

House Bill 2479

Sponsored by Representative DALTO (at the request of Oregon Podiatric Medical Association)

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**.

Changes definition of "physician" to include podiatrist for purposes of physician regulatory statutes. Makes conforming changes to related statutes. Changes definition of "physician" to include podiatrist for purposes of evidence code statute regarding patient and physician privilege and insurance code statute protecting advocacy for patient under medical services contract. Changes definition of "retired physician" to include podiatrist for purposes of volunteer service immunity.

A BILL FOR AN ACT

1
2 Relating to podiatry; creating new provisions; and amending ORS 30.302, 31.740, 40.235, 58.015,
3 67.005, 124.050, 316.144, 430.735, 441.063, 475.950, 659A.150, 677.010, 677.087, 677.095, 677.097,
4 677.188, 677.265, 677.450, 677.805, 677.855, 688.130, 688.132, 688.230, 742.400 and 743.803.

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

6 **SECTION 1.** ORS 30.302 is amended to read:

7 30.302. (1) As used in this section, "retired physician" means any person:

8 (a) Who holds a degree of Doctor of Medicine, [or] Doctor of Osteopathy **or Doctor of Podiatric**
9 **Medicine**, or **who** has met the minimum educational requirements for licensure to practice
10 naturopathic medicine;

11 (b) Who has been licensed and is currently retired in accordance with the provisions of ORS
12 chapter 677 or 685;

13 (c) Who is registered with the Board of Medical Examiners for the State of Oregon as a retired
14 emeritus physician or who complies with the requirements of the Board of Naturopathic Examiners
15 as a retired naturopath;

16 (d) Who registers with the county health officer in the county in which the physician or
17 naturopath practices; and

18 (e) Who provides medical care as a volunteer without compensation solely through referrals
19 from the county health officer specified in paragraph (d) of this subsection.

20 (2) Any retired physician who treats patients pursuant to this section shall be considered to be
21 an agent of a public body for the purposes of ORS 30.260 to 30.300.

22 **SECTION 2.** ORS 31.740 is amended to read:

23 31.740. Punitive damages shall not be awarded against a health practitioner if:

24 (1) The health practitioner is licensed, registered or certified as:

25 (a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

26 (b) An occupational therapist under ORS 675.230 to 675.300;

27 (c) A licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and 675.585;

28 (d) A physician under ORS 677.100 to 677.228 **or 677.820 to 677.840**;

29 (e) An emergency medical technician under ORS chapter 682;

30 [(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;]

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 [(g)] (f) A nurse under ORS 678.040 to 678.101;
- 2 [(h)] (g) A nurse practitioner under ORS 678.375 to 678.390;
- 3 [(i)] (h) A dentist under ORS 679.060 to 679.180;
- 4 [(j)] (i) A dental hygienist under ORS 680.040 to 680.100;
- 5 [(k)] (j) A denturist under ORS 680.515 to 680.535;
- 6 [(L)] (k) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;
- 7 [(m)] (L) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;
- 8 [(n)] (m) A chiropractor under ORS 684.040 to 684.105;
- 9 [(o)] (n) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;
- 10 [(p)] (o) A massage therapist under ORS 687.021 to 687.086;
- 11 [(q)] (p) A physical therapist under ORS 688.040 to 688.145;
- 12 [(r)] (q) A radiologic technician under ORS 688.445 to 688.525; or
- 13 [(s)] (r) A pharmacist under ORS 689.151 and 689.225 to 689.285; and
- 14 (2) The health practitioner was engaged in conduct regulated by the license, registration or
- 15 certificate issued by the appropriate governing body and was acting within the scope of practice for
- 16 which the license, registration or certificate was issued and without malice.

17 **SECTION 3.** ORS 40.235 is amended to read:

18 40.235. (1) As used in this section, unless the context requires otherwise:

19 (a) “Confidential communication” means a communication not intended to be disclosed to third

20 persons except:

21 (A) Persons present to further the interest of the patient in the consultation, examination or

22 interview;

23 (B) Persons reasonably necessary for the transmission of the communication; or

24 (C) Persons who are participating in the diagnosis and treatment under the direction of the

25 physician, including members of the patient’s family.

26 (b) “Patient” means a person who consults or is examined or interviewed by a physician.

27 (c) “Physician” means a person authorized and licensed or certified to practice medicine **or**

28 **podiatry** in any state or nation, or reasonably believed by the patient so to be, while engaged in the

29 diagnosis or treatment of a physical condition. “Physician” includes licensed or certified

30 naturopathic and chiropractic physicians.

31 (2) A patient has a privilege to refuse to disclose and to prevent any other person from dis-

32 closing confidential communications in a civil action, suit or proceeding, made for the purposes of

33 diagnosis or treatment of the patient’s physical condition, among the patient, the patient’s physician

34 or persons who are participating in the diagnosis or treatment under the direction of the physician,

35 including members of the patient’s family.

36 (3) The privilege created by this section may be claimed by:

37 (a) The patient;

38 (b) A guardian or conservator of the patient;

39 (c) The personal representative of a deceased patient; or

40 (d) The person who was the physician, but only on behalf of the patient. Such person’s authority

41 so to do is presumed in the absence of evidence to the contrary.

