

# Enrolled Senate Bill 39

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CHAPTER .....

## AN ACT

Relating to the Oregon State Board of Nursing; creating new provisions; amending ORS 678.010, 678.036, 678.101, 678.150, 678.375 and 678.390; and prescribing an effective date.

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

**SECTION 1.** ORS 678.010 is amended to read:

678.010. As used in ORS 678.010 to 678.410[, *unless the context requires otherwise*]:

[(1) *“Board” means the Oregon State Board of Nursing.*]

[(2)] (1) “Clinical nurse specialist” means a licensed registered nurse who has been licensed by the [board] **Oregon State Board of Nursing** as qualified to practice the expanded clinical specialty nursing role.

[(3)] (2) “Diagnosing” in the context of the practice of nursing means identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing care.

[(4)] (3) “Human responses” means signs, symptoms and processes that denote the person’s interaction with an actual or potential health problem.

[(5)] (4) “Long term care facility” means a licensed skilled nursing facility or intermediate care facility as those terms are used in ORS 442.015, an adult foster home as defined in ORS 443.705 that has residents over 60 years of age, or a residential care facility, including an assisted living facility, as defined in ORS 443.400.

[(6)] (5) “Nurse practitioner” means a registered nurse who has been licensed by the board as qualified to practice in an expanded specialty role within the practice of nursing.

[(7)] (6) “Physician” means a person licensed to practice under ORS chapter 677.

[(8)(a) *“Practice of nursing” means diagnosing and treating human responses to actual or potential health problems through services such as identification thereof, health teaching, health counseling and providing care supportive to or restorative of life and well-being and including the performance of additional services requiring education and training that are recognized by the nursing profession as proper to be performed by nurses licensed under ORS 678.010 to 678.410 and that are recognized by rules of the board.*]

**(7)(a) “Practice of nursing” means autonomous and collaborative care of persons of all ages, families, groups and communities, sick and well, and in all settings to promote health and safety, including prevention and treatment of illness and management of changes throughout a person’s life.**

(b) “Practice of nursing” includes:

(A) Executing medical orders prescribed by a physician, dentist, clinical nurse specialist, nurse practitioner, certified registered nurse anesthetist or other licensed health care provider licensed or certified by this state and authorized by the board by rule to issue orders for medical treatment; [and]

(B) Providing supervision of nursing assistants[.]; and

**(C) The performance of additional services that:**

**(i) Require education and training; and**

**(ii) Are recognized by the board by rule and the nursing profession as services to be properly performed by a nurse licensed under ORS 678.010 to 678.410.**

(c) "Practice of nursing" does not include the execution of medical orders described in this subsection by a member of the immediate family for another member or by a person designated by or on behalf of a person requiring care as provided by board rule if the person executing the order is not licensed under ORS 678.010 to 678.410.

[9] **(8)** "Practice of practical nursing" means the application of knowledge drawn from basic education in the social and physical sciences in planning and giving nursing care and in assisting persons toward achieving of health and well-being.

[10] **(9)** "Practice of registered nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching and supervising care that promotes the person's optimum health and independence.

[11] **(10)** "Treating" means selection and performance of therapeutic measures essential to the effective execution and management of the nursing care and execution of the prescribed medical orders.

**SECTION 2.** ORS 678.036 is amended to read:

678.036. (1) A nurse who is responsible for supervising nursing assistants shall not be considered to be supervising a nursing assistant who administers [*noninjectable*] medication while the nurse is absent from the facility at which the administration occurs unless the nursing assistant is acting pursuant to specific instructions from the nurse or the nurse fails to leave instructions when the nurse should have done so.

(2) A nurse who is responsible for supervising nursing assistants shall not be subject to an action for civil damages for the failure of a nursing assistant who administers [*noninjectable*] medication to notify the nurse of any patient reaction to the medication perceived by the assistant.

(3) A nurse who delegates the provision of nursing care to another person pursuant to ORS 678.150 shall not be subject to an action for civil damages for the performance of a person to whom nursing care is delegated unless the person is acting pursuant to specific instructions from the nurse or the nurse fails to leave instructions when the nurse should have done so.

