

PUBLIC PACKET

**OREGON BOARD
OF
DENTISTRY**

**BOARD MEETING
FEBRUARY 19, 2016**



STANDARD PROTOCOLS FOR GENERAL CONSENT ORDERS

CIVIL PENALTIES

Licensee shall pay a \$____ civil penalty in the form of a cashier's, bank, or official check, made payable to the Oregon Board of Dentistry and delivered to the Board offices within 30 days of the effective date of the Order.

NOTE: The Board will allow licensed dentists a 30-day payment period for each civil penalty increment of \$2,500

NOTE: The Board will allow licensed dental hygienists a 30-day payment period of each civil penalty increment of \$500

RESTITUTION PAYMENTS

Licensee shall pay \$___ in restitution in the form of a cashier's, bank, or official check made payable to patient ___ and delivered to the Board offices within 30 days of the effective date of the Order.

NOTE: The Board will allow licensed dentists a 30-day payment period for each restitution increment of \$2,500

REIMBURSEMENT PAYMENTS

Licensee shall provide the Board with documentation verifying reimbursement payment made to ___, the patient's insurance carrier, within 30 days of the effective date of the Order.

NOTE: The Board will allow licensed dentists a 30-day payment period for each reimbursement increment of \$2,500

CONTINUING EDUCATION – BOARD ORDERED

Licensee shall successfully complete ___ hours of ___ (OPTIONS: Board pre-approved, hands-on, mentored), continuing education in the area of ___ within ___ (OPTIONS: years, months) of the effective date of this Order, unless the Board grants an extension, and advises the Licensee in writing. This ordered continuing education is in addition to the continuing education required for the licensure period ___ (OPTIONS: April 1, XXX to March 31, XXX OR October 1, XXX to September 30, XXX). As soon as possible after completion of a Board ordered course, Licensee shall submit documentation to the Board verifying completion of the course.

COMMUNITY SERVICE

Licensee shall provide ___ hours of Board approved community service within ___ (OPTIONS: years, months) of the effective date of this Order, unless the Board grants an extension, and advises the Licensee in writing. The community service shall be pro bono, and shall involve the Licensee providing direct dental care to patients. Licensee shall submit documentation verifying completion of the community service within the specified time allowed for the community service.

FALSE CERTIFICATION OF CONTINUING EDUCATION

Licensee shall be reprimanded, pay a \$___ (\$2,000 for dentists OR \$1,000 for dental hygienists) civil penalty, complete ten hours of community service within 60 days and complete the balance of the ___ (40 OR 24) hours of continuing education for the licensure period (4/1/-- to 3/31/-- OR 10/1/-- to 9/30/--), within 60 days of the effective date of this Order. As soon as possible following completion of the continuing education the Licensee shall provide the Board with documentation certifying the completion.

WORKING WITHOUT A CURRENT LICENSE

Licensee shall pay a \$___ civil penalty in the form of a cashier's, bank, or official check, made payable to the Oregon Board of Dentistry and delivered to the Board offices within 30 days of the effective date of the Order.

NOTE: A licensed dentist, who worked any number of days without a license will be issued a Notice of Proposed Disciplinary Action and offered a Consent Order incorporating a reprimand and a \$5,000 civil penalty.

NOTE: A licensed dental hygienist who worked any number of days without a current license, will be issued a Notice of Proposed Disciplinary Action and offered a Consent Order incorporating a reprimand and civil penalty of \$2,500.

ALLOWING A PERSON TO PERFORM DUTIES FOR WHICH THE PERSON IS NOT LICENSED OR CERTIFIED

Licensee shall pay a \$___ civil penalty in the form of a cashier's, bank, or official check, made payable to the Oregon Board of Dentistry and delivered to the Board offices within 30 days of the effective date of the Order, unless the Board grants an extension, and advises the Licensee in writing.

NOTE: The Licensee will be charged \$2,000 for the first offense and \$4,000 for the second, and each subsequent offense.

FAILURE TO CONDUCT WEEKLY BIOLOGICAL TESTING OF STERILIZATION DEVICES

Licensee shall pay a \$ ____ civil penalty in the form of a cashier's, bank, or official check made payable to the Oregon Board of Dentistry and delivered to the Board offices within ____ days of the effective date of the Order, complete ____ hours of Board approved community service within _____ (months, year) of the effective date of the Order, and, for a period of one year of the effective date of the Order, submit, by the fifteenth of each month, the results of the previous month's weekly biological monitoring testing of sterilization devices.

NOTE: Failure to do biological monitoring testing one to five times within a calendar year will result in a Letter of Concern.

NOTE: Failure to do biological monitoring testing six to ten times within a calendar year will result in the issuance of a Notice of Proposed Disciplinary Action and an offer of a Consent Order incorporating a reprimand.

NOTE: Failure to do biological monitoring testing 11 to 20 times within a calendar year will result in the issuance of a Notice and an offer of a Consent Order incorporating a reprimand, a \$3,000 civil penalty to be paid within 60 days, 20 hours of Board approved community service to be completed within six months, and monthly submission of spore testing results for a period of one year from the effective date of the Order.

NOTE: Failure to do biological monitoring testing more than 20 times within a calendar year will result in the issuance of a Notice and an offer of a Consent Order incorporating a reprimand, a \$6,000 civil penalty to be paid within 90 days, 40 hours of Board approved community service to be completed within one year, and monthly submission of spore testing results for a period of one year from the effective date of the Order.

STANDARD PROTOCOLS FOR CONSENT ORDERS SPECIFICALLY RELATED TO ALCOHOL ABUSE

ALCOHOL

Licensee shall, for an indefinite length of time, be subject to the following conditions of this Consent Order:

Licensee shall not apply for relief from these conditions within five years of the effective date of the Order, and then must do so in writing.

Licensee shall not use alcohol, controlled drugs, or mood altering substances at any place or time unless prescribed by a licensed practitioner for a bona fide medical condition and upon prior notice to the Board and care providers, except that prior notice to the Board and care providers shall not be required in the case of a bona fide medical emergency.

Licensee shall undergo an evaluation by a Board approved addictionologist or treatment center within 30 days of the effective date of the Order and make the written evaluation and treatment recommendations available to the Board.

Licensee shall adhere to, participate in, and complete all aspects of any and all residential care programs, continuing care programs and recovery treatment plans recommended by Board approved care providers and arrange for a written copy of all plans, programs, and contracts to be provided to the Board within 30 days of the effective date of this Order.

Licensee shall advise the Board, in writing, of any change or alteration to any residential care programs, continuing care programs, and recovery treatment plans 14 days before the change goes into effect.

Licensee shall instruct all health care providers participating in the residential, continuing care, and recovery programs to respond promptly to any Oregon Board of Dentistry inquiry concerning Licensee's compliance with the treatment plan and to immediately report to the Board, any positive test results or any substantial failure to fully participate in the programs by the Licensee. Licensee shall instruct the foregoing professionals to make written quarterly reports to the Board of Licensee's progress and compliance with the treatment programs.

Licensee shall waive any privilege with respect to any physical, psychiatric, or psychological evaluation or treatment in favor of the Board for the purposes of determining compliance with this Order, or the need to modify this Order, and shall execute any waiver or release upon request of the Board.

Licensee shall submit to a Board approved, random, supervised, urinalysis testing program, at Licensee's expense, with the frequency of the testing to be determined by the Board, but initially at a minimum of 24 random tests per year. Licensee shall arrange for the results of all tests, both positive and negative, to be provided promptly to the Board.

Licensee shall advise the Board, within 72 hours, of any alcohol, illegal or prescription drug, or mind altering substance related relapse, any positive urinalysis test result, or any substantial failure to participate in any recommended recovery program.

Licensee shall personally appear before the Board, or its designated representative(s), at a frequency to be determined by the Board, but initially at a frequency of three times per year.

Licensee shall, within three days, report the arrest for any misdemeanor or felony and, within three days, report the conviction for any misdemeanor or felony.

Licensee shall assure that, at all times, the Board has the most current addresses and telephone numbers for residences and offices.

STANDARD PROTOCOLS FOR CONSENT ORDERS SPECIFICALLY RELATED TO SUBSTANCE ABUSE

DRUGS

Licensee shall, for an indefinite length of time, be subject to the following conditions of this Consent Order:

Licensee shall not apply for relief from these conditions within five years of the effective date of the Order and then must do so in writing.

Licensee shall not use controlled drugs or mind altering substances at any place or time unless prescribed by a licensed practitioner for a bona fide medical condition and upon prior notice to the Board and care providers, except that prior notice to the Board and care providers shall not be required in the case of a bona fide medical emergency.

NOTE: It may be appropriate to add "alcohol" to this condition.

Licensee shall undergo an evaluation by a Board approved addictionologist or treatment center within 30 days of the effective date of the Order and make the written evaluation and treatment recommendations available to the Board.

Licensee shall adhere to, participate in, and complete all aspects of any and all residential care programs, continuing care programs and recovery treatment plans recommended by Board approved care providers and arrange for a written copy of all plans, programs, and contracts to be provided to the Board within 30 days of the effective date of the Order.

Licensee shall advise the Board, in writing, of any change or alteration to any residential care programs, continuing care programs, and recovery treatment plans 14 days before the change goes into effect.

Licensee shall instruct all health care providers participating in the residential, continuing care, and recovery programs to respond promptly to any Oregon Board of Dentistry inquiry concerning Licensee's compliance with the treatment plan and to immediately report to the Board, any positive test results or any substantial failure to fully participate in the programs by the Licensee. Licensee shall instruct the foregoing professionals to make written quarterly reports to the Board of Licensee's progress and compliance with the treatment programs.

