license; civil penalties; reinstatement of license. (1) The following acts shall be grounds for which the Health Licensing Office, in consultation with the State Board of Direct Entry Midwifery, may refuse to grant a license or may exercise disciplinary action against a licensed direct entry midwife:

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

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

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

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

(e) Advertising falsely, misleadingly or deceptively.

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

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

(h) Willfully or repeatedly violating any provision of ORS 687.405 to 687.495, any rule of the board or office or any lawful order of the board or office previously entered in a disciplinary proceeding.

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

(a) Refuse to approve an application for licensure.

(b) Revoke or suspend a license.

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

(d) Issue a reprimand.

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

(A) Submit to treatment;

(B) Undertake further relevant education or training;

(C) Take an examination; or

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

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

(4) The office shall establish guidelines for the disposition of disciplinary cases involving specific types of violations. [1993 c.362 §10; 2001 c.53 §6]

687.455 Records. The Health Licensing Office shall keep a record of the proceedings of the State Board of Direct Entry Midwifery relating to the issuance, refusal, suspension and revocation of licenses. The office shall keep a record of all complaints received, including the date of receipt, name of licensee, name and address of each complainant and

the nature of the complaint. [1993 c.362 §5; 2001 c.53 §3]

(State Board and Health Licensing Office)

687.470 State Board of Direct Entry Midwifery; establishment; appointment; confirmation; membership.

There is established within the Health Licensing Office the State Board of Direct Entry Midwifery consisting of seven members appointed by the Governor. Each member of the board shall serve a term of three years and until a successor is appointed and qualified. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. All appointments of members of the board are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The membership of the board shall include:

- (1) Four licensed direct entry midwives.
- (2) Two certified nurse midwives.
- (3) One physician licensed under ORS chapter 677 involved at the time of appointment in obstetrical care or education. [1993 c.362 §2; 1999 c.885 §23; 1999 c.990 §1]

687.475 Officers; meetings; quorum; compensation and expenses. (1) The State Board of Direct Entry Midwifery shall elect a chairperson. The board shall adopt rules to govern the proceedings of the board. The board shall hold meetings at such times and places as it determines. A majority of the members of the board shall constitute a quorum.

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

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

- (1) Maintenance of records of care, including client charts;
- (2) Participation in peer review;
- (3) Development of a written plan for emergency transport;
- (4) Guidelines for equipment; and
- (5) Maintenance of patient disclosure forms, which includes information regarding whether the midwife has malpractice insurance. [1993 c.362 §8; 2001 c.53 §4a]

687.485 Authority of Health Licensing Office; rules. In addition to the powers otherwise granted by ORS 687.405 to 687.495, the Health Licensing Office, in consultation with the State Board of Direct Entry Midwifery, may:

- (1) Determine whether applicants meet the qualifications under ORS 687.405 to 687.495, conduct examinations and grant licenses to qualified applicants upon compliance with the rules of the board and the office;
- (2) Do any act necessary or proper to effect and carry out the duties required of the office by ORS 687.405 to 687.495;
- (3) Adopt rules for the administration of ORS 687.405 to 687.495; and
- (4) Accept and expend donations, contributions and grant funds for the purposes of ORS 687.405 to 687.495. [1993 c.362 §7; 1999 c.990 §2; 2001 c.53 §4; 2001 c.462 §3]

687.490 Confidentiality of information provided to board or office. (1) Any information provided to the State Board of Direct Entry Midwifery or the Health Licensing Office under ORS 687.450 is confidential and shall not be subject to public disclosure or admissible as evidence in any judicial proceeding.

- (2) Any person who in good faith provides information to the board or the office shall not be subject to an action for civil damages as a result thereof. [1993 c.362 §17; 2001 c.53 §7]

(Miscellaneous)

687.493 Authority to purchase and administer certain legend drugs and devices. (1) A midwife licensed under ORS 687.405 to 687.495 may purchase and administer authorized scheduled legend drugs and devices that are used in pregnancy, birth, postpartum care, newborn care or resuscitation and that are deemed integral to providing safe care to the public by the State Board of Direct Entry Midwifery by rule.

- (2) Legend drugs authorized under subsection (1) of this section are limited:

(a) For neonatal use to prophylactic ophthalmic medications, vitamin K and oxygen; and

(b) For maternal use to postpartum antihemorrhagics, Rh_o (D) immune globulin, epinephrine, intravenous fluids, local anesthetic and oxygen.

(3) Legend devices authorized under subsection (1) of this section are limited to devices for injection of medications, for the administration of intravenous fluids, for adult and infant resuscitation and for rupturing the amniotic membranes.

(4) A pharmacist who dispenses drugs and devices to a licensed midwife as authorized by this section and in conformity with the provisions of ORS chapter 689 is not liable for any adverse reactions caused by administration of the legend drugs and devices by the midwife. [2001 c.462 §2]

687.495 Collection of data on births. In cooperation with the State Board of Direct Entry Midwifery, the Health Licensing Office shall collect and report data on births for which a direct entry midwife was the primary care provider. The report shall distinguish outcomes between licensed direct entry midwives and direct entry midwives who are not licensed under ORS 687.405 to 687.495. [1993 c.362 §15]

687.890 [Formerly 687.125; 1999 c.537 §20; 1999 c.1084 §17; renumbered 687.250 in 2001]

PENALTIES

687.895 Procedure for civil penalties. Any civil penalty under ORS 687.011 to 687.250, 687.895 and 687.991 shall be imposed as provided in ORS 183.090. [Formerly 687.087; 1997 c.626 §16]

687.990 [Repealed by 1955 c.492 §15]

687.991 Criminal penalties. Violation of ORS 687.021 or of any rule adopted under ORS 687.121 is a Class A misdemeanor. [1955 c.492 §14; 1977 c.507 §15]