

House Bill 2376

Sponsored by Representative PRUSAK (Pre-session filed.)

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 health care provider who prescribes opioid to offer prescription for naloxone, or similar drug, and educational material under specified circumstances. Defines "health care provider." Allows health professional regulatory board to impose discipline for violation.

Becomes operative on January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to naloxone; creating new provisions; amending ORS 677.190, 678.111 and 679.140; and
3 prescribing an effective date.

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

5 **SECTION 1. (1) As used in this section:**

6 (a) "Health care provider" means a dentist licensed under ORS chapter 679, a physician
7 licensed under ORS chapter 677 or a nurse practitioner licensed under ORS 678.375 to 678.390.

8 (b) "Opioid" means a natural, synthetic or semisynthetic chemical that interacts with
9 opioid receptors on nerve cells in the body and brain to reduce the intensity of pain signals
10 and feelings of pain.

11 (c) "Opioid overdose" means a medical condition that causes depressed consciousness and
12 mental functioning, decreased movement, depressed respiratory function and the impairment
13 of the vital functions as a result of ingesting opioids in an amount larger than can be phys-
14 ically tolerated.

15 (2) A health care provider that prescribes an opioid to a patient shall offer to the patient
16 a prescription for naloxone or any other drug approved by the United States Food and Drug
17 Administration for the complete or partial reversal of opioid overdose, if any of the following
18 conditions are present:

19 (a) The patient is prescribed an opioid in a dosage of 50 milligram morphine equivalents
20 per day or higher;

21 (b) The patient is concurrently prescribed benzodiazepine and an opioid; or

22 (c) The patient has an increased risk for opioid overdose because of a history of overdose
23 or substance use disorder or is at risk of returning to a high dose of prescribed opioids to
24 which the patient is no longer tolerant.

25 (3) A health care provider who offers a prescription for naloxone or other drug for
26 overdose reversal described in subsection (2) of this section shall provide to the patient, or
27 patient's guardian if the patient is a minor, educational material about opioid overdose and
28 the use of naloxone or other drug for overdose reversal described in subsection (2) of this
29 section.

30 (4) The requirements of this section do not apply when a prescription for an opioid is

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 written for an individual who is in a hospice program, as defined in ORS 443.850, or for an
 2 adult in custody of the Department of Corrections or an individual in custody of the Oregon
 3 Youth Authority.

4 (5)(a) The Oregon Board of Dentistry may adopt rules, in consultation with the State
 5 Board of Pharmacy, regarding the prescription of naloxone or other drug for overdose re-
 6 versal described in subsection (2) of this section by a physician.

7 (b) The Oregon Medical Board may adopt rules, in consultation with the State Board of
 8 Pharmacy, regarding the prescription of naloxone or other drug for overdose reversal de-
 9 scribed in subsection (2) of this section by a physician.

10 (c) The Oregon State Board of Nursing may adopt rules, in consultation with the State
 11 Board of Pharmacy, regarding the prescription of naloxone or other drug for overdose re-
 12 versal described in subsection (2) of this section by a nurse practitioner.

13 **SECTION 2.** ORS 677.190 is amended to read:

14 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to
 15 practice for any of the following reasons:

16 (1)(a) Unprofessional or dishonorable conduct.

17 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-
 18 self constitute unprofessional conduct. For purposes of this paragraph:

19 (A) "Alternative medical treatment" means:

20 (i) A treatment that the treating physician, based on the physician's professional experience, has
 21 an objective basis to believe has a reasonable probability for effectiveness in its intended use even
 22 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-
 23 erally recognized or standard treatment or lacks the approval of the United States Food and Drug
 24 Administration;

25 (ii) A treatment that is supported for specific usages or outcomes by at least one other physician
 26 licensed by the Oregon Medical Board; and

27 (iii) A treatment that poses no greater risk to a patient than the generally recognized or
 28 standard treatment.

29 (B) "Alternative medical treatment" does not include use by a physician of controlled substances
 30 in the treatment of a person for chemical dependency resulting from the use of controlled sub-
 31 stances.