Licensee shall waive any privilege with respect to any physical, psychiatric, or psychological evaluation or treatment in favor of the Board for the purposes of determining compliance with this Order, or the need to modify this Order and shall execute any waiver or release upon request of the Board.

Licensee shall submit to a Board approved, random, supervised, urinalysis testing program, at Licensee's expense, with the frequency of the testing to be determined by the Board, but initially at a minimum of 24 random tests per year. Licensee shall

arrange for the results of all tests, both positive and negative, to be provided to the Board.

Licensee shall advise the Board, within 72 hours, of any drug related relapse, any positive urinalysis test result, or any substantial failure to participate in any recommended recovery program.

Licensee shall personally appear before the Board, or its designated representative(s), at a frequency to be determined by the Board, but initially at a frequency of three times per year.

IF APPROPRIATE –

Licensee will not order or dispense any controlled substance, nor shall Licensee store any controlled substance in his/her office.

Licensee shall immediately begin using pre-numbered triplicate prescription pads for prescribing controlled substances. Said prescription pads will be provided to the Licensee, at his/her expense, by the Board. Said prescriptions shall be used in their numeric order. Prior to the 15th day of each month, Licensee shall submit to the Board office, one copy of each triplicate prescription used during the previous month. The second copy to the triplicate set shall be maintained in the file of the patient for whom the prescription was written. In the event of a telephone prescription, Licensee shall submit two copies of the prescription to the Board monthly. In the event any prescription is not used, Licensee shall mark all three copies void and submit them to the Board monthly.

Licensee shall maintain a dental practice environment in which nitrous oxide is not present or available for any purpose, or establish a Board approved plan to assure that Licensee does not have singular access to nitrous oxide. The Board must approve the proposed plan before implementation.

Licensee shall immediately surrender his/her Drug Enforcement Administration Registration.

STANDARD PROTOCOLS FOR CONSENT ORDERS SPECIFICALLY RELATED TO SEXUAL VIOLATIONS

SEX RELATED VIOLATIONS

Licensee shall, for an indefinite length of time, be subject to the following conditions of this Consent Order:

Licensee shall not apply for relief from these conditions within five years of the effective date of the Order, and then must do so in writing.

Licensee shall undergo an assessment by a Board approved evaluator, within 30 days of the effective date of the Order, and make the written evaluation and treatment recommendations available to the Board.

Licensee shall adhere to, participate in, and complete all aspects of any and all residential care programs, continuing care programs and recovery treatment plans recommended by Board approved care providers and arrange for a written copy of all plans, programs, and contracts to be provided to the Board within 30 days of the effective date of the Order.

Licensee shall advise the Board, in writing, of any change or alteration to any residential care programs, continuing care programs, and recovery treatment plans 14 days before the change goes into effect.

Licensee shall instruct all health care providers participating in the residential, continuing care, and recovery programs to respond promptly to any Oregon Board of Dentistry inquiry concerning Licensee's compliance with the treatment plan and to immediately report to the Board, any substantial failure to fully participate in the programs by the Licensee. Licensee shall instruct the foregoing professionals to make written quarterly reports to the Board of Licensee's progress and compliance with the treatment programs.

Licensee shall waive any privilege with respect to any physical, psychiatric, or psychological evaluation or treatment in favor of the Board for the purposes of determining compliance with this Order, or the need to modify this Order, and shall execute any waiver or release upon request of the Board.

Licensee shall submit to a polygraph examination or plethysmograph examination, at Licensee's expense, at the direction of the Board or a counseling provider.

Licensee shall advise the Board, within 72 hours, of any substantial failure to participate in any recommended recovery program.

Licensee shall personally appear before the Board, or its designated representative(s), at a frequency to be determined by the Board, but initially at a frequency of three times per year.

IF APPROPRIATE –

Require Licensee to advise his/her dental staff or his/her employer of the terms of the Consent Order at least on an annual basis. Licensee shall provide the Board with documentation attesting that each dental staff member or employer reviewed the Consent Order. In the case of a Licensee adding a new employee, the Licensee shall advise the individual of the terms of the Consent Order on the first day of employment and shall provide the Board with documentation attesting to that advice.

STANDARD PROTOCOLS FOR CONSENT ORDERS REQUIRING CLOSE SUPERVISION

CLOSE SUPERVISION

- a. For a period of at least six months, Licensee shall only practice dentistry in Oregon under the close supervision of a Board approved, Oregon licensed dentist (Supervisor), in order to demonstrate that clinical skills meet the standard of care. Periods of time Licensee does not practice dentistry as a dentist in Oregon, shall not apply to reduction of the (six) month requirement
- b. Licensee will submit the names of any other supervising dentists for Board approval. Licensee will immediately advise the Board of any change in supervising dentists.
- c. Licensee shall only treat patients when another Board approved Supervisor is physically in the office and shall not be solely responsible for emergent care.
- d. The Supervisor will review and co-sign Licensee's treatment plans, treatment notes, and prescription orders.
- e. Licensee will maintain a log of procedures performed by Licensee. The log will include the patient's name, the date of treatment, and a brief description of the procedure. The Supervisor will review and co-sign the log. Prior to the 15th of each month, Licensee will submit the log of the previous month's treatments to the Board.
- f. For a period of two weeks, or longer if deemed necessary by the Supervisor, the Supervisor will examine the appropriate stages of dental work performed by Licensee in order to determine clinical competence.
- g. After two weeks, and for each month thereafter for a period of six months, the Supervisor will submit a written report to the Board describing Licensee's level of clinical competence. At the end of six months, the Supervisor, will submit a written report attesting to the level of Licensee's competency to practice dentistry in Oregon.
- h. At the end of the restricted license period, the Board will re-evaluate the status of Licensee's dental license. At that time, the Board may extend the restricted license period, lift the license restrictions, or take other appropriate action.

STANDARD PROTOCOLS – DEFINITIONS

Group practice: On 10/10/08, the Board defined “group practice” as two or more Oregon licensed dentists, one of which may be a respondent, practicing in the same business entity and in the same physical location.

When ordering a licensee to practice only in a group practice, add the caveat, “**Periods of time Licensee is not practicing dentistry as a dentist in Oregon, shall not apply to reduction of the (five year) requirement.**”

STANDARD PROTOCOLS – PARAGRAPHS

WHEREAS, based on the results of an investigation, the Board has filed a Notice of Proposed Disciplinary Action, dated XXX, and hereby incorporated by reference; and

APPROVAL OF MINUTES

**OREGON BOARD OF DENTISTRY
MINUTES
December 18, 2015**

MEMBERS PRESENT: Alton Harvey Sr., President
Julie Ann Smith, D.D.S., M.D., MCR, Vice-President
Todd Beck, D.M.D.
Amy B. Fine, D.M.D.
Jonna E. Hongo, D.M.D.
Yadira Martinez, R.D.H.
James Morris
Alicia Riedman, R.D.H.
Brandon Schwindt, D.M.D.
Gary Underhill, D.M.D.

STAFF PRESENT: Stephen Prisby, Executive Director
Paul Kleinstub, D.D.S., M.S., Dental Director/Chief Investigator
Daryll Ross, Investigator (portion of meeting)
Harvey Wayson, Investigator (portion of meeting)
Teresa Haynes, Exam and Licensing Manager (portion of meeting)
Michelle Lawrence, D.M.D., Consultant (portion of meeting)
Daniel Blickenstaff, D.D.S., Consultant (portion of meeting)
Jessica Conway, Office Manager (portion of meeting)
Ingrid Nye, Office Specialist (portion of meeting)

ALSO PRESENT: Lori Lindley, Sr. Assistant Attorney General

VISITORS PRESENT: Heidi Jo Grubbs, R.D.H.; Kenneth Chung, ODA; Christina Swartz Bodamer, ODA; Mary Harrison, ODAA; Anthony Medina, DAS; Bruce Burton, D.M.D., ODA; Harold Hickok; Pamela Lynch, R.D.H.; Kyle Johnstone, R.D.H., ODHA; Caroline Maier, R.D.H.

Call to Order: The meeting was called to order by the President at 7:40 a.m. at the Board office; 1500 SW 1st Ave., Suite 770, Portland, Oregon.

NEW BUSINESS

MINUTES

Dr. Hongo moved and Dr. Fine seconded that the minutes of the October 30, 2015 Board meeting be approved as amended reminding the public that prior to a Board meeting, there is a public packet available with attachments of all relevant information to be reviewed at that Board meeting, and those public packets are public records as well. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Dr. Fine moved and Mr. Morris seconded that the minutes of the November 12, 2015 Special Teleconference Board meeting be approved as presented. The motion passed with Dr. Beck,

Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

ASSOCIATION REPORTS

Oregon Dental Association

Dr. Bruce Burton reported that the sixth annual Mission of Mercy event served 1,090 patients, and provided \$900,000 worth of care. Christina Swartz Bodamer reported that the ODA's peer review program was seeking more volunteer dentists.

Oregon Dental Hygienists' Association

Stephen Prisby stated that he spoke to Lynn Ironside and she was unable to attend the meeting but had nothing to report at this time. Mr. Prisby welcomed the new President of the ODHA, Cassie Button, R.D.H. Mr. Prisby reported that he presented at the ODHA conference on November 13, 2015.