**SECTION 3.** ORS 678.101 is amended to read:

678.101. (1) [*Every*] **A** person licensed to practice nursing shall apply **to the Oregon State Board of Nursing** for renewal of the license, other than a limited license, in every second year before [*12:01 a.m.*] **11:59 p.m.** on the anniversary of the birthdate of the person in the odd-numbered year for persons whose birth occurred in an odd-numbered year and in the even-numbered year for persons whose birth occurred in an even-numbered year. Persons whose birthdate anniversary falls on February 29 shall be treated as if the anniversary were March 1.

(2) Each application must be accompanied by a nonrefundable renewal fee payable to the [*Oregon State Board of Nursing*] **board.**

(3) The board may not renew the license of a person licensed to practice nursing unless:

(a) The requirements of subsections (1) and (2) of this section are met; and

(b) Prior to payment of the renewal fee described in subsection (2) of this section the person completes, or provides documentation of previous completion of:

(A) A pain management education program approved by the board and developed in conjunction with the Pain Management Commission established under ORS 413.570; or

(B) An equivalent pain management education program, as determined by the board.

(4) The license of any person not renewed for failure to comply with subsections (1) to (3) of this section is expired and the person shall be considered delinquent and is subject to any delinquent fee established under ORS 678.410.

(5) A registered nurse who has been issued a license as a nurse practitioner, clinical nurse specialist or certified registered nurse anesthetist shall apply as specified by the board by rule for renewal of the license and for renewal of the [*prescriptive privileges*] **authority to prescribe** in every second year before [*12:01 a.m.*] **11:59 p.m.** on the anniversary of the birthdate, as determined for the person's license to practice nursing.

**SECTION 4.** ORS 678.150 is amended to read:

678.150. (1) The Oregon State Board of Nursing shall elect annually from its number a president, a president-elect and a secretary, each of whom shall serve until a successor is elected and qualified. The board shall meet on the call of the president or as the board may require. Special meetings of the board may be called by the secretary upon the request of any three members. Five members constitute a quorum.

(2) The board shall adopt a seal which shall be in the care of the executive director.

(3) The board shall keep a record of all its proceedings and of all persons licensed and schools or programs approved under ORS 678.010 to 678.448. The records must at all reasonable times be open to public scrutiny.

(4) The executive director of the board may hire and define the duties of employees as necessary to carry out the provisions of ORS 678.010 to 678.448. The executive director, with approval of the board, may employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board.

(5) The board shall determine the qualifications of applicants for a license to practice nursing in this state and establish educational and professional standards for such applicants subject to laws of this state.

(6) The board shall:

(a) Exercise general supervision over the practice of nursing in this state.

(b) Prescribe standards and approve curricula for nursing education programs preparing persons for licensing under ORS 678.010 to 678.448.

(c) Provide for surveys of nursing education programs as may be necessary.

(d) Approve nursing education programs that meet the requirements of ORS 678.010 to 678.448 and of the board.

(e) Deny or withdraw approval from nursing education programs for failure to meet prescribed standards.

(f) Examine, license and renew the licenses of duly qualified applicants.

(g) Issue subpoenas for any records relevant to a board investigation, including patient and other medical records, personnel records applicable to nurses and nursing assistants, records of schools of nursing and nursing assistant training records and any other relevant records; issue subpoenas to persons for personal interviews relating to board investigations; compel the attendance of witnesses; and administer oaths or affirmations to persons giving testimony during an investigation or at hearings. In any proceeding under this subsection, when a subpoena is issued to an applicant, certificate holder or licensee of the board, a claim of nurse-patient privilege under ORS 40.240 or of psychotherapist-patient privilege under ORS 40.230 is not grounds for quashing the subpoena or for refusing to produce the material that is subject to the subpoena.

(h) Enforce the provisions of ORS 678.010 to 678.448, and incur necessary expenses for the enforcement.

*[(i) Prescribe standards for the delegation of tasks of patient care to nursing assistants and for the supervision of nursing assistants. The standards must include rules governing the delegation of administration of noninjectable medication by nursing assistants and must include rules prescribing the types of noninjectable medication that can be administered by nursing assistants, and the circumstances, if any, and level of supervision under which nursing assistants can administer noninjectable medication. In formulating the rules governing the administration of noninjectable medication by*

*nursing assistants, the board shall consult with nurses and other stakeholders appropriate to the context of patient care. Notwithstanding any other provision of this paragraph, however, the registered nurse issuing the order shall determine the appropriateness of the delegation of a task of patient care.]*

**(i) Adopt rules to prescribe:**

**(A) Standards for the delegation of patient care tasks by a registered nurse to a nursing assistant. The standards must specify that only a registered nurse may delegate the provision of nursing care. The standards must include rules governing the delegation of administration of medication, including of controlled substances, and other tasks ordered or prescribed by a nurse practitioner or clinical nurse specialist or a physician licensed under ORS chapter 677.**

**(B) Standards for the delegation by a registered nurse of procedures ordered or prescribed by a nurse practitioner or clinical nurse specialist or a physician licensed under ORS chapter 677 to persons other than licensed nursing personnel in a community-based setting, as defined by the board. The rules must provide for the delegation of procedures related to administration of medication.**

(j) Notify licensees at least annually of changes in legislative or board rules that affect the licensees. Notice may be by newsletter or other appropriate means.

(7) The board shall determine the scope of practice as delineated by the knowledge acquired through approved courses of education or through experience.

*[(8) For local correctional facilities, lockups and juvenile detention facilities, as defined in ORS 169.005, for youth correction facilities as defined in ORS 420.005, for facilities operated by a public agency for detoxification of persons who use alcohol excessively, for homes or facilities licensed under ORS 443.705 to 443.825 for adult foster care, and for facilities licensed under ORS 443.400 to 443.455 for residential care, training or treatment, the board shall adopt rules pertaining to the provision of nursing care, and to the various tasks relating to the administration of noninjectable medication including administration of controlled substances. The rules must provide for delegation of nursing care and tasks relating to the administration of medication to other than licensed nursing personnel by a physician licensed by the Oregon Medical Board or by a registered nurse, designated by the facility. The delegation must occur under the procedural guidance, initial direction and periodic inspection and evaluation of the physician or registered nurse. However, the provision of nursing care may be delegated only by a registered nurse.]*

**(8)(a) The board shall adopt rules regarding the provision of nursing care and various tasks relating to the administration of medication, including the administration of controlled substances, for the community-based settings described in subsection (6) of this section.**

**(b) The rules adopted under this subsection must:**

**(A) Provide for the delegation, to other than licensed nursing personnel, of tasks relating to the administration of medication and patient care tasks that are ordered or prescribed by a physician licensed under ORS chapter 677, a clinical nurse specialist or a nurse practitioner.**

**(B) Specify that the delegation must occur under the procedural guidance, initial direction and periodic inspection and evaluation of the physician, clinical nurse specialist, nurse practitioner or registered nurse.**

**(C) Specify that the provision of nursing care may be delegated only by a registered nurse.**

**(D) Determine sites in addition to the facilities described in this subsection where the delegation of nursing tasks and administration of medication may occur.**

(9) The [Oregon State Board of Nursing] **board** may require applicants, licensees and certificate holders under ORS 678.010 to 678.448 to provide to the board data concerning the individual's nursing employment and education.

(10) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the board may require the fingerprints of a person who is:

- (a) Applying for a license or certificate that is issued by the board;
- (b) Applying for renewal of a license or certificate that is issued by the board; or
- (c) Under investigation by the board.

(11) Pursuant to ORS chapter 183, the board shall adopt rules necessary to carry out the provisions of ORS 678.010 to 678.448.

**SECTION 5.** ORS 678.375 is amended to read:

678.375. (1) The Oregon State Board of Nursing is authorized to issue licenses to licensed registered nurses to practice as nurse practitioners if they meet the requirements of the board pursuant to ORS 678.380.

(2) A person may not practice as a nurse practitioner or hold oneself out to the public or to an employer, or use the initials, name, title, designation or abbreviation as a nurse practitioner until and unless the person is licensed by the board.

(3) A registered nurse licensed as a nurse practitioner is authorized to complete and sign reports of death. Reports of death signed by a *[licensed]* nurse practitioner fulfill the requirements of the laws dealing with reports of death. A *[licensed]* nurse practitioner who completes a report of death shall comply with ORS 432.133.

(4) A registered nurse licensed as a nurse practitioner is authorized to prescribe drugs for the use of and administration to other persons if approval has been given under ORS 678.390. The drugs that the nurse practitioner is authorized to prescribe *[shall]* **must** be included within the *[licensed]* nurse practitioner's scope of practice as defined by rules of the board.