32 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-
 33 ization, independent practice association, preferred provider organization or other medical service
 34 provider organization may contract for patients on behalf of physicians.

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

37 (4) Obtaining any fee by fraud or misrepresentation.

38 (5) Willfully or negligently divulging a professional secret without the written consent of the
 39 patient.

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

43 (7) Impairment as defined in ORS 676.303.

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

1 (9) Making statements that the licensee knows, or with the exercise of reasonable care should
 2 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or
 3 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-
 4 ment of any disease or other condition of the human body or mind.

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

7 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the
 8 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-
 9 son is not licensed.

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

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

14 (14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
 15 the board may order a licensee to submit to a standardized competency examination. The licensee
 16 shall have access to the result of the examination and to the criteria used for grading and evaluat-
 17 ing the examination. If the examination is given orally, the licensee shall have the right to have the
 18 examination recorded.

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

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

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

26 (18) Failing to report the change of the location of practice of the licensee as required by ORS
 27 677.172.

28 (19) Imprisonment as provided in ORS 677.225.

29 (20) Making a fraudulent claim.

30 (21)(a) Performing psychosurgery.

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

36 (22) Refusing an invitation for an informal interview with the board requested under ORS
 37 677.415.

38 (23) Violation of the federal Controlled Substances Act.

39 (24) Prescribing controlled substances without a legitimate medical purpose, or prescribing
 40 controlled substances without following accepted procedures for examination of patients, or pre-
 41 scribing controlled substances without following accepted procedures for record keeping.

42 (25) Providing written documentation for purposes of ORS 475B.797 without having legitimately
 43 diagnosed a debilitating medical condition, as defined in ORS 475B.791, or without having followed
 44 accepted procedures for the examination of patients or for keeping records.

45 (26) Failure by the licensee to report to the board any adverse action taken against the licensee

1 by another licensing jurisdiction or any peer review body, health care institution, professional or
2 medical society or association, governmental agency, law enforcement agency or court for acts or
3 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
4 in this section.

5 (27) Failure by the licensee to notify the board of the licensee's voluntary resignation from the
6 staff of a health care institution or voluntary limitation of a licensee's staff privileges at the insti-
7 tution if that action occurs while the licensee is under investigation by the institution or a com-
8 mittee thereof for any reason related to medical incompetence, unprofessional conduct, physical
9 incapacity or impairment.

10 **(28) Violation of section 1 of this 2021 Act.**

11 **SECTION 3.** ORS 678.111 is amended to read:

12 678.111. In the manner prescribed in ORS chapter 183 for a contested case:

13 (1) Issuance of the license to practice nursing, whether by examination or by indorsement, of
14 any person may be refused or the license may be revoked or suspended or the licensee may be
15 placed on probation for a period specified by the Oregon State Board of Nursing and subject to such
16 condition as the board may impose or may be issued a limited license or may be reprimanded or
17 censured by the board, for any of the following causes:

18 (a) Conviction of the licensee of crime where such crime bears demonstrable relationship to the
19 practice of nursing. A copy of the record of such conviction, certified to by the clerk of the court
20 entering the conviction, shall be conclusive evidence of the conviction.

21 (b) Gross incompetence or gross negligence of the licensee in the practice of nursing at the level
22 for which the licensee is licensed.

23 (c) Any willful fraud or misrepresentation in applying for or procuring a license or renewal
24 thereof.

25 (d) Fraud or deceit of the licensee in the practice of nursing or in admission to such practice.

26 (e) Impairment as defined in ORS 676.303.

27 (f) Conduct derogatory to the standards of nursing.

28 (g) Violation of any provision of ORS 678.010 to 678.448 **or section 1 of this 2021 Act** or rules
29 adopted *[thereunder]* **under ORS 678.010 to 678.448 or section 1 of this 2021 Act.**

30 (h) Revocation or suspension of a license to practice nursing by any state or territory of the
31 United States, or any foreign jurisdiction authorized to issue nursing credentials whether or not that
32 license or credential was relied upon in issuing that license in this state. A certified copy of the
33 order of revocation or suspension shall be conclusive evidence of such revocation or suspension.