Oregon Dental Assistants Association

Ms. Mary Harrison reported that there were no registrations for the ODAA education seminar, which was scheduled for December 5, 2015.

COMMITTEE AND LIAISON REPORTS

WREB Liaison Report

Dr. Jonna Hongo had nothing to report at this time. The next meeting is scheduled for February, 2016.

AADB Liaison Report

Dr. Amy Fine was not able to attend the AADB meeting in Washington DC, and Ms. Yadira Martinez reported on behalf of the Board members who attended the conference. The meeting was educational and informative.

ADEX Liaison Report

Dr. Jonna Hongo reported that Mr. Alton Harvey was elected as a consumer member on the Board of Directors, and that past Board member Dr. Patricia Parker was re-elected to her seat on the Board of Directors.

CDCA Liaison Report

Dr. Amy Fine had nothing to report at this time. The CDCA annual meeting will be held January 14-16, 2016 in Orlando, Florida. Mr. Prisby requested the Board approve his attendance at the annual conference. Dr. Underhill moved and Dr. Hongo seconded that his travel be approved. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Committee Meeting Dates

A Dental Hygiene committee meeting is scheduled for January 21, 2016 at 6:00 p.m. at the Board office.

EXECUTIVE DIRECTOR'S REPORT

Board Member & Staff Updates

Mr. Prisby introduced the new Office Specialist, Ingrid Nye. The new Dental Investigator position interviews are in the final stages, tentative start date in January, 2016.

Budget Status Report

Mr. Prisby reviewed the latest budget report for the 2015 - 2017 Biennium. The report, which is from July 1, 2015 through October 31, 2015, shows revenue of \$660,714.35 and expenditures of \$383,794.53. Mr. Prisby said he would be happy to answer questions that the board members have regarding the report.

Customer Service Survey Report

Mr. Prisby stated that he attached the legislatively mandated survey results from July 1, 2015 - November 30, 2015, implementing our new online format and including comments received. The results of the survey show that the OBD continues to receive positive ratings from the majority of those that submit a survey.

Board and Staff Speaking Engagements

Mr. Prisby stated that he and Dr. Kleinstub gave a "Board Updates" and "Enforcements" presentation to the Washington County Dental Society with DBIC on November 10, 2015 in Beaverton.

Mr. Prisby stated that he gave a "Board Updates" presentation to the ODHA at their Convention on November 13, 2015 at the Portland Airport Sheraton.

Mr. Prisby stated that he gave a "Board Updates" presentation to the Marion and Polk County Dental Society with DBIC on December 4, 2015 in Salem.

Newsletter

Mr. Prisby stated that the next newsletter is being finalized and the plan is to have it available and distributed before the end of the year.

UNFINISHED BUSINESS

At the October 30th Board meeting, the staff was directed to research the rules regarding Epinephrine (the EpiPen) for dental hygienists in emergency situations to have available in an emergency kit. The Board discussed Oregon Pharmacy's rule and the Oregon Health Authority's rules regarding epinephrine relevant to the discussion. It was determined that the OHA has a pathway for dental hygienists to acquire EpiPens.

CORRESPONDENCE

James Brown Memo

December 2015 Dental Board letter from SRTA

ADEX Highlights 2015

OTHER BUSINESS

The Board Received a Request for Approval Dental Hygiene Restorative Curriculum -

Pima Medical Institute Dental – Hygiene Program. Dr. Beck moved and Dr. Smith seconded that the Board approve the curriculum as presented. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

The Board Received a Request to amend a previously approved Dental Hygiene Restorative Curriculum from Portland Community College. Dr. Smith moved and Ms. Martinez seconded that the amended curriculum be approved as presented. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

The Board Received a Request for permission to take the Western Regional Dental Examination - Silvia Amaya-Pajares, D.D.S., M.S. Dr. Hongo moved and Dr. Fine seconded that the Board grant permission to take the examination. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Ethics and Boundaries Assessment Services Inc. Dr. Underhill moved and Dr. Fine seconded that the Board use this assessment as a tool for discipline. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

ARTICLES AND NEWS OF INTEREST (no action necessary)

Bend Bulletin Article

ADEA Snapshot of Education

EXECUTIVE SESSION: The Board entered into Executive Session pursuant to ORS 192.606 (1)(f), (h) and (k); ORS 676.165; ORS 676.175 (1), and ORS 679.320 to review records exempt from public disclosure, to review confidential investigatory materials and investigatory information, and to consult with counsel.

PERSONAL APPEARANCES AND COMPLIANCE ISSUES

Licensee appeared pursuant to their Consent Order in case numbers **2013-0097, 2013-0119, 2014-0094.**

LICENSING ISSUES

OPEN SESSION: The Board returned to Open Session.

CONSENT AGENDA

2016-0092 and 2016-0074 Dr. Smith moved and Dr. Hongo seconded that the above referenced cases be closed with a finding of No Violation of the Dental Practice Act per the staff recommendations. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Schwindt recused himself on case 2016-0092.

COMPLETED CASES

2015-0086, 2016-0080, 2015-0096, 2015-0075, 2016-0078, 2016-0069, 2016-0022 and 2016-0041 Dr. Smith moved and Dr. Beck seconded that the above referenced cases be closed with a finding of No Violation of the Dental Practice Act or No Further Action per the Board recommendations. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2014-0117

Dr. Beck moved and Dr. Fine seconded that the Board close the matter with a Letter of Concern reminding Licensee to assure that the instructions for all prescriptions are documented, assure that all subgingival cement is removed when cementing a crown onto an implant abutment, and to assure that every autoclave is tested every week patients are treated, even when the autoclave is not used that week. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0090

Mr. Morris moved and Dr. Underhill seconded that the Board close the matter with a Letter of Concern reminding Licensee to assure that he informs his patients of any less than optimal outcomes of his dental treatment and to document the occurrences in the patient chart. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2014-0122

Ms. Riedman moved and Dr. Fine seconded that the Board close the matter with a Letter of Concern reminding Licensee to assure that his documented informed consent is more thorough when using the Herbst appliance on adults. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Schwindt recused himself.

2015-0072

Dr. Hongo moved and Dr. Underhill seconded that the Board close the matter with a Letter of Concern reminding Licensee to assure that he fully documents dental diagnosis for prescribing medications and documenting all radiographic findings. The motion passed with Dr. Smith, Dr. Beck, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Fine recused herself.

Higbee, Max W., D.M.D. and Smith, Dane E., D.M.D. 2015-0079

Dr. Underhill moved and Dr. Beck seconded that the Board merge this case with case 2015-0070, for Respondent #1 and issue a single Notice of Proposed Disciplinary Action for both cases, and offer the licensee a Consent Order in which the licensee would agree to be reprimanded, to pay a \$3,000 civil penalty to be paid within 60 days, 20 hours of Board approved community service to be completed within six months, complete at least three hours of Board approved CE in record keeping, make a restitution payment in the amount of \$925.00 to patient TB per Board protocols, and monthly submission of spore testing results for a period of one year from the effective date of the Order. For Respondent #2, close the matter with a Letter of Concern addressing the issue of ensuring that all treatment provided to a patient is completely and accurately documented in the patient records. The motion passed with Dr.

Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Higbee, Max W., D.M.D. 2015-0070

Dr. Underhill moved and Dr. Beck seconded that the Board merge this case with case 2015-0079, for Respondent #1 and issue a single Notice of Proposed Disciplinary Action for both cases, and offer the licensee a Consent Order in which the licensee would agree to be reprimanded, to pay a \$3,000 civil penalty to be paid within 60 days, 20 hours of Board approved community service to be completed within six months, complete at least three hours of Board approved CE in record keeping, make a restitution payment in the amount of \$925.00 to patient TB per Board protocols, and monthly submission of spore testing results for a period of one year from the effective date of the Order. For Respondent #2, close the matter with a Letter of Concern addressing the issue of ensuring that all treatment provided to a patient is completely and accurately documented in the patient records. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0147

Ms. Martinez moved and Dr. Smith seconded that the Board close the matter with a strongly worded Letter of Concern reminding Licensee to assure that he only provide treatment within the scope of the practice of dentistry. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman and Ms. Martinez and Dr. Underhill voting aye.

Olesberg, Dale J., D.M.D. 2015-0098

Dr. Beck moved and Dr. Fine seconded that the Board issue a Notice of Proposed Disciplinary Action and offer Licensee a Consent Order incorporating a reprimand and a \$3,000.00 civil penalty, 20 hours of Board approved community service, and monthly submission of spore testing results for a period of one year. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Hongo recused herself.

Pham, John, D.D.S. 2015-0045

Mr. Morris moved and Dr. Beck seconded that the Board issue a Notice of Proposed Disciplinary Action and offer Licensee a Consent Order incorporating a reprimand and civil penalty of \$6,000.00, to be paid within 90 days, 40 hours of Board approved community service to be completed within one year, take a Board approved class on record keeping, and monthly submission of spore testing results for a period of one year from the effective date of the Order. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0089

Dr. Schwindt moved and Dr. Fine seconded that the Board close the matter with Letter of Concern addressing the issue of ensuring that when treatment is planned, there are diagnostic images present to substantiate the planned treatment. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2014-0205

Dr. Underhill moved and Dr. Fine seconded that the Board close the matter with a Letter of Concern addressing the issue of ensuring that adequate pre-treatment radiographs are available

prior to providing treatment. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0076

Ms. Martinez moved and Dr. Hongo seconded that the Board close the matter with a Letter of Concern reminding Licensee to ensure that documentation of heat sterilizer testing is done and recorded on a weekly basis. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman and Ms. Martinez and Dr. Underhill voting aye. Dr. Smith recused herself.