42 (4) The following is a nonexclusive list of limits on the privilege granted by this section:

43 (a) If the judge orders an examination of the physical condition of the patient, communications

44 made in the course thereof are not privileged under this section with respect to the particular pur-

45 pose for which the examination is ordered unless the judge orders otherwise.

1 (b) Except as provided in ORCP 44, there is no privilege under this section for communications
2 made in the course of a physical examination performed under ORCP 44.

3 (c) There is no privilege under this section with regard to any confidential communication or
4 record of such confidential communication that would otherwise be privileged under this section
5 when the use of the communication or record is specifically allowed under ORS 426.070, 426.074,
6 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or
7 record to the extent and for the purposes set forth in the described statute sections.

8 **SECTION 4.** ORS 124.050 is amended to read:

9 124.050. As used in ORS 124.050 to 124.095:

10 (1) "Abuse" means one or more of the following:

11 (a) Any physical injury caused by other than accidental means, or which appears to be at vari-
12 ance with the explanation given of the injury.

13 (b) Neglect which leads to physical harm through withholding of services necessary to maintain
14 health and well-being.

15 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
16 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

17 (d) Willful infliction of physical pain or injury.

18 (2) "Department" means the Department of Human Services.

19 (3) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
20 visions of ORS 441.640 to 441.665.

21 (4) "Law enforcement agency" means:

22 (a) Any city or municipal police department.

23 (b) Any county sheriff's office.

24 (c) The Oregon State Police.

25 (d) Any district attorney.

26 (5) "Public or private official" means:

27 (a) Physician **licensed under ORS chapter 677**, naturopathic physician[, *osteopathic physician*,]
28 **or** chiropractor [*or podiatric physician and surgeon*], including any intern or resident.

29 (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an
30 in-home health service.

31 (c) Employee of the Department of Human Services, county health department or community
32 mental health and developmental disabilities program.

33 (d) Peace officer.

34 (e) Member of the clergy.

35 (f) Licensed clinical social worker.

36 (g) Physical, speech or occupational therapists.

37 (h) Senior center employee.

38 (i) Information and referral or outreach worker.

39 (j) Licensed professional counselor or licensed marriage and family therapist.

40 (k) Any public official who comes in contact with elderly persons in the performance of the of-
41 ficial's official duties.

42 **SECTION 5.** ORS 316.144 is amended to read:

43 316.144. A resident or nonresident individual who is certified as eligible under ORS 442.561,
44 442.562, 442.563 or 442.564, and is licensed as a physician [*or podiatric physician and surgeon*] under
45 ORS chapter 677, licensed as a physician assistant under ORS chapter 677, licensed as a nurse

1 practitioner under ORS chapter 678, licensed as a certified registered nurse anesthetist under ORS
 2 chapter 678, licensed as a dentist under ORS chapter 679 or licensed as an optometrist under ORS
 3 683.010 to 683.335 is entitled to the tax credit described in ORS 316.143 even if not a member of the
 4 hospital medical staff if the Office of Rural Health certifies that the individual:

5 (1) Has a rural practice that amounts to 60 percent of the individual’s practice; and

6 (2)(a) If a **nonpodiatric** physician or a physician assistant, can cause a patient to be admitted
 7 to the hospital;

8 (b) If a certified registered nurse anesthetist, is employed by or has a contractual relationship
 9 with one of the hospitals described in ORS 316.143 (1); or

10 (c) If an optometrist, has consulting privileges with a hospital listed in ORS 316.143 (1). This
 11 paragraph does not apply to an optometrist who qualifies as a “frontier rural practitioner,” as de-
 12 fined by the Office of Rural Health.

13 **SECTION 6.** ORS 430.735 is amended to read:

14 430.735. As used in ORS 430.735 to 430.765:

15 (1) “Abuse” means one or more of the following:

16 (a) Any death caused by other than accidental or natural means.

17 (b) Any physical injury caused by other than accidental means, or that appears to be at variance
 18 with the explanation given of the injury.

19 (c) Willful infliction of physical pain or injury.

20 (d) Sexual harassment or exploitation, including but not limited to any sexual contact between
 21 an employee of a facility or community program and an adult.

22 (e) Neglect that leads to physical harm through withholding of services necessary to maintain
 23 health and well-being. For purposes of this paragraph, “neglect” does not include a failure of the
 24 state or a community program to provide services due to a lack of funding available to provide the
 25 services.

26 (2) “Adult” means a person who is mentally ill or developmentally disabled, who is 18 years of
 27 age or older and receives services from a community program or facility.

28 (3) “Adult protective services” means the necessary actions taken to prevent abuse or exploi-
 29 tation of an adult, to prevent self-destructive acts and to safeguard an adult’s person, property and
 30 funds. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive
 31 to the adult and provides for the greatest degree of independence.

32 (4) “Care provider” means an individual or facility that has assumed responsibility for all or a
 33 portion of the care of an adult as a result of a contract or agreement.

34 (5) “Community program” means a community mental health and developmental disabilities
 35 program as established in ORS 430.610 to 430.695.

36 (6) “Department” means the Department of Human Services.