34 (i) Physical condition that makes the licensee unable to conduct safely the practice for which
35 the licensee is licensed.

36 (j) Violation of any condition imposed by the board when issuing a limited license.

37 (2) A license may be denied or suspended or revoked for the reasons stated in subsection (1) of
38 this section.

39 (3) A license in inactive status may be denied or suspended or revoked for the reasons stated
40 in subsection (1) of this section.

41 (4) A license in retired status may be denied or suspended or revoked for any cause stated in
42 subsection (1) of this section.

43 **SECTION 4.** ORS 679.140 is amended to read:

44 679.140. (1) The Oregon Board of Dentistry may discipline as provided in this section any person
45 licensed to practice dentistry in this state for any of the following causes:

1 (a) Conviction of any violation of the law for which the court could impose a punishment if the
 2 board makes the finding required by ORS 670.280. The record of conviction or a certified copy
 3 thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered,
 4 is conclusive evidence of the conviction.

5 (b) Renting or lending a license or diploma of the dentist to be used as the license or diploma
 6 of another person.

7 (c) Unprofessional conduct.

8 (d) Any violation of this chapter or ORS 680.010 to 680.205 **or section 1 of this 2021 Act**, of
 9 rules adopted pursuant to this chapter or ORS 680.010 to 680.205 **or section 1 of this 2021 Act** or
 10 of an order issued by the board.

11 (e) Engaging in or permitting the performance of unacceptable patient care by the dentist or by
 12 any person working under the supervision of the dentist due to a deliberate or negligent act or
 13 failure to act by the dentist, regardless of whether actual injury to the patient is established.

14 (f) Incapacity to practice safely.

15 (2) "Unprofessional conduct" as used in this chapter includes but is not limited to the following:

16 (a) Obtaining any fee by fraud or misrepresentation.

17 (b) Willfully betraying confidences involved in the patient-dentist relationship.

18 (c) Employing, aiding, abetting or permitting any unlicensed personnel to practice dentistry or
 19 dental hygiene.

20 (d) Making use of any advertising statements of a character tending to deceive or mislead the
 21 public or that are untruthful.

22 (e) Impairment as defined in ORS 676.303.

23 (f) Obtaining or attempting to obtain a controlled substance in any manner proscribed by the
 24 rules of the board.

25 (g) Prescribing or dispensing drugs outside the scope of the practice of dentistry or in a manner
 26 that impairs the health and safety of an individual.

27 (h) Disciplinary action by a state licensing or regulatory agency of this or another state re-
 28 garding a license to practice dentistry, dental hygiene or any other health care profession when, in
 29 the judgment of the board, the act or conduct resulting in the disciplinary action bears a demon-
 30 strable relationship to the ability of the licensee or applicant to practice dentistry or dental hygiene
 31 in accordance with the provisions of this chapter. A certified copy of the record of the disciplinary
 32 action is conclusive evidence of the disciplinary action.

33 (3) The proceedings under this section may be taken by the board from the matters within its
 34 knowledge or may be taken upon the information of another, but if the informant is a member of the
 35 board, the other members of the board shall constitute the board for the purpose of finding judgment
 36 of the accused.

37 (4) In determining what constitutes unacceptable patient care, the board may take into account
 38 all relevant factors and practices, including but not limited to the practices generally and currently
 39 followed and accepted by persons licensed to practice dentistry in this state, the current teachings
 40 at accredited dental schools, relevant technical reports published in recognized dental journals and
 41 the desirability of reasonable experimentation in the furtherance of the dental arts.

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

44 (a) Suspend judgment.

45 (b) Place a licensee on probation.