PREVIOUS CASES REQUIRING BOARD ACTION

2008-0013

Mr. Morris moved and Dr. Hongo seconded that the Board reaffirm Board action of October 30, 2015. The motion passed with Dr. Smith, Dr. Fine, Dr. Hongo, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Beck and Dr. Schwindt recused themselves.

Smith, Dane E., D.D.S. 2015-0073

Dr. Schwindt moved and Dr. Fine seconded that the Board reinstate Licensee's dental hygiene license providing she agree to the terms of a Consent Order incorporating the protocols to protect the public and support her recovery and a requirement she enroll in HPSP. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Hsu, Richard Pao-Yuan, D.M.D. 2015-0189

Ms. Riedman moved and Dr. Hongo seconded that the Board issue an Order of Dismissal dismissing the Notice of Proposed License Revocation issued 7/3/15. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Dr. Schwindt recused himself.

2015-0181

Dr. Fine moved and Dr. Hongo seconded that the Board rescind the Board's vote on October 30, 2015 to issue a Notice of Proposed License Revocation and close the case with No Further Action. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0153

Dr. Hongo moved and Dr. Beck seconded that the Board issue an Order of Dismissal dismissing the Notice of Proposed Disciplinary Action and close the matter with a Letter of Concern reminding Licensee to assure that he not offer considerations in exchange for referrals. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

2015-0008

Dr. Underhill moved and Dr. Beck seconded that the Board affirm board action of October 30, 2015. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

LICENSURE AND EXAMINATION

Request for Oral and Maxillofacial Exam

Ms. Martinez moved and Dr. Schwindt seconded that the Board accept the request to allow Dr. Jev Clark to take the Oral and Maxillofacial Exam in July pending staff and examiner availability. The motion passed with Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Smith, Dr. Schwindt, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye. Mr. Morris voted no.

Ratification of Licenses Issued

As authorized by the Board, licenses to practice dentistry and dental hygiene were issued to applicants who fulfilled all routine licensure requirements. It is recommended the Board ratify issuance of the following licenses. Complete application files will be available for review during the Board meeting.

DENTAL HYGIENISTS

H7113	GAIL MARGARET JOHNSON, R.D.H.	10/22/2015
H7114	SARAH LYNN BOROWIAK, R.D.H.	10/22/2015
H7115	TIA M GLANDING, R.D.H.	10/22/2015
H7116	CALLY MARIE GRANT, R.D.H.	10/29/2015
H7117	SHANNON MICHIKO SAKATA, R.D.H.	10/29/2015
H7118	VANESSA R PLUNKETT, R.D.H.	10/29/2015
H7119	ADAM M MERRITT, R.D.H.	11/6/2015
H7120	BINA MISTRY, R.D.H.	11/10/2015
H7121	JACQUE'LINE MARIE MENDIOLA, R.D.H.	11/18/2015
H7122	MELISSA KAYE ALLEMAND, R.D.H.	11/18/2015
H7123	KYNA L CHILDS, R.D.H.	11/18/2015
H7124	SABRINA ROSE ANDRUS, R.D.H.	11/18/2015
H7125	ALESIA MARIE GREENE, R.D.H.	12/3/2015
H7126	SARAH A ROSS, R.D.H.	12/3/2015
H7127	DANIELLE MARIE DESHAYES, R.D.H.	12/3/2015
H7128	CORINNE MAUREEN SMITH, R.D.H.	12/4/2015
H7129	ANGELA M HERMANSEN, R.D.H.	12/7/2015

DENTISTS

D10366	JASMINE J CHA, D.D.S.	10/23/2015
D10367	MARK S CUSHING, D.D.S.	10/23/2015
D10368	IRAJ H KASIMI, D.M.D.	10/29/2015
D10369	LAUREN S BUSCH, D.D.S.	10/29/2015
D10371	JOHN K SULLIVAN, D.D.S.	11/6/2015
D10372	MELISSA M RAMSEY, D.D.S.	11/18/2015
D10373	LIN ZHU, D.D.S.	11/18/2015
D10374	CHARLES DANIEL KNECHTEL, D.D.S.	11/18/2015
D10375	DANA NGUYEN SCHMIDL, D.D.S.	11/19/2015
D10376	RARES N DECA, D.M.D.	12/3/2015
D10377	BEATRICE E DECA, D.M.D.	12/3/2015
D10378	LAUREN M WEBER, D.D.S.	12/3/2015
D10379	CRAIG ROSS ELGIN, D.M.D.	12/3/2015

D10380	ELIZABETH A MILLER, D.D.S.	12/3/2015
D10381	ALISHA J JAMES, D.D.S.	12/3/2015
D10382	JUNGHUN JI, D.D.S.	12/7/2015
D10383	CONG VO, D.D.S.	12/7/2015
D10366	JASMINE J CHA, D.D.S.	10/23/2015

Mr. Morris moved, and Dr. Fine seconded, that licenses issued be ratified as published. The motion passed with Dr. Smith, Dr. Beck, Dr. Fine, Dr. Hongo, Dr. Schwindt, Mr. Morris, Ms. Riedman, Ms. Martinez and Dr. Underhill voting aye.

Announcement

No announcements

ADJOURNMENT

The meeting was adjourned at 1:35 pm. President Harvey stated that the next Board meeting would take place February 19, 2016.

Alton Harvey Sr.
President

ASSOCIATION REPORTS

Nothing to report under this tab

COMMITTEE REPORTS

PRESIDENT'S MESSAGE

Eva Ackley, DDS • evaackley@icloud.com

Happy New Year from AADB!

As many of you know, AADB had its 132nd Annual Meeting in the great district of Washington. It was well-attended and the program took advantage of being in our nation's capital. Some of the highlights of our meeting included visits from our Congressmen, Dr. Paul Gosar and Dr. Brian Babin, as well as information on the Federal Trade Commission, licensure issues and legislative updates. AADB continues to utilize its members in many capacities through its many committees and I would personally like to thank those members that have shared their time and talent on the program committee. Stay tuned as I hear wonderful ideas coming forth for our future meetings.

I am excited to announce IRS approval for our AADB Foundation. This is a project that was finished through the continued efforts of our Executive Director, Mr. Jim Tarrant. This will enable us to target areas of research that will benefit our members and allow us to apply for the grants necessary to work on these specialty areas. We also have a research committee that will help to identify which areas to choose. AADB continues to evolve with much of its communication and development through the volunteer committee work from you, our members. A complete list of these committees can be found on our website, www.dentalboards.org, under About AADB.

The Assessment Services Program (ASP) has stayed busy throughout the year with its Expert Review Assessment (ERA) and the Dentist-Professional Review and Evaluation Program (D-PREP) and recently has added the third component of Remediation. State boards can now utilize the services of the Universities that have developed a standardized intensive remediation program. These programs will ensure that the individual has achieved the necessary remediation to enable him or her to return to active practice. We appreciate the cooperation of the institutions and their faculty to help us facilitate this program nationally.

AADB continues to be a requested partner at the table of many different national groups. Some of the topics of discussion include licensure portability, ADA/DSO workgroup and possible development of an interstate dental licensure compact. Our membership contains a continuous national source of individuals that provide the expert view of current and former state board members. Again, we are grateful to all our volunteers that continue to give back to our profession.

And last, but not least, look for the unveiling of our new website. We have contracted with an agency to perfect the necessary updating of our website and it is due to be finished this spring. At the last meeting, we announced a contest to help us choose a new logo for the organization. Our hopes are to create a site that is easy to navigate and bring more personal options to keep up with the information highway. Your board is listening to your requests and wants to remind you that there is a membership directory under the Members Only section of the website for personal use so that we may contact each other as conveniently as possible.

Our Mid-Year Meeting is scheduled for April 10-11 in Chicago. We have already secured some amazing speakers to enlighten us. The program will be published in the near future on our website, so get your registration in soon. Hope to see you all there!

[Back to top](#)



American Association of Dental Boards

Meet your new AADB Board members:

Dr. Jill Burns, President-Elect

Dr. Burns is a General Dentist from Indiana who represents the North Caucus. She served as AADB Parliamentarian and on the Bylaws Committee before election as President-Elect. She practices in Richmond, IN.

Dr. Robert Zena, Treasurer

Dr. Zena represents the South Caucus. He is a Prosthodontist from Whitesburg, Kentucky and Associate Clinical Professor, Postgraduate Prosthodontic Program, University of Louisville. He served on the AADB Program Committee and its Sponsorship Subcommittee.

Mary Davidson, RDH, MPH

Mary Davidson, RDH from The Dalles, Oregon represents the West Caucus and the Dental Hygiene members. She has a Master of Public Health degree and served as a Dental Hygiene Member of the Oregon Board of Dentistry. She was Chair of the AADB Membership Committee and was a member of the Website Committee.

Issie Jenkins, JD, LL.M

Issie Jenkins, JD from Maryland represents the East Caucus and the perspective of the public members. She served in Senior Executive Service, United States Equal Employment Opportunity Commission, Washington, D.C. as General Counsel. Ms. Jenkins is a member of the Maryland State Board of Dental Examiners (Maryland Governor's Appointment).

[Back to top](#)



AMERICAN BOARD OF DENTAL EXAMINERS, INC.

Stanwood Kanna, D.D.S., President
William Pappas, D.D.S., Vice-President
Jeffery Hartsog, D.M.D., Secretary
Conrad McVea, III, D.D.S., Treasurer
Bruce Barrette, D.D.S., Past President

December 17, 2015

Mr. Alton Harvey, President
Oregon Board of Dentistry
15005 SW Kingbird Dr.
Beaverton, OR 97007

RECEIVED

DEC 22 2015

Oregon Board
of Dentistry

Dear President Harvey:

The ADEX 2015 Annual Meeting is history and we are already planning for the ADEX 2016 Meeting on August 5, 6, 7, 2016 at the Doubletree Rosemont O'Hare.

A number of Bylaw changes were passed by the 2015 ADEX House of Representatives that will have an impact on who attends future ADEX Meetings. The first Bylaws change has to do with Conflict of Interest.

SECTION 5. Conflict of Interest. No Officer, Member Representative, Director, or Member of any committee of the Corporation may be an Officer, Director, or Members of an operational, governance, or policy-making committee of an organization that:

- (a) Develops and administers licensure examinations which are substantially the same as those developed by the Corporation; and*
- (b) Is not authorized to administer examinations developed by the Corporation.*

For clarity, ADEX is a test development agency **not** a test administration agency. The Commission on Dental Assessments (CDCA) and The Council of Interstate Testing (CITA) are test administration agencies that currently administer the ADEX Examination.

Western Regional Boards (WREB), Central Regional Dental Testing Service, (CRDTS) and Southern Regional Boards (SRTA) are both test development agencies and test administration agencies.

To avoid any possible conflict of interest this new Bylaw does not allow an Officer, Director, Member Representative, or Member of an operational, governance, or policy-making committee of WREB, CRDTS, and SRTA, cannot serve in a similar capacity with ADEX. This does not mean that you cannot serve as **an examiner** with the test administration agencies CDCA, CITA, WREB, CRDTS and SRTA as this is not a conflict of interest.

The next Bylaws change deals with the Membership of the ADEX Dental and Dental Hygiene Examination Committees and the ADEX House of Representatives (ADEXHR).

Section 1. A. Each Member Board shall have one vote to cast on all matters submitted for a vote of the Members. The vote shall be cast by a dentist representative designated by each Member Board. Each dentist representative shall (i) be the member of the Dental Examination Committee representing his or her Board; and (ii) shall be or has been an active member of that Member Board. Member Boards will be entitled to vote on matters related to the examination(s) that they accept.

P.O. Box 50718 • Mesa, AZ 85208

Telephone (503) 724-1104

ADEXOFFICE@aol.com

www.adex.org

Mr. Alton Harvey, President
December 17, 2015
Page 2

The 2016 ADEXHR Representatives will be the same person who currently serve as the State Members of the ADEX Dental Examination Committee and District Representatives to the ADEX Dental Hygiene Examination Committee the Consumer District Representatives that were selected by Districts at the 2015 ADEXHR.

This will mean that the ADEX jurisdictions will only select one person to serve on the ADEX Dental Examination Committee and they will also be the State Representative to the ADEXHR.

ADEX Dental Examination Members are selected by the Member Jurisdiction of ADEX and they serve a three year term.

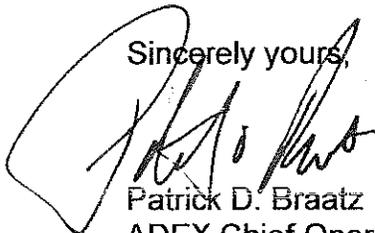
Your current ADEX Dental Examination Member is Dr. Jonno Hongo and the term will expire at the ADEXHR 2015.

Please advise ADEX no later than March 1, 2016 who your ADEX Dental Examination Committee Member will be.

Please send via e-mail to ADEXOFFICE@aol.com.

If you have any questions, please feel free to contact me at the e-mail address above or call me at 503-724-1104

Sincerely yours,



Patrick D. Braatz
ADEX Chief Operating Officer

cc: Executive Director/Administrator
Current Dental Exam Committee Member

Dental Hygiene Committee Meeting
Minutes
January 21, 2016
Draft 1

MEMBERS PRESENT: Yadira Martinez, R.D.H., E.P.P., Chair
Amy Fine, D.M.D. (via telephone)
Alicia Riedman, R.D.H., E.P.P.
Wilber Ramirez-Rodriguez, R.D.H., E.P.P., ODHA Representative
Mary Harrison, E.F.D.A., E.F.O.D.A., ODAA Representative

STAFF PRESENT: Stephen Prisby, Executive Director
Paul Kleinstub, D.D.S., M.S., Dental Director/Chief Investigator
Teresa Haynes, Examination and Licensing Manager

ALSO PRESENT: Lori Lindley, Sr. Assistant Attorney General (via telephone)

BOARD MEMBER PRESENT: Alton Harvey, Sr., President

VISITORS PRESENT: Ilya Babiy, R.D.H., E.P.P., Mt. Hood Community College; Pamela Lynch, R.D.H., E.P.P.; Heidi Jo Grubbs, R.D.H.; Lynn Ironside, R.D.H., ODHA; Gail Aamodt, R.D.H., E.P.P., ODHA/Pacific University; Kyle Johnstone, R.D.H., E.P.P., ODHA/Virginia Garcia; Rachel Broderick, CDA, EFDA, Dental Hygiene Student

Call to Order: The meeting was called to order by the Chair at 6:05 p.m. at the Board office; 1500 SW 1st Ave., Suite 770, Portland, Oregon.

MINUTES

Ms. Harrison moved and Ms. Riedman seconded that the minutes of the September 11, 2014 Dental Hygiene Committee meeting be approved as presented. The motion passed with Dr. Fine, Ms. Riedman, Mr. Ramirez-Rodriguez and Ms. Harrison voting aye.

OAR 818-042-0020 – Dentist and Dental Hygienist Responsibility:

The Committee reviewed and discussed how many dental assistants an Expanded Practice Dental Hygienist can hire and supervise at given time. Dr. Fine moved and Ms. Harrison seconded that the Committee refer the question to the Board for discussion. The motion passed with Dr. Fine, Ms. Riedman, Mr. Ramirez-Rodriguez and Ms. Harrison voting aye.

818-042-0020

Dentist and Dental Hygienist Responsibility

(1) A dentist is responsible for assuring that a dental assistant has been properly trained, has demonstrated proficiency, and is supervised in all the duties the assistant performs in the dental office. Unless otherwise specified, dental assistants shall work under indirect supervision in the dental office.

(2) A dental hygienist who works under general supervision may supervise a dental assistant in the dental office if the dental assistant is rendering assistance to the dental hygienist in providing dental hygiene services and the dentist is not in the office to provide indirect supervision. A dental hygienist with an Expanded Practice Permit may hire and supervise a dental assistant who will render assistance to the dental hygienist in providing dental hygiene services.

(3) The supervising dentist or dental hygienist is responsible for assuring that all required licenses, permits or certificates are current and posted in a conspicuous place.

(4) Dental assistants who are in compliance with written training and screening protocols adopted by the Board may perform oral health screenings under general supervision.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 2-2012, f. 6-14-12, cert. ef. 7-1-12

OAR 818-035-0025 - Prohibitions

The Committee reviewed and discussed the use of lasers by dental hygienists in periodontal therapy. Dr. Kleinstub informed the Committee that under existing rules, there is no prohibition using lasers while providing dental hygiene services.

818-035-0025

Prohibitions

A dental hygienist may not:

- (1) Diagnose and treatment plan other than for dental hygiene services;
- (2) Cut hard or soft tissue with the exception of root planing;
- (3) Extract any tooth;
- (4) Fit or adjust any correctional or prosthetic appliance except as provided by OAR 818-035-0030(1)(h);
- (5) Prescribe, administer or dispense any drugs except as provided by OAR 818-035-0030, 818-035-0040, 818-026-0060(11) and 818-026-0070(11);
- (6) Place, condense, carve or cement permanent restorations except as provided in OAR 818-035-0072, or operatively prepare teeth;
- (7) Irrigate or medicate canals; try in cones, or ream, file or fill canals;
- (8) Use the behavior management techniques of Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.
- (9) Place or remove healing caps or healing abutments, except under direct supervision.
- (10) Place implant impression copings, except under direct supervision.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.020(1)

Hist.: DE 2-1992, f. & cert. ef. 6-24-92; DE 2-1997, f. & cert. ef. 2-20-97; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14; OBD 1-2015(Temp), f. & cert. ef. 4-17-15 thru 10-13-15; OBD 3-2015, f. 9-8-15, cert. ef. 10-1-15

Ephinephrine (The EpiPen)

The Committee reviewed and discussed the Oregon Health Authority (OHA) and the Oregon Pharmacy Board's rules that describe a pathway to enable dental hygienists to obtain EpiPens for their emergency kits.

OAR 818-042-0050 – Taking of X-Rays – Exposing Radiographs

Ms. Harrison moved and Ms. Riedman seconded that the Committee recommend that the Board refer to the Rules Oversight Committee amending OAR 818-042-0050(2) to read:

818-042-0050

Taking of X-Rays — Exposing of Radiographs

(1) A dentist may authorize the following persons to place films, adjust equipment preparatory to exposing films, and expose the films under general supervision:

- (a) A dental assistant certified by the Board in radiologic proficiency; or
- (b) A radiologic technologist licensed by the Oregon Board of Medical Imaging and certified by the Oregon Board of Dentistry (OBD) who has completed ten (10) clock hours in a Board approved dental radiology course and submitted a satisfactory full mouth series of radiographs to the OBD.

(2) A dentist or dental hygienist may authorize a dental assistant who has completed a course of instruction approved by the Oregon Board of Dentistry, and who has passed the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, or comparable exam administered by any other testing entity authorized by the Board, or other comparable requirements approved by the Oregon Board of Dentistry to place films, adjust equipment preparatory to exposing films, and expose the films under the indirect supervision of a dentist, dental hygienist, or dental assistant who holds an Oregon Radiologic Proficiency Certificate. The dental assistant must successfully complete the clinical examination within six months of the dentist or dental hygienist authorizing the assistant to take radiographs.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14; OBD 3-2015, f. 9-8-15, cert. ef. 10-1-15

The motion passed with Dr. Fine, Ms. Riedman, Mr. Ramirez-Rodriguez and Ms. Harrison voting aye.

OAR 333-028-0200-333-028-0280 –Certification for Local School Dental Sealant Programs & SB 660

The Committee reviewed and discussed the Oregon Health Authority's proposed rules and Statutes regarding the Certification for Local School Dental Sealant Programs. Ms. Haynes informed the Committee that the OHA is anticipating that they will be filing the proposed rules, with a couple of minor changes, with the Secretary of State on January 29, 2016.

The meeting was adjourned at 6:37.

DRAFT

**EXECUTIVE
DIRECTORS
REPORT**

EXECUTIVE DIRECTOR'S REPORT

February 19, 2016

Board Member & Staff Updates

I am happy to introduce Dr. Daniel Blickenstaff as the OBD's new full time dental investigator. Dr. Blickenstaff earned his undergraduate, graduate and dental degrees from The Ohio State University. He had his own private practice for 37 years. He has been a Restorative Dentistry Clinical Instructor at PCC for the last five years. He is a published author and has presented on such diverse topics as TMJ and "What you need to know so that you don't look stupid your first day on the job."

Congratulations to current Board Members, Dr. Julie Ann Smith, Dr. Todd Beck, past Board President Dr. Norm Magnuson and other distinguished Oregon dentists on their induction into the American College of Dentists as new Fellows on November 25, 2015, in Washington D.C. They were also inducted as Fellows into the International College of Dentists at the same meeting. **Attachment #1**

Legislation & Executive Order Updates

The short legislative session started February 1st and ends March 6th. I have listed proposed legislation that will have a direct impact on the Board and other legislation that the Board may find important. Additionally I included Governor Brown's Executive Order # 16-06, and subsequent audit report. **Attachment #2**

OBD Budget Status Report

Attached is the latest budget report for the 2015 - 2017 Biennium. This report, which is from July 1, 2015 through December 31, 2015, shows revenue of \$696,191.02 and expenditures of \$559,370.68. If Board members have questions on this budget report format, please feel free to ask me. **Attachment #3**

Customer Service Survey

Attached are the legislatively mandated survey results from July 1, 2015 – January 31, 2016, and comments received. The results of the survey show that the OBD continues to receive positive ratings from the majority of those that submit a survey. **Attachment #4**

Board and Staff Speaking Engagements

Teresa Haynes and I made a License Application Presentation to the graduating Dental Hygiene Students at OIT in Klamath Falls on Monday, January 25, 2016.

2016 Dental License Renewal

Approximately 2,000 postcard notices were mailed to Oregon licensed dentists for the March 31, 2016 Renewal Cycle. I will provide an update to the Board on the number who have renewed at the Board Meeting.

AADA & AADB Midyear Meetings

The midyear meetings are scheduled for April 10-12 in Chicago. The Joint Commission on National Dental Examinations conducts an annual forum for representatives of state boards of dentistry for the purpose of exchanging information about National Board Dental and Dental Hygiene Examinations. The meeting will take place directly following the conclusion of the AADB meeting. Dr. Todd Beck had agreed to attend and participate on behalf of the Board. I request that the Board approve my attendance at the AADA & AADB Midyear meetings.

Action Requested

Board Social

Board members, staff and any interested parties are invited to attend a social gathering at Big Al's in Beaverton which will occur after the Board meeting on February 19. A quorum of the Board may be present.

Newsletter

The last newsletter was published in December. I anticipate the next edition going out in the summer to incorporate the Board's Strategic Plan along with other important news and updates relevant to our Licensees.

Congratulations!

American College of Dentists Inductees



On November 5, 2015, the ACD inducted 284 new Fellows at the Grant Hyatt Washington, in Washington, DC. Pictured here with Immediate Past Regent for Regency 8, **Rickland Asai, DMD**, are this year's new Fellows from left to right: **Norman Magnuson, DDS**; **Frances Sunseri, DMD**; **Kim Wright, DMD**; **Athena Bettger, DMD**; and **Todd Beck, DMD**.

Legislation & Governor Brown Executive Order/SOS Audit Report Summaries

Attachments for each provided

House Bill 4016

Permits Oregon Board of Dentistry, Oregon Medical Board, Oregon State Board of Nursing and State Board of Pharmacy to contract to establish impaired health professional program for licensees of boards. Requires program to meet requirements for impaired health professional program contracted for established by Oregon Health Authority.

House Bill 4095

Requires Oregon Board of Dentistry, upon request of individual who has been disciplined by board, to remove from its website and other publicly accessible print and electronic publications information related to disciplining individual if individual meets certain criteria.

House Bill 4106

Prohibits state agency from relying only upon expediency, convenience, best interest of public, general public need or speculation as basis for finding of prejudice that authorizes temporary adoption, amendment or suspension of rule.

House Bill 4118

Allows person to contest civil penalty in circuit court.

House Bill 4130

Requires state agency public records policies, and public record retention schedules of state agencies and political subdivisions of this state, to require retention of public records for a minimum of two years. Requires public bodies to provide standardized acknowledgment of receipt of requests for public records within five business days of receipt of request. Requires public bodies to provide records, or to assert exemption from required disclosure, within 30 days of receipt of request. Permits public body to exceed 30-day deadline if public body provides requester with estimated time that records will be disclosed or exemptions claimed. Permits requesters to petition for administrative or judicial review if public body fails to meet 30-day deadline. Limits amounts public bodies with 10 or more full-time equivalent employees may charge as fees for producing public records. Directs county clerks and city elections officers to give notice to Secretary of State regarding petitions for county or local initiative measures, and requires secretary to provide reasonable statewide notice of county or local initiative measures. Appropriates moneys from General Fund to Secretary of State to implement statewide notice of county or local initiative measures

Senate Bill 1504

Enacts interstate Physical Therapy Licensure Compact.

Senate Bill 1538

Requires state agencies to notify Legislative Fiscal Office promptly concerning information security incidents and provide office with copies and report results of information security assessments.

Senate Bill 1579

Requires state agencies to provide summary of legal advice regarding validity or effect of proposed rule or written order.

House Joint Resolution 201

Proposes amendment to Oregon Constitution relating to legislative review of state agency administrative rules. Provides that Legislative Assembly may require legislative committees to review and approve administrative rules before rules or amendments become effective. Provides that administrative rules adopted or amended by state agencies after effective date of constitutional amendment have no force and effect unless specified legislative committees approve rule or amendment, if approval is required by law. Refers proposed amendment to people for their approval or rejection at next regular general election.

Senate Joint Resolution 202

Proposes amendment to Oregon Constitution to require Legislative Assembly to approve each administrative rule or amendment of administrative rule adopted by executive branch agency before taking effect. Authorizes Legislative Assembly to permit executive branch agencies to adopt or amend rules that take effect immediately if emergency conditions exist that satisfy criteria established by Legislative Assembly. Permits rule adopted or amended on emergency basis to be in effect for no more than 12 calendar months unless rule or amendment is approved by Legislative Assembly. Applies to rules that are first adopted or amended on or after July 1, 2017. Refers proposed amendment to people for their approval or rejection at next regular general election.

Governor Kate Brown's Executive Order # 16-06**EXECUTIVE ORDER NO. 16-06****PUBLIC RECORDS**

Upon assuming the office of Governor in February 2015, I offered a package of bills to the Legislative Assembly relating to ethics and governmental accountability. A key component of that package was Senate Bill 9, which mandated that an audit be conducted of state agencies' responses to public records requests with respect to issues of cost, timeliness and procedures. The Legislature approved Senate Bill 9 and I signed it into law on June 15, 2015.

The Secretary of State's Audits Division has conducted the audit required by Senate Bill 9, and on November, 2015, released the audit results in a document entitled "State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies." (The audit and the audit results are hereinafter referred to collectively as the "Audit.") The Audit examined a sampling of large, medium and small agencies and found that for the most part Oregon state agencies handle routine requests well and struggle with complex requests.

Secretary of State Audit Report

Secretary of State Audit Report

Jeanne P. Atkins, Secretary of State

Gary Blackmer, Director, Audits Division



State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies

Executive Summary

Oregon state agencies respond well to most public records requests for routine information, but the infrequent complex requests produce challenges. As a result, some requesters believe that agencies deliberately discourage, delay, or block the release of public information.

The Department of Administrative Services should provide guidance and training to help agencies develop procedures, and agencies should create timeliness goals for responding to requests. Better monitoring, consistent fees, use of technology, and third-party mediation could also help with the retention and disclosure of public records and improve trust in Oregon's government.

A-Engrossed
House Bill 4016

Ordered by the House February 8
Including House Amendments dated February 8

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

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.

[Permits Oregon Board of Dentistry, Oregon Medical Board, Oregon State Board of Nursing and State Board of Pharmacy to contract to establish impaired health professional program for licensees of boards. Requires program to meet requirements for impaired health professional program contracted for or established by Oregon Health Authority.]

Permits health profession licensing boards to establish or contract together to establish impaired health professional program for licensees of boards. Permits boards to consult with each other to adopt rules related to impaired health professional program. Establishes Impaired Health Professional Program Work Group to facilitate establishment and continuation of impaired health professional program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to impaired health professional programs; creating new provisions; amending ORS 676.190;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 676.190 is amended to read:

6 676.190. (1) The [*Oregon Health Authority shall*] **health profession licensing boards may** es-
7 tablish or contract to establish an impaired health professional program.

8 **(2) A program established or contracted for under this section** [*The program*] must:

9 (a) Enroll licensees of participating health profession licensing boards who have been diagnosed
10 with alcohol or substance abuse or a mental health disorder;

11 (b) Require that a licensee sign a written consent prior to enrollment in the program allowing
12 disclosure and exchange of information between the program, the licensee's board, the licensee's
13 employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

14 (c) Enter into diversion agreements with enrolled licensees;

15 (d) If the enrolled licensee has a direct supervisor, assess the ability of the direct supervisor to
16 supervise the licensee, including an assessment of any documentation of the direct supervisor's
17 completion of specialized training;

18 (e) Report substantial noncompliance with a diversion agreement to a noncompliant licensee's
19 board within one business day after the program learns of the substantial noncompliance; and

20 (f) At least weekly, submit to licensees' boards:

21 (A) A list of licensees who were referred to the program by a health profession licensing board
22 and who are enrolled in the program; and

23 (B) A list of licensees who were referred to the program by a health profession licensing board

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 and who successfully complete the program.

2 [(2)] (3) The lists submitted under subsection [(1)(f)] (2)(f) of this section are exempt from dis-
3 closure as a public record under ORS 192.410 to 192.505.

4 [(3)] (4) When the program reports substantial noncompliance under subsection [(1)(e)] (2)(e) of
5 this section to a licensee's board, the report must include:

6 (a) A description of the substantial noncompliance;

7 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS
8 676.200 (2)(a) or subsection [(6)(a)] (7)(a) of this section stating the licensee's diagnosis;

9 (c) A copy of the licensee's diversion agreement; and

10 (d) The licensee's employment status.

11 [(4)] (5) The program may not diagnose or treat licensees enrolled in the program.

12 [(5)] (6) The diversion agreement required by subsection [(1)] (2) of this section must:

13 (a) Require the licensee to consent to disclosure and exchange of information between the pro-
14 gram, the licensee's board, the licensee's employer, evaluators and treatment programs or providers,
15 in compliance with ORS 179.505 and 42 C.F.R. part 2;

16 (b) Require that the licensee comply continuously with the agreement for at least two years to
17 successfully complete the program;

18 (c) Require that the licensee abstain from mind-altering or intoxicating substances or potentially
19 addictive drugs, unless the drug is:

20 (A) Prescribed for a documented medical condition by a person authorized by law to prescribe
21 the drug to the licensee; and

22 (B) Approved by the program if the licensee's board has granted the program that authority;

23 (d) Require the licensee to report use of mind-altering or intoxicating substances or potentially
24 addictive drugs within 24 hours;

25 (e) Require the licensee to agree to participate in a recommended treatment plan;

26 (f) Contain limits on the licensee's practice of the licensee's health profession;

27 (g) Require the licensee to submit to random drug or alcohol testing in accordance with federal
28 regulations, unless the licensee is diagnosed with solely a mental health disorder and the licensee's
29 board does not otherwise require the licensee to submit to random drug or alcohol testing;

30 (h) Require the licensee to report to the program regarding the licensee's compliance with the
31 agreement;

32 (i) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime
33 to the program within three business days after the licensee is arrested or convicted;

34 (j) Require the licensee to report applications for licensure in other states, changes in employ-
35 ment and changes in practice setting; and

36 (k) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and
37 treatment.

38 [(6)(a)] (7)(a) *[If a health profession licensing board participating in the program establishes by*
39 *rule an option for self-referral to the program, a licensee of the health profession licensing board may*
40 *self-refer to the program.]* **A health profession licensing board may establish by rule an option**
41 **to permit licensees of the health profession licensing board to self-refer to the program.**

42 (b) The program shall require a licensee who self-refers to the program to attest that the
43 licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board.
44 The program shall enroll the licensee on the date on which the licensee attests that the licensee,
45 to the best of the licensee's knowledge, is not under investigation by the licensee's board.

1 (c) When a licensee self-refers to the program, the program shall:

2 (A) Require that an independent third party approved by the licensee's board to evaluate alcohol
3 or substance abuse or mental health disorders evaluate the licensee for alcohol or substance abuse
4 or mental health disorders; and

5 (B) Investigate to determine whether the licensee's practice while impaired has presented or
6 presents a danger to the public.

7 (d) When a licensee self-refers to the program, the program may not report the licensee's en-
8 rollment in or successful completion of the program to the licensee's board.

9 *[(7) The authority shall adopt rules establishing a fee to be paid by the health profession licensing
10 boards participating in the program for administration of the program.]*

11 *[(8) The authority shall arrange for an independent third party to audit the program every four
12 years to ensure compliance with program guidelines. The authority shall report the results of the audit
13 to the Legislative Assembly, the Governor and the health profession licensing boards. The report may
14 not contain individually identifiable information about licensees.]*

15 **(8) The health profession licensing boards shall arrange for an independent third party
16 to conduct an audit every four years of an impaired health professional program for the
17 licensees of those health profession licensing boards to ensure compliance with program
18 guidelines. The health profession licensing boards shall report the results of the audit to the
19 Legislative Assembly in the manner provided by ORS 192.245 and to the Governor. The report
20 may not contain individually identifiable information about licensees.**

21 (9) The *[authority]* **health profession licensing boards, in consultation with one another,**
22 **may adopt rules to carry out this section.**

23 **SECTION 2. Section 3 of this 2016 Act is added to and made a part of ORS 676.185 to
24 676.200.**

25 **SECTION 3. (1) The Impaired Health Professional Program Work Group is established.**

26 **(2) The work group consists of the designees of any health profession licensing boards
27 that elect to establish or contract for an impaired health professional program as described
28 in ORS 676.190.**

29 **(3) The work group shall facilitate the establishment and continuation of the impaired
30 health professional program described in ORS 676.190.**

31 **(4) A majority of the members of the work group constitutes a quorum for the trans-
32 action of business.**

33 **(5) Official action by the work group requires the approval of a majority of the members
34 of the work group.**

35 **(6) The work group shall elect one of its members to serve as chairperson.**

36 **(7) The work group shall meet at times and places specified by the call of the chairperson
37 or of a majority of the members of the work group.**

38 **(8) The work group may adopt rules necessary for the operation of the work group.**

39 **(9) The Oregon Medical Board shall provide staff support to the work group.**

40 **(10) Members of the work group are not entitled to compensation, but may be reimbursed
41 for actual and necessary travel and other expenses incurred by them in the performance of
42 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
43 penses shall be paid out of funds appropriated to the health professional licensing board that
44 the member represents for purposes of the work group.**

45 **(11) All agencies of state government, as defined in ORS 174.111, are directed to assist**

1 **the work group in the performance of duties of the work group and, to the extent permitted**
2 **by laws relating to confidentiality, to furnish information and advice the members of the**
3 **work group consider necessary to perform their duties.**

4 **SECTION 4. The amendments to ORS 676.190 by section 1 of this 2016 Act become oper-**
5 **ative on July 1, 2017.**

6 **SECTION 5. This 2016 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
8 **on its passage.**

9

House Bill 4095

Sponsored by Representative GILLIAM; Representative LIVELY, Senator GIROD (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 Oregon Board of Dentistry, upon request of individual who has been disciplined by board, to remove from its website and other publicly accessible print and electronic publications information related to disciplining individual if individual meets certain criteria.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to dentistry; and declaring an emergency.

3 Whereas the Oregon Board of Dentistry is responsible for the licensure and discipline of dental
4 professionals in this state; and

5 Whereas collaboration between the Oregon Board of Dentistry and other medical professional
6 boards in this state fosters productive and equitable discipline procedures among all medical pro-
7 fessions; and

8 Whereas communication between the Oregon Board of Dentistry and the Legislative Assembly
9 should be encouraged; now, therefore,

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

11 **SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS chapter 679.**

12 **SECTION 2. (1) Upon the request of an individual who has been disciplined by the Oregon**
13 **Board of Dentistry, the board shall remove from its website and other publicly accessible**
14 **print and electronic publications under the board's control all information related to disci-**
15 **plining the individual under ORS 679.140 and any findings and conclusions made by the board**
16 **during the disciplinary proceeding, if:**

17 **(a) The request is made 10 years or more after the date on which any disciplinary sanc-**
18 **tion ended;**

19 **(b) The individual was not disciplined for financially or physically harming a patient;**

20 **(c) The individual informed the board of the matter for which the individual was disci-**
21 **plined before the board received information about the matter or otherwise had knowledge**
22 **of the matter;**

23 **(d) The individual making the request, if the individual is or was a licensee, otherwise**
24 **remained in good standing with the board following the imposition of the disciplinary sanc-**
25 **tion; and**

26 **(e) The individual fully complied with all disciplinary sanctions imposed by the board.**

27 **(2) The board shall adopt by rule a process for making a request under this section.**

28 **SECTION 3. As soon as practicable after the effective date of this 2016 Act, the Oregon**
29 **Board of Dentistry shall:**

30 **(1) Provide notice to each individual licensed by the board under ORS chapter 679 of the**

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 **process for making a request described in section 2 of this 2016 Act; and**

2 **(2) Provide public notice of the process for making a request under section 2 of this 2016**
3 **Act.**

4 **SECTION 4. This 2016 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
6 **on its passage.**

7



Oregon

Kate Brown, Governor

Board of Dentistry
1500 SW 1st Ave. Ste 770
Portland, OR 97201-5837
(971) 673-3200
Fax: (971) 673-3202

Testimony
On House Bill 4095
by
Stephen Prisby, Executive Director
Oregon Board of Dentistry
Before the
Health Committee on Health Care,
Wednesday, February 3, 2016

On behalf of the Oregon Board of Dentistry, I want to thank you for the opportunity to testify regarding House Bill 4095.

The stated mission of the Oregon Board of Dentistry is to assure that the citizens of Oregon receive the highest possible quality oral health care.

In keeping with that mission, I am presenting the following comments on House Bill 4095. House Bill 4095 was first available for the Board to review last Thursday, January 28, 2016. Copies of the legislation as introduced have been sent to all members of the Board. However, for the Board to take an official position will require the Board to meet and discuss this legislation, as well as any of the amendments that may be introduced or suggested at today's hearing. A meeting has not been able to take place.

OBD Staff and I have noted:

- Public Record Requests would still require us to provide public discipline information even if as this legislation intends, we remove information and redact information from past newsletters and board minutes that are posted on our website.
- The language in Section 2(d) references that a licensee remained in "good standing." The OBD does not define the term "good standing" in the Dental Practice Act.
- The Board of Dentistry would be the only health licensing board removing the names of disciplined licensees from websites and other electronic publications.
- Governor Kate Brown recently issued Executive Order No.16-06 which addresses public record policies and will impact our agency to enhance more transparency and accessibility to Oregonians.

Last year 18 Health Boards (Medical, Nursing, Pharmacy, Dentistry, etc...) worked together based on a directive from Representative Greenlick & Representative Hayden to see if the boards could find and possibly propose a single way all boards would allow discipline information to be available to the public and to see if after a certain timeframe, some discipline would come off board websites. The boards are different, with different types of board orders and actions, and different types of discipline. All 18 Health Boards leave discipline information on their websites indefinitely. Some, like ours have a note to contact the board office, when orders are withdrawn.

To comply with HB 4095 would necessitate the OBD to reallocate our limited resources, of staff time and money to fulfill what the legislation intends. It might appear to make the OBD look like it is protecting certain Licensees by removing unflattering discipline information.

The charge from the Oregon Legislature ever since it created the Oregon Board of Dentistry in 1887 has always been for the continued protection of the public, and the Board and I take that role very seriously.

The Board only posts disciplinary information on our website when both the Board has voted to discipline a Licensee, and the consent order has been signed by the Licensee and the Board President. Pursuant to ORS 676.175 Complaints and Investigations are not public records.

I have discussed this legislation with the ODA and shared it with the ODHA. I enjoy a good working relationship with the leadership of both organizations and appreciate their feedback on this and other legislation impacting our dentists and dental hygienists.

Therefore, the Board pledges to this Committee that it will work with all of the parties involved in the development, as well as those that would be impacted by the passage of this legislation, to help craft a piece of legislation that will be acceptable to all of the parties involved and promote the Board's mission to protect the public.

I would be happy to answer any of the Committee's questions.

House Bill 4106

Sponsored by Representatives KENNEMER, GOMBERG; Representatives DAVIS, DOHERTY, EVANS, HOYLE, HUFFMAN, KENY-GUYER, KOMP, MCLANE, PILUSO, SPRENGER, STARK, WEIDNER, WILSON, WITT, Senators BEYER, BOQUIST (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**.

Prohibits state agency from relying only upon expediency, convenience, best interest of public, general public need or speculation as basis for finding of prejudice that authorizes temporary adoption, amendment or suspension of rule.

A BILL FOR AN ACT

1
2 Relating to state agency adoption of temporary rules; amending ORS 183.335.

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

4 **SECTION 1.** ORS 183.335 is amended to read:

5 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
6 of its intended action:

7 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
8 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

9 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

10 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
11 subsection (8) of this section; and

12 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons
13 specified in subsection (15) of this section.

14 (2)(a) The notice required by subsection (1) of this section must include:

15 (A) A caption of not more than 15 words that reasonably identifies the subject matter of the
16 agency's intended action. The agency shall include the caption on each separate notice, statement,
17 certificate or other similar document related to the intended action.

18 (B) An objective, simple and understandable statement summarizing the subject matter and
19 purpose of the intended action in sufficient detail to inform a person that the person's interests may
20 be affected, and the time, place and manner in which interested persons may present their views on
21 the intended action.

22 (b) The agency shall include with the notice of intended action given under subsection (1) of this
23 section:

24 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
25 promulgation of the rule;

26 (B) A citation of the statute or other law the rule is intended to implement;

27 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
28 need;

29 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
30 the agency in considering the need for and in preparing the rule, and a statement of the location

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 at which those documents are available for public inspection. The list may be abbreviated if neces-
2 sary, and if so abbreviated there shall be identified the location of a complete list;

3 (E) A statement of fiscal impact identifying state agencies, units of local government and the
4 public that may be economically affected by the adoption, amendment or repeal of the rule and an
5 estimate of that economic impact on state agencies, units of local government and the public. In
6 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
7 able information to project any significant economic effect of that action on businesses which shall
8 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
9 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
10 scribed in ORS 183.534;

11 (F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-
12 tion as to why no advisory committee was used to assist the agency in drafting the rule; and

13 (G) A request for public comment on whether other options should be considered for achieving
14 the rule's substantive goals while reducing the negative economic impact of the rule on business.

15 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
16 section from publication in the bulletin referred to in ORS 183.360.

17 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
18 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
19 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
20 show all changes to the rule by striking through material to be deleted and underlining all new
21 material, or by any other method that clearly shows all new and deleted material.

22 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
23 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
24 request received from 10 persons or from an association having not less than 10 members before the
25 earliest date that the rule could become effective after the giving of notice pursuant to subsection
26 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
27 notice of the hearing at least 21 days before the hearing to the person who has requested the
28 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
29 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
30 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
31 consider fully any written or oral submission.

32 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
33 and the rule for which the hearing is to be conducted applies only to a limited geographical area
34 within this state, or affects only a limited geographical area within this state, the hearing shall be
35 conducted within the geographical area at the place most convenient for the majority of the resi-
36 dents within the geographical area. At least 14 days before a hearing conducted under this para-
37 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
38 in a newspaper of general circulation published within the geographical area that is affected by the
39 rule or to which the rule applies. If a newspaper of general circulation is not published within the
40 geographical area that is affected by the rule or to which the rule applies, the publication shall be
41 made in the newspaper of general circulation published closest to the geographical area.

42 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
43 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
44 in the proposed adoption, amendment or repeal of any rule to written submissions.

45 (d) If requested by at least five persons before the earliest date that the rule could become ef-

1 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
 2 provide a statement that identifies the objective of the rule and a statement of how the agency will
 3 subsequently determine whether the rule is in fact accomplishing that objective.

4 (e) An agency that receives data or views concerning proposed rules from interested persons
 5 shall maintain a record of the data or views submitted. The record shall contain:

6 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
 7 amend or repeal a rule.

8 (B) A recording or summary of oral submissions received at hearings held for the purpose of
 9 receiving those submissions.

10 (C) Any public comment received in response to the request made under subsection (2)(b)(G) of
 11 this section and the agency's response to that comment.

12 (D) Any statements provided by the agency under paragraph (d) of this subsection.

13 (4) Upon request of an interested person received before the earliest date that the rule could
 14 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
 15 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
 16 requesting person an opportunity to submit data, views or arguments concerning the proposed
 17 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
 18 to subsection (5) of this section.

19 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
 20 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
 21 practicable, if the agency prepares:

22 (a) A statement of its findings **demonstrating** that its failure to act promptly will result in se-
 23 rious prejudice to the public interest or the interest of the parties concerned and the specific rea-
 24 sons for its findings of prejudice;

25 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
 26 promulgation of the rule;

27 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
 28 need;

29 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
 30 the agency in considering the need for and in preparing the rule, and a statement of the location
 31 at which those documents are available for public inspection; and

32 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
 33 183.534.

34 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
 35 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
 36 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
 37 (4) of this section.

38 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
 39 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

40 (c) **An agency may not rely only upon expediency, convenience, best interest of the pub-
 41 lic, general public need or speculation as the basis for its findings of prejudice under sub-
 42 section (5)(a) of this section.**

43 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
 44 prior notice or hearing if the amendment is solely for the purpose of:

45 (a) Changing the name of an agency by reason of a name change prescribed by law;

1 (b) Changing the name of a program, office or division within an agency as long as the change
2 in name does not have a substantive effect on the functions of the program, office or division;

3 (c) Correcting spelling;

4 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
5 meaning of the rule;

6 (e) Correcting statutory or rule references; or

7 (f) Correcting addresses or telephone numbers referred to in the rules.

8 (8)(a) