

# House Bill 2021

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Human Services for Dr. Laurence L. Skolnik)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires license to practice hypnotherapy except under limited exceptions. Establishes licensing program for hypnotherapists. Creates Advisory Council on Hypnotherapy in Health Licensing Office. Establishes procedures for council. Establishes confidentiality requirements for communications between hypnotherapist and client.

Imposes civil penalties of up to \$5,000 for violations of Act. Punishes violations of Act by maximum six months' imprisonment, \$2,500 fine, or both.

Sunset January 2, 2008.

## A BILL FOR AN ACT

1  
2 Relating to hypnotherapists; creating new provisions; amending ORS 676.606, 676.612, 676.613 and  
3 676.992; and appropriating money.

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

### **SECTION 1. As used in sections 2 to 11 of this 2005 Act:**

6 (1) "Hypnotherapy" means the induction of a hypnotic state in a client to increase moti-  
7 vation or alter behavioral patterns. "Hypnotherapy" includes:

8 (a) Consultation with a client:

9 (A) To determine the nature of the client's problem; and

10 (B) To inform the client about induction into a hypnotic state;

11 (b) Assessment of a client to determine the client's suitability for hypnotherapy;

12 (c) Preparation of a client to enter a hypnotic state;

13 (d) Explanation to a client of the nature of the hypnotic state;

14 (e) Instruction of a client in self-hypnosis conditioning;

15 (f) Testing a client to determine the degree of physical and emotional suggestibility of the  
16 client;

17 (g) Induction of a client into a hypnotic state using individualized methods and tech-  
18 niques based on interpretation of test results and analysis of problems; and

19 (h) Discussion with a client regarding the results of hypnosis of the client.

20 (2) "Licensed hypnotherapist" means a hypnotherapist licensed under section 6 of this  
21 2005 Act.

22 **SECTION 2.** (1) There is created in the Health Licensing Office the Advisory Council on  
23 Hypnotherapy, consisting of five members appointed by the Governor. In making appoint-  
24 ments to the council, the Governor shall take into consideration nominations received from  
25 professional organizations of hypnotherapists based in Oregon.

26 (2) Members of the council shall be residents of this state and shall be appointed as fol-  
27 lows:

28 (a) Three hypnotherapists who have regularly practiced in this state for the three years

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 prior to the date of appointment.

2 (b) One person from the general public who does not possess the professional qualifica-  
3 tions of other members.

4 (c) One physician, psychologist, psychologist associate or professional counselor licensed  
5 in this state.

6 (3) The term of office for each member of the council is four years. A member is eligible  
7 for reappointment. If there is a vacancy for any cause, the Governor shall make an ap-  
8 pointment to become immediately effective for the unexpired term.

9 (4) A member of the council may be removed by the Governor for neglect of duty, in-  
10 competence or unethical conduct.

11 (5) A member of the council is entitled to compensation and expenses as provided in ORS  
12 292.495.

13 **SECTION 3.** (1) The Advisory Council on Hypnotherapy shall elect one of its members  
14 as chairperson and another as vice chairperson, for the terms and with the duties and pow-  
15 ers necessary for the performance of the functions of those offices as the council deter-  
16 mines.

17 (2) The majority of the members of the council constitutes a quorum for the transaction  
18 of business.

19 (3) The council shall meet at least once each year at a time and place determined by the  
20 Health Licensing Office.

21 **SECTION 4.** The Advisory Council on Hypnotherapy shall have the responsibility and duty  
22 of advising the Health Licensing Office in all matters relating to sections 2 to 11 of this 2005  
23 Act, including providing recommendations in the following areas:

24 (1) Adoption of rules necessary for the administration of sections 2 to 11 of this 2005 Act.

25 (2) Training, education and fitness standards for issuance, renewal or restoration of li-  
26 censes to practice hypnotherapy.

27 (3) Qualifications and documentation required for licensure, temporary permits, authori-  
28 zations and waivers.

29 (4) Requirements for reciprocity and equivalency for the practice of hypnotherapy.

30 (5) A code of professional responsibility and standards of practice for licensed  
31 hypnotherapists.

32 (6) Development, approval or recognition of a written examination to test an applicant's  
33 knowledge of the basic and clinical sciences relating to hypnotherapy training techniques and  
34 methods and any other subjects the council may determine to be necessary to assess an ap-  
35 plicant's fitness to practice hypnotherapy.

36 (7) Standards for acceptable performance, including but not limited to a passing score  
37 on the approved or recognized competency examination.