- 1 (c) Suspend a license to practice dentistry in this state.
- 2 (d) Revoke a license to practice dentistry in this state.
- 3 (e) Place limitations on a license to practice dentistry in this state.
- 4 (f) Refuse to renew a license to practice dentistry in this state.
- 5 (g) Accept the resignation of a licensee to practice dentistry in this state.
- 6 (h) Assess a civil penalty.
- 7 (i) Reprimand a licensee.
- 8 (j) Impose any other disciplinary action the board in its discretion finds proper, including as-
- 9 sessment of the costs of the disciplinary proceedings as a civil penalty.
- 10 (6) If the board places any person upon probation as set forth in subsection (5)(b) of this section,
- 11 the board may determine and may at any time modify the conditions of the probation and may in-
- 12 clude among them any reasonable condition for the purpose of protection of the public and for the
- 13 purpose of the rehabilitation of the probationer or both. Upon expiration of the term of probation,
- 14 further proceedings shall be abated by the board if the person holding the license furnishes the
- 15 board with evidence that the person is competent to practice dentistry and has complied with the
- 16 terms of probation. If the evidence fails to establish competence to the satisfaction of the board or
- 17 if the evidence shows failure to comply with the terms of the probation, the board may revoke or
- 18 suspend the license.
- 19 (7) If a license to practice dentistry in this state is suspended, the person holding the license
- 20 may not practice during the term of suspension. Upon the expiration of the term of suspension, the
- 21 license shall be reinstated by the board if the board finds, based upon evidence furnished by the
- 22 person, that the person is competent to practice dentistry and has not practiced dentistry in this
- 23 state during the term of suspension. If the evidence fails to establish to the satisfaction of the board
- 24 that the person is competent or if any evidence shows the person has practiced dentistry in this
- 25 state during the term of suspension, the board may revoke the license after notice and hearing.
- 26 (8) Upon receipt of a complaint under this chapter or ORS 680.010 to 680.205, the board shall
- 27 conduct an investigation as described under ORS 676.165.
- 28 (9) Information that the board obtains as part of an investigation into licensee or applicant
- 29 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
- 30 licensee or applicant conduct is confidential as provided under ORS 676.175. Notwithstanding ORS
- 31 676.165 to 676.180, the board may disclose confidential information regarding a licensee or an ap-
- 32 plicant to persons who may evaluate or treat the licensee or applicant for drug abuse, alcohol abuse
- 33 or any other health related conditions.
- 34 (10) The board may impose against any person who violates the provisions of this chapter or
- 35 ORS 680.010 to 680.205 or rules of the board a civil penalty of up to \$5,000 for each violation. Any
- 36 civil penalty imposed under this section shall be imposed in the manner provided in ORS 183.745.
- 37 (11) Notwithstanding the expiration, suspension, revocation or surrender of the license, or the
- 38 resignation or retirement of the licensee, the board may:
- 39 (a) Proceed with any investigation of, or any action or disciplinary proceedings against, the
- 40 dentist or dental hygienist; or
- 41 (b) Revise or render void an order suspending or revoking the license.
- 42 (12)(a) The board may continue with any proceeding or investigation for a period not to exceed
- 43 four years from the date of the expiration, suspension, revocation or surrender of the license, or the
- 44 resignation or retirement of the licensee; or
- 45 (b) If the board receives a complaint or initiates an investigation within that four-year period,

1 the board's jurisdiction continues until the matter is concluded by a final order of the board fol-
2 lowing any appeal.

3 (13) Withdrawing the application for license does not close any investigation, action or pro-
4 ceeding against an applicant.

5 **SECTION 5. Section 1 of this 2021 Act and the amendments to ORS 677.190, 678.111 and**
6 **679.140 by sections 2 to 4 of this 2021 Act apply to prescriptions written on and after the**
7 **operative date specified in section 6 of this 2021 Act.**

8 **SECTION 6. (1) Section 1 of this 2021 Act and the amendments to ORS 677.190, 678.111**
9 **and 679.140 by sections 2 to 4 of this 2021 Act become operative on January 1, 2022.**

10 (2) The Oregon Board of Dentistry, the Oregon Medical Board, the Oregon State Board
11 of Nursing and the State Board of Pharmacy may take any action before the operative date
12 specified in subsection (1) of this section that is necessary to enable the boards to exercise,
13 on and after the operative date specified in subsection (1) of this section, all of the duties,
14 functions and powers conferred on the boards by section 1 of this 2021 Act and the amend-
15 ments to ORS 677.190, 678.111 and 679.140 by sections 2 to 4 of this 2021 Act.

16 **SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021**
17 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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