37 (7) “Facility” means a residential treatment home or facility, residential care facility, adult fos-
 38 ter care home, residential training home or facility or crisis respite facility.

39 (8) “Law enforcement agency” means:

40 (a) Any city or municipal police department;

41 (b) Any county sheriff’s office;

42 (c) The Oregon State Police; or

43 (d) Any district attorney.

44 (9) “Public or private official” means:

45 (a) Physician **licensed under ORS chapter 677**, naturopathic physician, [*osteopathic physician*,]

1 psychologist[,] **or** chiropractor [*or podiatric physician and surgeon*], including any intern or resident;

2 (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an
3 in-home health service;

4 (c) Employee of the Department of Human Services, county health department, community
5 mental health and developmental disabilities program or private agency contracting with a public
6 body to provide any community mental health service;

7 (d) Peace officer;

8 (e) Member of the clergy;

9 (f) Licensed clinical social worker;

10 (g) Physical, speech or occupational therapist;

11 (h) Information and referral, outreach or crisis worker;

12 (i) Attorney;

13 (j) Licensed professional counselor or licensed marriage and family therapist; or

14 (k) Any public official who comes in contact with adults in the performance of the official's du-
15 ties.

16 **SECTION 7.** ORS 441.063 is amended to read:

17 441.063. The rules of the hospital shall include provisions for the use of the hospital facilities
18 by duly licensed podiatric physicians and surgeons subject to rules and regulations governing such
19 use established by the medical staff and the podiatric staff of the hospital. Such staff comprised of
20 **nonpodiatric** physicians [*and*] or podiatric physicians and surgeons, **or both**, shall regulate the
21 admission and the conduct of the podiatric physicians and surgeons while using the facilities of the
22 hospital and shall prescribe procedures whereby the podiatric physician and surgeon's use of the
23 facilities may be suspended or terminated.

24 **SECTION 8.** ORS 475.950 is amended to read:

25 475.950. (1) A person commits the offense of failure to report a precursor substances transaction
26 if the person does any of the following:

27 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
28 (3)(a) to (hh) and (mm) and does not, at least three days before delivery of the substance, submit to
29 the Department of State Police a report that meets the reporting requirements established by rule
30 under ORS 475.945.

31 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (mm) and does
32 not, within 10 days after receipt of the substance, submit to the Department of State Police a report
33 that meets the reporting requirements established by rule under ORS 475.945.

34 (2) This section does not apply to any of the following:

35 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
36 upon the prescription of a physician **licensed under ORS chapter 677**, dentist[, *podiatric physician*
37 *and surgeon*] or veterinarian.

38 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
39 stance to patients upon prescription.

40 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-
41 nishes a precursor substance to a licensed pharmacy, physician, dentist[, *podiatric physician and*
42 *surgeon*] or veterinarian for distribution to patients upon prescription.

43 (d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner
44 if the person complies with the alternate reporting requirements.

45 (e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance

1 from a licensed pharmacist, physician, dentist[, *podiatric physician and surgeon*] or veterinarian
 2 pursuant to a prescription.

3 (f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in
 4 compliance with ORS 475.973.

5 (g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person
 6 with whom the practitioner has a doctor-patient or doctor-client relationship.

7 (h) Any person who obtains a precursor substance from a practitioner, as defined in ORS
 8 475.005, with whom the person has a doctor-patient or doctor-client relationship.

9 (3) Penalties related to providing false information on a report required under this section are
 10 provided under ORS 475.965.

11 (4) The Department of State Police and any law enforcement agency may inspect the sales re-
 12 cords of any retail or wholesale distributor of methyl sulfonyl methane or a precursor substance
 13 during the normal business hours of the retail or wholesale distributor.

14 (5) The offense described in this section, failure to report a precursor substances transaction,
 15 is a Class A misdemeanor.

16 **SECTION 9.** ORS 659A.150 is amended to read:

17 659A.150. As used in ORS 659A.150 to 659A.186:

18 (1) "Covered employer" means an employer described in ORS 659A.153.

19 (2) "Eligible employee" means any employee of a covered employer other than those employees
 20 exempted under the provisions of ORS 659A.156.

21 (3) "Family leave" means a leave of absence described in ORS 659A.159.

22 (4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent
 23 or child of the employee, a parent-in-law of the employee or a person with whom the employee was
 24 or is in a relationship of in loco parentis.

25 (5) "Health care provider" means the person who is primarily responsible for providing health
 26 care to an eligible employee or a family member of an eligible employee, and who is a physician li-
 27 censed to practice medicine and surgery, including a [*doctor of*] **physician licensed to practice**
 28 osteopathy[, *a podiatrist*] **or podiatry**, a dentist, a clinical psychologist, an optometrist, a
 29 naturopath, a nurse practitioner, a direct entry midwife, a nurse-midwife or a clinical social worker,
 30 authorized to practice and performing within the scope of their professional license as provided for
 31 by law. "Health care provider" includes a Christian Science practitioner listed with the First
 32 Church of Christ Scientist in Boston, Massachusetts, who is primarily responsible for the treatment
 33 of the eligible employee or a family member of the eligible employee. "Health care provider" in-
 34 cludes a chiropractor, but only to the extent the chiropractor provides treatment consisting of
 35 manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

36 (6) "Serious health condition" means:

37 (a) An illness, injury, impairment or physical or mental condition that requires inpatient care
 38 in a hospital, hospice or residential medical care facility;

39 (b) An illness, disease or condition that in the medical judgment of the treating health care
 40 provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility
 41 of death in the near future, or requires constant care; or

42 (c) Any period of disability due to pregnancy, or period of absence for prenatal care.