38 (8) Continuing education requirements for license renewal.

39 **SECTION 5.** In addition to its responsibilities under ORS 676.605, the Health Licensing  
40 Office shall:

41 (1) Adopt rules necessary to conduct business, carry out duties and administer the pro-  
42 visions of sections 2 to 11 of this 2005 Act.

43 (2) Issue, deny, renew, restore, revoke or suspend a license or permit to practice  
44 hypnotherapy, or place on probation or otherwise sanction the holder of a license to practice  
45 hypnotherapy, in consultation with the Advisory Council on Hypnotherapy.

1 (3) Establish and collect fees and charges to carry out its legal responsibilities.

2 (4) Do any act necessary or proper to effect and carry out the duties required of the of-  
3 fice and council.

4 (5) Accept and expend donations, contributions and grant funds for the purposes of ad-  
5 ministering sections 2 to 11 of this 2005 Act.

6 **SECTION 6.** An applicant for a license to practice hypnotherapy under sections 2 to 11  
7 of this 2005 Act shall be issued a license to practice hypnotherapy if the applicant has:

8 (1) Submitted a written application, in the form and manner prescribed by the Health  
9 Licensing Office, evidencing that the applicant has completed the requirements for licensing  
10 as established by rule by the Advisory Council on Hypnotherapy; and

11 (2) Paid all fees required for licensing.

12 **SECTION 7.** (1) Except as otherwise provided in subsection (2) of this section, a person  
13 may not practice hypnotherapy or claim to be a licensed hypnotherapist unless the person  
14 is licensed to practice hypnotherapy under section 6 of this 2005 Act.

15 (2) As long as the person does not purport to be a licensed hypnotherapist, nothing in  
16 sections 2 to 11 of this 2005 Act is intended to:

17 (a) Limit, preclude or otherwise interfere with the practices of health care providers or  
18 other persons licensed, certified or registered in this state under any other statutes, or  
19 prevent health care providers or other persons from engaging in the profession or occupation  
20 for which the health care provider or other person is licensed, certified or registered;

21 (b) Prevent any person from practicing hypnotherapy if the person is employed as a  
22 hypnotherapist by the federal government or any of its agencies;

23 (c) Preclude any person from pursuing a supervised course of study, leading to licensure  
24 as a hypnotherapist, in an educational program approved by the Advisory Council on  
25 Hypnotherapy if the person is identified by a title that clearly indicates student or trainee  
26 status;

27 (d) Prevent any person from completing any supervised practical experience require-  
28 ments established by the council; or

29 (e) Limit, preclude or otherwise interfere with the practices of a recognized member of  
30 the clergy, provided that the person is acting in the person's ministerial capacity when pro-  
31 viding the services.

32 **SECTION 8.** A licensed hypnotherapist or any employee of the licensed hypnotherapist  
33 may not disclose any communication given the licensed hypnotherapist by a client in the  
34 course of professional activity when such communication was given to enable the licensed  
35 hypnotherapist to aid the client, except:

36 (1) In the course of formally reporting, conferring or consulting with administrative su-  
37 periors, colleagues or consultants who share professional responsibilities. When information  
38 is so disclosed, the recipients of the information may not further disclose the information;

39 (2) When the client or those persons legally responsible for the affairs of the client give  
40 written consent to the disclosure;

41 (3) When a communication reveals the intent to commit a crime or harmful act and  
42 disclosure is judged necessary by the licensed hypnotherapist to protect any person from  
43 clear, imminent risk of serious mental or physical harm or injury, or to prevent a serious  
44 threat to public safety;

45 (4) When the client initiates legal action or makes a complaint against the licensed

1 **hypnotherapist to the Health Licensing Office;**

2 **(5) When the communication reveals that a minor is or is suspected to be the victim of**  
3 **a crime, abuse or neglect; or**

4 **(6) When the Health Licensing Office initiates or conducts an investigation as provided**  
5 **in ORS 676.608.**

6 **SECTION 9. (1) The Health Licensing Office, by rule, shall establish and collect fees re-**  
7 **lating to hypnotherapists under sections 2 to 11 of this 2005 Act for:**

8 **(a) Application;**

9 **(b) Examinations;**

10 **(c) License;**

11 **(d) License renewal;**

12 **(e) License restoration;**

13 **(f) Replacement or duplicate license;**

14 **(g) Temporary permit;**

15 **(h) Delinquency; and**

16 **(i) The provision of copies of official documents or records and for the recovery of ad-**  
17 **ministrative costs associated with compiling, photocopying or preparing and delivering the**  
18 **documents or records.**