(5) A licensed pharmacist may fill and a licensed pharmacist or an employee of the licensed pharmacist may dispense medications prescribed by a nurse practitioner in accordance with the terms of the prescription. The filling of *[such]* a prescription **described in this subsection** does not constitute evidence of negligence on the part of the pharmacist if the prescription was dispensed within the reasonable and prudent practice of pharmacy.

(6) As used in this section:

(a) "Drug" means:

(A) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendium or any supplement to any of them;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings;

(C) Articles other than food that are intended to affect the structure or any function of the body of human beings; and

(D) Articles intended for use as a component of any articles specified in subparagraph (A), (B) or (C) of this paragraph.

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

**SECTION 6.** ORS 678.390 is amended to read:

678.390. (1) The Oregon State Board of Nursing may authorize a *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist to write prescriptions, including prescriptions for controlled substances listed in schedules II, III, III N, IV and **through** V.

(2) A *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist may submit an application to the Oregon State Board of Nursing to dispense prescription drugs. The Oregon State Board of Nursing shall provide immediate notice to the State Board of Pharmacy upon approving an application submitted by a *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist to dispense prescription drugs.

(3) An application for the authority to dispense prescription drugs under this section must include any information required by the Oregon State Board of Nursing by rule.

(4) Prescription drugs dispensed by a *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist must be personally dispensed by the *[licensed]* nurse practitioner or *[licensed]* clinical

nurse specialist, except that nonjudgmental dispensing functions may be delegated to staff assistants when:

(a) The accuracy and completeness of the prescription is verified by the *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist; and

(b) The prescription drug is labeled with the name of the patient to whom it is being dispensed.

(5) The Oregon State Board of Nursing shall adopt rules requiring:

(a) Prescription drugs dispensed by *[licensed]* nurse practitioners and *[licensed]* clinical nurse specialists to be either prepackaged by a manufacturer registered with the State Board of Pharmacy or repackaged by a pharmacist licensed by the State Board of Pharmacy under ORS chapter 689;

(b) Labeling requirements for prescription drugs dispensed by *[licensed]* nurse practitioners and *[licensed]* clinical nurse specialists that are the same as labeling requirements required of pharmacies licensed under ORS chapter 689;

(c) Record keeping requirements for prescriptions and prescription drug dispensing by a *[licensed]* nurse practitioner and a *[licensed]* clinical nurse specialist that are the same as the record keeping requirements required of pharmacies licensed under ORS chapter 689;

(d) A dispensing *[licensed]* nurse practitioner and a dispensing *[licensed]* clinical nurse specialist to have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications; and

(e) A dispensing *[licensed]* nurse practitioner and a dispensing *[licensed]* clinical nurse specialist to allow representatives of the State Board of Pharmacy, upon receipt of a complaint, to inspect a dispensing site after prior notice to the Oregon State Board of Nursing.

(6) The Oregon State Board of Nursing has sole disciplinary authority regarding *[licensed]* nurse practitioners and *[licensed]* clinical nurse specialists who have prescription drug dispensing authority.

(7) The authority to write prescriptions or dispense prescription drugs may be denied, suspended or revoked by the Oregon State Board of Nursing upon proof that the authority has been abused. The procedure shall be a contested case under ORS chapter 183. Disciplinary action under this subsection is grounds for discipline of the *[licensed]* nurse practitioner or *[licensed]* clinical nurse specialist in the same manner as a licensee may be disciplined under ORS 678.111.

**SECTION 7. The amendments to ORS 678.101 by section 3 of this 2021 Act apply to licenses and authority to prescribe that are due for renewal on or after the operative date specified in section 8 of this 2021 Act.**

**SECTION 8. (1) The amendments to ORS 678.010, 678.036, 678.101, 678.150, 678.375 and 678.390 by sections 1 to 6 of this 2021 Act become operative on January 1, 2022.**

**(2) The Oregon State Board of Nursing may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board by the amendments to ORS 678.010, 678.036, 678.101, 678.150, 678.375 and 678.390 by sections 1 to 6 of this 2021 Act.**

**SECTION 9. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.**

**Passed by Senate March 10, 2021**

**Repassed by Senate May 26, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 24, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State