43 **SECTION 10.** ORS 677.010 is amended to read:

44 677.010. As used in this chapter, subject to the exemptions in ORS 677.060 and unless the con-
 45 text requires otherwise:

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

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

5 (3) "Diagnose" means to examine another person in any manner to determine the source or na-
6 ture of a disease or other physical or mental condition, or to hold oneself out or represent that a
7 person is so examining another person. It is not necessary that the examination be made in the
8 presence of such other person; it may be made on information supplied either directly or indirectly
9 by such other person.

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

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

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

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

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

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

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

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

33 (12) "Physician" means any person who holds a degree of Doctor of Medicine, [or] Doctor of
34 Osteopathy **or Doctor of Podiatric Medicine, is licensed by the board and is working within**
35 **the scope of that license.**

36 (13) "Podiatric physician and surgeon" means a [podiatric] physician [and surgeon] **who holds**
37 **a degree of Doctor of Podiatric Medicine and who is** licensed under ORS 677.805 to 677.855 to
38 treat ailments of the human foot, ankle and tendons directly attached to and governing the function
39 of the foot and ankle.

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

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

45 (16) "Approved school of medicine" means a school offering a full-time resident program of study

1 in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such
 2 program having been fully accredited or conditionally approved by the Liaison Committee on Med-
 3 ical Education, or its successor agency, or the American Osteopathic Association, or its successor
 4 agency, or having been otherwise determined by the board to meet the association standards as
 5 specifically incorporated into board rules.

6 **SECTION 11.** ORS 677.087 is amended to read:

7 677.087. (1) Any physician [*or podiatric physician and surgeon*] having agreed with a patient to
 8 perform any surgical operation or procedure[,] shall perform the surgery personally or, prior to
 9 surgery, shall inform the patient that the physician [*or podiatric physician and surgeon*] will not be
 10 performing the surgery.

11 (2) This section [*shall*] **does** not apply when the physician [*or podiatric physician and surgeon*],
 12 because of an emergency, cannot personally notify the patient that the physician [*or podiatric phy-*
 13 *sician and surgeon*] will not be performing the surgery.

14 **SECTION 12.** ORS 677.095 is amended to read:

15 677.095. (1) A physician [*or podiatric physician and surgeon*] licensed to practice medicine or
 16 podiatry by the Board of Medical Examiners for the State of Oregon has the duty to use that degree
 17 of care, skill and diligence that is used by ordinarily careful physicians [*or podiatric physicians and*
 18 *surgeons*] in the same or similar circumstances in the community of the physician [*or podiatric phy-*
 19 *sician and surgeon*] or a similar community.

20 (2) In any suit, action or arbitration seeking damages for professional liability from a health
 21 care provider, no issue [*shall*] **may** be precluded on the basis of a default, stipulation, agreement
 22 or any other outcome at any stage of an investigation or an administrative proceeding, including
 23 but not limited to a final order.

24 **SECTION 13.** ORS 677.097 is amended to read:

25 677.097. (1) In order to obtain the informed consent of a patient, a physician [*or podiatric phy-*
 26 *sician and surgeon*] shall explain the following:

- 27 (a) In general terms the procedure or treatment to be undertaken;
- 28 (b) That there may be alternative procedures or methods of treatment, if any; and
- 29 (c) That there are risks, if any, to the procedure or treatment.

30 (2) After giving the explanation specified in subsection (1) of this section, the physician [*or*
 31 *podiatric physician and surgeon*] shall ask the patient if the patient wants a more detailed explana-
 32 tion. If the patient requests further explanation, the physician [*or podiatric physician and surgeon*]
 33 shall disclose in substantial detail the procedure, the viable alternatives and the material risks un-
 34 less to do so would be materially detrimental to the patient. In determining that further explanation
 35 would be materially detrimental the physician [*or podiatric physician and surgeon*] shall give due
 36 consideration to the standards of practice of reasonable [*medical or podiatric*] practitioners in the
 37 same or a similar community under the same or similar circumstances.

38 **SECTION 14.** ORS 677.188 is amended to read:

39 677.188. As used in ORS 677.190, unless the context requires otherwise:

40 (1) “Fraud or misrepresentation” means the intentional misrepresentation or misstatement of a
 41 material fact, concealment of or failure to make known any material fact, or any other means by
 42 which misinformation or a false impression knowingly is given.

43 (2) “Fraudulent claim” means a claim submitted to any patient, insurance or indemnity associ-
 44 ation, company or individual for the purpose of gaining compensation[, *which*] **if** the person making
 45 the claim knows **the claim** to be false.