19 **(2) All moneys received by the Health Licensing Office under sections 2 to 11 of this 2005**  
20 **Act shall be paid into the General Fund in the State Treasury and credited to the Health**  
21 **Licensing Office Account, and are appropriated continuously to the Health Licensing Office**  
22 **and shall be used by the Health Licensing Office only for the administration and enforcement**  
23 **of sections 2 to 11 of this 2005 Act.**

24 **(3) The fees established by the Health Licensing Office under this section are subject to**  
25 **the prior approval of the Oregon Department of Administrative Services. The fees may not**  
26 **exceed the cost of administering or enforcing sections 2 to 11 of this 2005 Act pertaining to**  
27 **the purpose for which the fees were established, as authorized by the Legislative Assembly**  
28 **within the budget of the Health Licensing Office, as that budget may be modified by the**  
29 **Emergency Board.**

30 **SECTION 10. (1) A person not licensed under section 6 of this 2005 Act, who wishes to**  
31 **practice, demonstrate or teach hypnotherapy temporarily and primarily for educational pur-**  
32 **poses, must perform those services in association with an Oregon licensed hypnotherapist.**  
33 **A temporary demonstration permit must be obtained from the Health Licensing Office before**  
34 **performing services. The office shall determine by rule the qualifications for issuance of a**  
35 **temporary demonstration permit.**

36 **(2) A permit shall be issued if the person meets the qualifications established by rule and:**

37 **(a) Makes application to the office for the permit.**

38 **(b) Is currently licensed to practice hypnotherapy in another state and presents satis-**  
39 **factory evidence to the Advisory Council on Hypnotherapy.**

40 **(c) Pays the required application and permit fees.**

41 **SECTION 11. In the manner prescribed in ORS chapter 183 for contested cases, the**  
42 **Health Licensing Office may impose a form of discipline authorized under ORS 676.612**  
43 **against any person dealing in hypnotherapy for any of the grounds listed in ORS 676.612 and**  
44 **for any violation of the provisions of sections 2 to 11 of this 2005 Act or the rules adopted**  
45 **thereunder.**

1       **SECTION 12. Violation of any provision of sections 2 to 11 of this 2005 Act is a Class B**  
2 **misdemeanor.**

3       **SECTION 13.** ORS 676.606 is amended to read:

4       676.606. The Health Licensing Office shall provide administrative oversight and centralized ser-  
5 vice for the following boards, advisory councils and program:

6       (1) Board of Athletic Trainers, as provided in sections 1 to 11, chapter 736, Oregon Laws 1999;

7       (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;

8       (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.570;

9       (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

10       (5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;

11       (6) Environmental Health Registration Board, as provided in ORS chapter 700;

12       (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as  
13 provided in ORS 690.350 to 690.430;

14       (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185; [and]

15       (9) Body piercing licensing program, as provided in ORS 690.500 to 690.570[.]; and

16       **(10) Advisory Council on Hypnotherapy, as provided in sections 2 to 11 of this 2005 Act.**

17       **SECTION 14.** ORS 676.612 is amended to read:

18       676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified  
19 in ORS 680.535, 687.445, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111 and section 11, chap-  
20 ter 547, Oregon Laws 2003, **and section 5 of this 2005 Act**, the Health Licensing Office may refuse  
21 to issue or renew, may suspend or revoke or may place on probation or otherwise sanction a holder  
22 of a certificate, permit, license or registration to practice issued by the agency for any of the fol-  
23 lowing reasons:

24       (a) Fraud, misrepresentation, concealment of material facts or deception in applying for or ob-  
25 taining an authorization to practice in this state, or in any written or oral communication to the  
26 agency concerning the issuance or retention of the authorization.

27       (b) Using, causing or promoting the use of any advertising matter, promotional literature, testi-  
28 monial, guarantee, warranty, label, insignia or any other representation, however disseminated or  
29 published, that is false, misleading or deceptive.

30       (c) Making a representation that the certificate, permit, license or registration holder knew or  
31 should have known is false or misleading regarding skill or the efficacy or value of treatment or  
32 remedy administered by the holder.

33       (d) Practicing under a false, misleading or deceptive name, or impersonating another certificate,  
34 permit, license or registration holder.

35       (e) Permitting a person other than the certificate, permit, license or registration holder to use  
36 the certificate, permit, license or registration.

37       (f) Practicing with a physical or mental condition that presents an unreasonable risk of harm  
38 to the practitioner or to the person or property of others in the course of performing the practi-  
39 tioner's duties.

40       (g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing  
41 substances, or engaging in the illegal use of controlled substances or other skill-impairing sub-  
42 stances so as to create a risk of harm to the person or property of others in the course of per-  
43 forming the practitioner's duties.

44       (h) Failing to properly and reasonably accept responsibility for the actions of employees.

45       (i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered per-

1 son to practice a regulated occupation or profession listed in ORS 676.992.

2 (j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from  
3 or failure to conform to standards of practice in performing services or practicing in a regulated  
4 occupation or profession listed under ORS 676.992.

5 (k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-  
6 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the  
7 conviction. A plea of no contest or an admission of guilt shall be considered a conviction for pur-  
8 poses of this paragraph.

9 (L) Failing to report any adverse action, as required by statute or rule, taken against the cer-  
10 tificate, permit, license, or registration holder by another regulatory jurisdiction or any peer review  
11 body, health care institution, professional association, governmental agency, law enforcement agency  
12 or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary  
13 action as described in this section.

14 (m) Violation of a statute regulating an occupation or profession listed in ORS 676.992.

15 (n) Violation of any rule regulating an occupation or profession listed in ORS 676.992.

16 (o) Failing to cooperate with the agency in any investigation, inspection or request for infor-  
17 mation.

18 (2) The agency may refuse to issue or renew, may suspend or revoke or may place on probation  
19 or otherwise sanction a holder of a certificate, permit, license or registration to practice issued by  
20 the agency for failure to pay an outstanding civil penalty that is due or for failure to meet the terms  
21 of any order issued by the agency that has become final.

22 (3) If the agency places a holder of a certificate, permit, license or registration on probation  
23 under subsection (1) of this section, the agency, in consultation with the appropriate board, council  
24 or program, may determine and at any time modify the conditions of the probation.

25 (4) If a certificate, permit, license or registration is suspended, the holder may not practice  
26 during the term of suspension. Upon the expiration of the term of suspension, the certificate, permit,  
27 license or registration may be reinstated by the agency if the conditions of suspension no longer  
28 exist and the holder has satisfied all requirements in the relevant statutes or administrative rules  
29 for issuance, renewal or reinstatement.

30 **SECTION 15.** ORS 676.613 is amended to read:

31 676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that  
32 a person is engaged in, has engaged in, or is about to engage in any act, practice or transaction that  
33 violates any provision of sections 1 to 11, chapter 736, Oregon Laws 1999, ORS 680.500 to 680.570,  
34 687.405 to 687.495, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 or  
35 694.015 to 694.185 or ORS chapter 700 **or sections 2 to 11 of this 2005 Act**, the agency may,  
36 through the Attorney General or the district attorney of the county in which the act, practice or  
37 transaction occurs or will occur, apply to the court for an injunction restraining the person from  
38 the act, practice or transaction.

39 (2) A court may issue an injunction under this section without proof of actual damages. An in-  
40 junction issued under this section does not relieve a person from any other prosecution or enforce-  
41 ment action taken for violation of statutes listed in subsection (1) of this section.

42 **SECTION 16.** ORS 676.992 is amended to read:

43 676.992. (1) In addition to any other penalty or remedy provided by law, the Health Licensing  
44 Office may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes  
45 and any rule adopted thereunder:

- 1 (a) Sections 1 to 11, chapter 736, Oregon Laws 1999 (athletic training);
- 2 (b) ORS 690.500 to 690.570 (body piercing);
- 3 (c) ORS 690.005 to 690.235 (cosmetology);
- 4 (d) ORS 680.500 to 680.570 (denture technology);
- 5 (e) ORS 687.405 to 687.495 (direct entry midwifery);
- 6 (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- 7 (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- 8 (h) ORS 688.800 to 688.840 (respiratory therapy); *[and]*
- 9 (i) ORS chapter 700 (environmental sanitation)*[.]*; **and**
- 10 **(j) Sections 2 to 11 of this 2005 Act (hypnotherapy).**

11 (2) The agency may take any other disciplinary action that it finds proper, including but not  
 12 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any  
 13 statute or rule adopted under any statute listed in subsection (1) of this section.

14 (3) Subsection (1) of this section shall not limit the amount of the civil penalty resulting from  
 15 a violation of ORS 694.042.