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

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

5 (a) Any conduct or practice contrary to recognized standards of ethics of the medical or
 6 podiatric profession or any conduct or practice [*which*] **that** does or might constitute a danger to
 7 the health or safety of a patient or the public or any conduct, practice or condition [*which*] **that**
 8 does or might impair a physician’s [*or podiatric physician and surgeon’s*] ability safely and skillfully
 9 to practice medicine or podiatry;

10 (b) Willful performance of any surgical or medical treatment [*which*] **that** is contrary to ac-
 11 ceptable medical standards; and

12 (c) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic
 13 studies; administration of unnecessary treatment; employment of outmoded, unproved or unscientific
 14 treatments; failure to obtain consultations when failing to do so is not consistent with the standard
 15 of care; or otherwise utilizing medical service for diagnosis or treatment [*which*] **that** is or may be
 16 considered inappropriate or unnecessary.

17 **SECTION 15.** ORS 677.265 is amended to read:

18 677.265. In addition to any other powers granted by this chapter, the Board of Medical Exam-
 19 iners for the State of Oregon may:

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

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

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

32 (c) Enforcing the provisions of this chapter and exercising general supervision over the practice
 33 of medicine and podiatry within this state. In determining whether to discipline a licensee for a
 34 standard of care violation, the board shall determine whether the licensee used that degree of care,
 35 skill and diligence that is used by ordinarily careful physicians [*or podiatric physicians and*
 36 *surgeons*] in the same or similar circumstances in the community of the physician [*or podiatric phy-*
 37 *sician and surgeon*] or a similar community.

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

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

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

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

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

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

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

14 (9) Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas
 15 in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are rea-
 16 sonably necessary to carry out its duties under this chapter.

17 **SECTION 16.** ORS 677.450 is amended to read:

18 677.450. The Board of Medical Examiners may release information received under ORS 441.820
 19 concerning the revocation or restriction of a physician's [*or podiatric physician and surgeon's*] ac-
 20 tivities at a health care facility to any other health care facility licensed under ORS 441.015 to
 21 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 at which
 22 that physician [*or podiatric physician and surgeon*] holds or has applied for staff privileges or other
 23 right to practice medicine or podiatry at the facility.

24 **SECTION 17.** ORS 677.805 is amended to read:

25 677.805. As used in ORS 677.805 to 677.855:

26 (1) "Ankle" means the tibial plafond and its posterolateral border or posterior malleolus, the
 27 medial malleolus, the distal fibula or lateral malleolus, and the talus.

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

29 (3) "Council" means the Advisory Council on Podiatry.

30 (4) "Podiatric physician and surgeon" means a [*podiatric*] physician [*and surgeon*] whose practice
 31 is limited to treating ailments of the human foot, ankle and tendons directly attached to and gov-
 32 erning the function of the foot and ankle.

33 (5) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments
 34 of the human foot, ankle and tendons directly attached to and governing the function of the foot and
 35 ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is
 36 performed in a hospital certified in the manner described in ORS 441.055 (2) or in an ambulatory
 37 surgical center certified by the Department of Human Services and is under the supervision of or
 38 in collaboration with a [*physician licensed to practice*] **doctor of medicine or osteopathy licensed**
 39 by the Board of Medical Examiners for the State of Oregon. "Podiatry" does not include the ad-
 40 ministration of general or spinal anesthetics or the amputation of the entire foot.

41 **SECTION 18.** ORS 677.855 is amended to read:

42 677.855. (1) An advisory council to consist of five persons and to be known as the Advisory
 43 Council on Podiatry hereby is created to advise the Board of Medical Examiners for the State of
 44 Oregon in carrying out the purposes and enforcing the provisions of ORS 677.805 to 677.855. Mem-
 45 bers of the council shall be appointed for three-year terms, but none shall serve more than three

1 consecutive terms without the lapse of at least one term.

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

3 (a) Three shall be [*podiatrists*] **podiatric physicians and surgeons** who have been residents of
 4 this state for at least two years and have held licenses as [*podiatrists*] **podiatric physicians and**
 5 **surgeons** for no less than two years.

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

7 (3) The board shall appoint as the fifth member of the council a member of the board who [*is*
 8 *also a physician*] **holds a degree of Doctor of Medicine or Doctor of Osteopathy.**

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

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

13 (6) Not later than February 1 of each year, the Oregon Podiatric Medical Association shall
 14 nominate three qualified [*podiatrists*] **podiatric physicians and surgeons** for appointment to the
 15 vacancy under subsection (2)(a) of this section of the member of the council whose term expires in
 16 that year, and shall certify its nominees to the Governor. The Governor may make the appointment
 17 from among the nominees whose names were submitted by the Oregon Podiatric Medical Associ-
 18 ation.

19 (7) Members are entitled to compensation and expenses as provided for board members in ORS
 20 677.280 (2).

21 (8) The board may delegate to the council any of its duties under ORS 677.805 to 677.855.