16 (4) In imposing a civil penalty pursuant to this section, the agency shall consider the following  
 17 factors:

- 18 (a) The immediacy and extent to which the violation threatens the public health or safety;
- 19 (b) Any prior violations of statutes, rules or orders;
- 20 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-  
 21 lation; and
- 22 (d) Any other aggravating or mitigating factors.

23 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

24 (6) The moneys received by the agency from civil penalties under this section shall be paid into  
 25 the General Fund of the State Treasury and credited to the Health Licensing Office Account. Such  
 26 moneys are continuously appropriated to the Health Licensing Office for the administration and  
 27 enforcement of the laws the agency is charged with administering and enforcing that govern the  
 28 person against whom the penalty was imposed.

29 **SECTION 17.** ORS 676.606, as amended by section 13 of this 2005 Act, is amended to read:

30 676.606. The Health Licensing Office shall provide administrative oversight and centralized ser-  
 31 vice for the following boards, advisory councils and program:

- 32 (1) Board of Athletic Trainers, as provided in sections 1 to 11, chapter 736, Oregon Laws 1999;
- 33 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;
- 34 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.570;
- 35 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- 36 (5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;
- 37 (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- 38 (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as  
 39 provided in ORS 690.350 to 690.430;
- 40 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185; **and**
- 41 (9) Body piercing licensing program, as provided in ORS 690.500 to 690.570*[; and]*.
- 42 *[(10) Advisory Council on Hypnotherapy, as provided in sections 2 to 11 of this 2005 Act.]*

43 **SECTION 18.** ORS 676.612, as amended by section 14 of this 2005 Act, is amended to read:

44 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified  
 45 in ORS 680.535, 687.445, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111 and section 11, chap-

1 ter 547, Oregon Laws 2003, [and section 5 of this 2005 Act,] the Health Licensing Office may refuse  
2 to issue or renew, may suspend or revoke or may place on probation or otherwise sanction a holder  
3 of a certificate, permit, license or registration to practice issued by the agency for any of the fol-  
4 lowing reasons:

5 (a) Fraud, misrepresentation, concealment of material facts or deception in applying for or ob-  
6 taining an authorization to practice in this state, or in any written or oral communication to the  
7 agency concerning the issuance or retention of the authorization.

8 (b) Using, causing or promoting the use of any advertising matter, promotional literature, testi-  
9 monial, guarantee, warranty, label, insignia or any other representation, however disseminated or  
10 published, that is false, misleading or deceptive.

11 (c) Making a representation that the certificate, permit, license or registration holder knew or  
12 should have known is false or misleading regarding skill or the efficacy or value of treatment or  
13 remedy administered by the holder.

14 (d) Practicing under a false, misleading or deceptive name, or impersonating another certificate,  
15 permit, license or registration holder.

16 (e) Permitting a person other than the certificate, permit, license or registration holder to use  
17 the certificate, permit, license or registration.

18 (f) Practicing with a physical or mental condition that presents an unreasonable risk of harm  
19 to the practitioner or to the person or property of others in the course of performing the practi-  
20 tioner's duties.

21 (g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing  
22 substances, or engaging in the illegal use of controlled substances or other skill-impairing sub-  
23 stances so as to create a risk of harm to the person or property of others in the course of per-  
24 forming the practitioner's duties.

25 (h) Failing to properly and reasonably accept responsibility for the actions of employees.

26 (i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered per-  
27 son to practice a regulated occupation or profession listed in ORS 676.992.

28 (j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from  
29 or failure to conform to standards of practice in performing services or practicing in a regulated  
30 occupation or profession listed under ORS 676.992.

31 (k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-  
32 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the  
33 conviction. A plea of no contest or an admission of guilt shall be considered a conviction for pur-  
34 poses of this paragraph.

35 (L) Failing to report any adverse action, as required by statute or rule, taken against the cer-  
36 tificate, permit, license, or registration holder by another regulatory jurisdiction or any peer review  
37 body, health care institution, professional association, governmental agency, law enforcement agency  
38 or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary  
39 action as described in this section.

40 (m) Violation of a statute regulating an occupation or profession listed in ORS 676.992.

41 (n) Violation of any rule regulating an occupation or profession listed in ORS 676.992.

42 (o) Failing to cooperate with the agency in any investigation, inspection or request for infor-  
43 mation.

44 (2) The agency may refuse to issue or renew, may suspend or revoke or may place on probation  
45 or otherwise sanction a holder of a certificate, permit, license or registration to practice issued by

1 the agency for failure to pay an outstanding civil penalty that is due or for failure to meet the terms  
2 of any order issued by the agency that has become final.

3 (3) If the agency places a holder of a certificate, permit, license or registration on probation  
4 under subsection (1) of this section, the agency, in consultation with the appropriate board, council  
5 or program, may determine and at any time modify the conditions of the probation.

6 (4) If a certificate, permit, license or registration is suspended, the holder may not practice  
7 during the term of suspension. Upon the expiration of the term of suspension, the certificate, permit,  
8 license or registration may be reinstated by the agency if the conditions of suspension no longer  
9 exist and the holder has satisfied all requirements in the relevant statutes or administrative rules  
10 for issuance, renewal or reinstatement.

11 **SECTION 19.** ORS 676.613, as amended by section 15 of this 2005 Act, is amended to read:

12 676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that  
13 a person is engaged in, has engaged in, or is about to engage in any act, practice or transaction that  
14 violates any provision of sections 1 to 11, chapter 736, Oregon Laws 1999, ORS 680.500 to 680.570,  
15 687.405 to 687.495, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 or  
16 694.015 to 694.185 or ORS chapter 700 [*or sections 2 to 11 of this 2005 Act*], the agency may, through  
17 the Attorney General or the district attorney of the county in which the act, practice or transaction  
18 occurs or will occur, apply to the court for an injunction restraining the person from the act,  
19 practice or transaction.

20 (2) A court may issue an injunction under this section without proof of actual damages. An in-  
21 junction issued under this section does not relieve a person from any other prosecution or enforce-  
22 ment action taken for violation of statutes listed in subsection (1) of this section.

23 **SECTION 20.** ORS 676.992, as amended by section 16 of this 2005 Act, is amended to read:

24 676.992. (1) In addition to any other penalty or remedy provided by law, the Health Licensing  
25 Office may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes  
26 and any rule adopted thereunder:

- 27 (a) Sections 1 to 11, chapter 736, Oregon Laws 1999 (athletic training);
- 28 (b) ORS 690.500 to 690.570 (body piercing);
- 29 (c) ORS 690.005 to 690.235 (cosmetology);
- 30 (d) ORS 680.500 to 680.570 (denture technology);
- 31 (e) ORS 687.405 to 687.495 (direct entry midwifery);
- 32 (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- 33 (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- 34 (h) ORS 688.800 to 688.840 (respiratory therapy); **and**
- 35 (i) ORS chapter 700 (environmental sanitation)[; *and*].
- 36 [(j) *Sections 2 to 11 of this 2005 Act (hypnotherapy).*]

37 (2) The agency may take any other disciplinary action that it finds proper, including but not  
38 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any  
39 statute or rule adopted under any statute listed in subsection (1) of this section.

40 (3) Subsection (1) of this section shall not limit the amount of the civil penalty resulting from  
41 a violation of ORS 694.042.

42 (4) In imposing a civil penalty pursuant to this section, the agency shall consider the following  
43 factors:

- 44 (a) The immediacy and extent to which the violation threatens the public health or safety;
- 45 (b) Any prior violations of statutes, rules or orders;

1 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-  
2 lation; and

3 (d) Any other aggravating or mitigating factors.

4 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

5 (6) The moneys received by the agency from civil penalties under this section shall be paid into  
6 the General Fund of the State Treasury and credited to the Health Licensing Office Account. Such  
7 moneys are continuously appropriated to the Health Licensing Office for the administration and  
8 enforcement of the laws the agency is charged with administering and enforcing that govern the  
9 person against whom the penalty was imposed.

10 **SECTION 21. Notwithstanding the term of office specified by section 2 of this 2005 Act,  
11 of the members first appointed to the Advisory Council on Hypnotherapy:**

12 (1) Two shall serve for terms ending March 1, 2007.

13 (2) Two shall serve for terms ending March 1, 2008.

14 (3) One shall serve for a term ending March 1, 2009.

15 **SECTION 22. Section 7 of this 2005 Act becomes operative on March 1, 2006.**

16 **SECTION 23. Sections 1 to 12 and 21 of this 2005 Act are repealed on January 2, 2008.**

17 **SECTION 24. The amendments to ORS 676.606, 676.612, 676.613 and 676.992 by sections 17  
18 to 20 of this 2005 Act become operative on January 2, 2008.**

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