22 **SECTION 19.** ORS 688.130 is amended to read:

23 688.130. (1) Unless the education and training requirements described in ORS 688.134 have been
 24 met, no licensed physical therapist or person who holds a temporary permit issued under ORS
 25 688.110 shall use physical therapy upon any person except where there has been:

26 (a) Prior evaluation of dysfunction of the person by the physical therapist by the use of recog-
 27 nized evaluative physical therapy tests and procedures; and either

28 (b) Diagnosis or referral by a physician [*or a podiatric physician and surgeon*] licensed under
 29 ORS chapter 677 by the Board of Medical Examiners for the State of Oregon, a dentist licensed by
 30 the Oregon Board of Dentistry, a physician assistant licensed under ORS chapter 677, a chiropractic
 31 physician licensed under ORS chapter 684 by the State Board of Chiropractic Examiners, a
 32 naturopathic physician licensed under ORS chapter 685 by the Board of Naturopathic Examiners or
 33 a nurse practitioner certified under ORS 678.375; or

34 (c) Diagnosis or referral made in another state by a medical doctor, osteopathic physician or
 35 podiatric physician and surgeon licensed by an authority of that state similar to the Board of Med-
 36 ical Examiners for the State of Oregon or by a dentist licensed by an authority of that state similar
 37 to the Oregon Board of Dentistry.

38 (2) [*No*] **A** person [*shall*] **may not** practice as a physical therapist assistant unless the person
 39 is licensed under ORS 688.090 and such practice is solely under the supervision and direction of a
 40 physical therapist.

41 **SECTION 20.** ORS 688.132 is amended to read:

42 688.132. (1) If a licensed physical therapist administers physical therapy to a person as author-
 43 ized in ORS 688.130 (1)(a), the physical therapist must immediately refer the person to a medical
 44 doctor, osteopathic physician, chiropractic physician, podiatric physician and surgeon, naturopathic
 45 physician, dentist, physician assistant or nurse practitioner if:

1 (a) Signs and symptoms are present that require treatment or diagnosis by such providers or for
 2 which physical therapy is contraindicated or for which treatment is outside the knowledge of the
 3 physical therapist or scope of practice of physical therapy; or

4 (b) The physical therapist continues therapy and 30 days have passed since the initial physical
 5 therapy treatment has been administered, unless:

6 (A) The individual is a child or a student eligible for special education, as defined by state or
 7 federal law, and is being seen pursuant to the child's or the student's individual education plan or
 8 individual family service plan;

9 (B) The individual is a student athlete at a public or private school, college or university and
 10 is seeking treatment in that role as athlete; or

11 (C) The individual is a resident of a long term care facility as defined in ORS 442.015, a resi-
 12 dential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an
 13 intermediate care facility for mental retardation pursuant to federal regulations.

14 (2) Notwithstanding any provision of ORS 742.520 to 742.542, personal injury protection benefits
 15 are not required to be paid for physical therapy treatment of a person covered by the applicable
 16 insurance policy unless the person is referred to the physical therapist by a [*licensed*] physician[,
 17 *podiatric physician and surgeon*] **licensed under ORS chapter 677**, naturopathic physician, dentist,
 18 physician's assistant or nurse practitioner.

19 **SECTION 21.** ORS 688.230 is amended to read:

20 688.230. (1) Any licensed health facility, licensed physical therapist, licensed physical therapist
 21 assistant, [*the Oregon Physical Therapy Association or*] physician licensed under ORS chapter 677[,
 22 *podiatric physician and surgeon*] or dentist **or the Oregon Physical Therapy Association** shall, and
 23 any other person may, report suspected violations of ORS 688.010 to 688.220 to the Physical Thera-
 24 pist Licensing Board. The reports are confidential as provided under ORS 676.175.

25 (2) Any person who reports or provides information to the board under subsection (1) of this
 26 section and who provides information in good faith [*shall not be*] **is not** subject to an action for civil
 27 damages as a result thereof.

28 **SECTION 22.** ORS 742.400 is amended to read:

29 742.400. (1) As used in this section, "claim" means:

30 (a) A written request for payment for injury alleged to have been caused by professional
 31 negligence that is made by or on behalf of the injured person to an insurer; or

32 (b) A written notification to an insurer by an insured that a person has requested payment from
 33 the insured for injury alleged to have been caused by professional negligence.

34 (2) Any insurer that issues or underwrites professional liability insurance in this state to any
 35 physician [*or podiatric physician and surgeon*] licensed by the Board of Medical Examiners for the
 36 State of Oregon, to any optometrist registered by the Oregon Board of Optometry, to any dentist
 37 or dental hygienist licensed by the Oregon Board of Dentistry or to any naturopath licensed by the
 38 Board of Naturopathic Examiners shall report any claim against the insured for alleged professional
 39 negligence to the appropriate licensing board within 30 days after receiving notice of the claim from
 40 the insured or any other person.

41 (3) The report required by subsection (2) of this section shall be kept confidential by all persons
 42 who make or receive it until the case is settled or closed and shall include:

43 (a) The name of the insured;

44 (b) The name of the person making the claim;

45 (c) The reason or reasons for which the claim is made; and

1 (d) Any additional information the Director of the Department of Consumer and Business Ser-
 2 vices considers necessary.

3 (4) Any insurer required to report to a board under this section shall also be required to advise
 4 the appropriate licensing board of any settlements, awards or judgments against a physician,
 5 optometrist, dentist or dental hygienist or naturopath within 30 days after the date of the settlement,
 6 award or judgment.

7 (5) The appropriate board shall provide copies of all reports required by subsections (2) and (4)
 8 of this section to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595,
 9 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privi-
 10 leges to the person against whom the claim was filed.

11 **SECTION 23.** ORS 743.803 is amended to read:

12 743.803. (1) A medical services contract may not require the provider, as an element of the
 13 contract or as a condition of compensation for services, to agree:

14 (a) In the event of alleged improper medical treatment of a patient, to indemnify the other party
 15 to the medical services contract for any damages, awards or liabilities including but not limited to
 16 judgments, settlements, attorney fees, court costs and any associated charges incurred for any rea-
 17 son other than the negligence or intentional act of the provider or the provider's employees;

18 (b) To charge the other party to the medical services contract a rate for services rendered
 19 pursuant to the medical services contract that is no greater than the lowest rate that the provider
 20 charges for the same service to any other person;

21 (c) To deny care to a patient because of a determination made pursuant to the medical services
 22 contract that the care is not covered or is experimental, or to deny referral of a patient to another
 23 provider for the provision of such care, if the patient is informed that the patient will be responsible
 24 for the payment of such noncovered, experimental or referral care and the patient nonetheless de-
 25 sires to obtain such care or referral; or

26 (d) Upon the provider's withdrawal from or termination or nonrenewal of the medical services
 27 contract, not to treat or solicit a patient even at that patient's request and expense.

28 (2) A medical services contract shall:

29 (a) Grant to the provider adequate notice and hearing procedures, or such other procedures as
 30 are fair to the provider under the circumstances, prior to termination or nonrenewal of the medical
 31 services contract when such termination or nonrenewal is based upon issues relating to the quality
 32 of patient care rendered by the provider.

33 (b) Set forth generally the criteria used by the other party to the medical services contract for
 34 the termination or nonrenewal of the medical services contract.

35 (c) Entitle the provider to an annual accounting accurately summarizing the financial trans-
 36 actions between the parties to the medical services contract for that year.

37 (d) Allow the provider to withdraw from the care of a patient when, in the professional judgment
 38 of the provider, it is in the best interest of the patient to do so.

39 (e) Provide that a doctor of medicine or osteopathy licensed under ORS chapter 677 shall be
 40 retained by the other party to the medical services contract and shall be responsible for all final
 41 medical and mental health decisions relating to coverage or payment made pursuant to the medical
 42 services contract.

43 (f) Provide that a physician, **as defined under ORS 677.010**, who is practicing in conformity
 44 with ORS 677.095 may advocate a decision, policy or practice without being subject to termination
 45 or penalty for the sole reason of such advocacy.

1 (g)(A) Entitle the party to the medical services contract who is being reimbursed for the pro-
 2 vision of health care services on a basis that includes financial risk withholds, or the party's rep-
 3 resentative, to a full accounting of health benefits claims data and related financial information on
 4 no less than a quarterly basis by the party to a medical service contract who has made reimburse-
 5 ment, as follows:

6 (i) The data shall include all pertinent information relating to the health care services provided,
 7 including related provider and patient information, reimbursements made and amounts withheld un-
 8 der the financial risk withhold provisions of the medical services contract for the period of time
 9 under reconciliation and settlement between the parties.

10 (ii) Any reconciliation and settlement undertaken pursuant to a medical services contract shall
 11 be based directly and exclusively upon data provided to the party who is being reimbursed for the
 12 provision of health care services.

13 (iii) All data, including supplemental information or documentation, necessary to finalize the
 14 reconciliation and settlement provisions of a medical services contract relating to financial risk
 15 withholds shall be provided to the party who is being reimbursed for the provision of health care
 16 services no later than 30 days prior to finalizing the reconciliation and settlement.

17 (B) Nothing in this paragraph shall be construed to prevent parties to a medical services con-
 18 tract from mutually agreeing to alternative reconciliation and settlement policies and procedures.

19 (h) Provide that when continuity of care is required to be provided under a health benefit plan
 20 by ORS 743.854, the insurer and the individual provider shall provide continuity of care to enrollees
 21 as provided in ORS 743.854.

22 (3) The other party to a medical services contract shall not:

23 (a) Refer to other documents or instruments in a contract unless the nonprovider party agrees
 24 to make available to the provider for review a copy of the documents or instruments within 72 hours
 25 of request; or

26 (b) Provide as an element of a contract with a third party relating to the provision of medical
 27 services to a patient of the provider that the provider's patient may not sue or otherwise recover
 28 from the nonprovider party, or must hold the nonprovider party harmless for, any and all expenses,
 29 damages, awards or liabilities that arise from the management decisions, utilization review pro-
 30 visions or other policies or determinations of the nonprovider party that have an impact on the
 31 provider's treatment decisions and actions with regard to the patient.

32 (4) An insurer, independent practice association, medical or mental health clinic or other party
 33 to a medical services contract shall provide the criteria for selection of parties to future medical
 34 services contracts upon the request of current or prospective parties.

35 **SECTION 24.** ORS 58.015 is amended to read:

36 58.015. As used in this chapter, unless the context requires otherwise:

37 (1) "Foreign professional corporation" means a professional corporation organized under laws
 38 other than the laws of this state.

39 (2) "License" includes a license, certificate of registration, permit or other legal authorization
 40 required by law as a condition precedent to the rendering of professional service or services within
 41 this state.

42 (3) "Oregon Business Corporation Act" has the same meaning given that term in ORS 60.951.

43 (4) "Practicing medicine" has the meaning given that term in ORS 677.085.

44 (5) "Professional" means:

45 (a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;

- 1 (b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;
- 2 (c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;
- 3 (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;
- 4 (e) Dentists licensed under ORS chapter 679 or the laws of another state;
- 5 (f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;
- 6 (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;
- 7 (h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;
- 8 (i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;
- 9 (j) Physicians licensed under ORS chapter 677 or the laws of another state;
- 10 [(k) Podiatrists licensed under ORS chapter 677 or the laws of another state;]
- 11 [(L)] (k) Radiologic technologists licensed under ORS 688.405 to 688.605 or the laws of another
- 12 state;
- 13 [(m)] (L) Real estate appraisers licensed under ORS chapter 674 or the laws of another state;
- 14 and
- 15 [(n)] (m) Other persons providing to the public types of personal service or services substan-
- 16 tially similar to those listed in paragraphs (a) to [(m)] (L) of this subsection that may be lawfully
- 17 rendered only pursuant to a license.
- 18 (6) "Professional corporation" or "domestic professional corporation" means a corporation or-
- 19 ganized under this chapter for the specific purpose of rendering professional service or services and
- 20 for such other purposes provided under this chapter.
- 21 (7) "Professional service" means personal service or services rendered in this state to the public
- 22 which may be lawfully rendered only pursuant to a license by a professional.
- 23 (8) "Regulatory board" means the governmental agency of the State of Oregon required or au-
- 24 thorized by law to license and regulate the rendering of a professional service or services for which
- 25 a professional corporation is organized.
- 26 **SECTION 25.** ORS 67.005 is amended to read:
- 27 67.005. As used in this chapter:
- 28 (1) "Business" includes every trade, occupation, profession and commercial activity.
- 29 (2) "Debtor in bankruptcy" means a person who is the subject of:
- 30 (a) An order for relief under Title 11 of the United States Code or a comparable order under a
- 31 successor statute of general application; or
- 32 (b) A comparable order under federal, state or foreign law governing insolvency.
- 33 (3) "Dissociated partner" means a partner with respect to whom an event specified in ORS
- 34 67.220 has occurred.
- 35 (4) "Distribution" means a transfer of money or other property from a partnership to a partner
- 36 in the partner's capacity as a partner or to the partner's transferee.
- 37 (5) "Foreign limited liability partnership" means a partnership that:
- 38 (a) Is formed under laws other than the law of this state; and
- 39 (b) Has the status of a limited liability partnership under those laws.
- 40 (6) "Limited liability partnership" means a partnership that has registered under ORS 67.590,
- 41 and has not registered or qualified in any other jurisdiction other than as a foreign limited liability
- 42 partnership.
- 43 (7) "Partnership" means an association of two or more persons to carry on as co-owners a
- 44 business for profit created under ORS 67.055, predecessor law, or comparable law of another juris-
- 45 diction. A partnership includes a limited liability partnership.

1 (8) "Partnership agreement" means the agreement, whether written, oral or implied, among the
2 partners concerning the partnership, including amendments to the partnership agreement.

3 (9) "Partnership at will" means a partnership in which the partners have not agreed to remain
4 partners until the expiration of a definite term or the completion of a particular undertaking.

5 (10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's
6 interests in the partnership, including the partner's transferable interest and all management and
7 other rights.

8 (11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited
9 liability company, association, joint venture, government, governmental subdivision, agency,
10 instrumentality or any other legal or commercial entity.

11 (12) "Professional" means:

12 (a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;

13 (b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;

14 (c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;

15 (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;

16 (e) Dentists licensed under ORS chapter 679 or the laws of another state;

17 (f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;

18 (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;

19 (h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;

20 (i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;

21 (j) Physicians licensed under ORS chapter 677 or the laws of another state;

22 [(k) Podiatrists licensed under ORS chapter 677 or the laws of another state;]

23 [(L)] (k) Radiologic technologists licensed under ORS 688.405 to 688.605 or the laws of another
24 state;

25 [(m)] (L) Real estate appraisers licensed under ORS chapter 674 or the laws of another state;

26 and

27 [(n)] (m) Other persons providing to the public types of personal service or services substan-
28 tially similar to those listed in paragraphs (a) to [(m)] (L) of this subsection that may be lawfully
29 rendered only pursuant to a license.

30 (13) "Professional service" means the service rendered by a professional.

31 (14) "Property" means all property, real, personal or mixed, tangible or intangible, or any in-
32 terest therein.

33 (15) "State" means a state of the United States, the District of Columbia, the Commonwealth
34 of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

35 (16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, encumbrance, cre-
36 ation of a security interest and any other disposition.

37 (17) "Transferable interest of a partner in the partnership" means the partner's share of the
38 profits and losses of the partnership and the partner's right to receive distributions.

39 **SECTION 26. ORS 677.095, 677.097 and 677.805 to 677.855 are added to and made a part of**
40 **ORS chapter 677.**

41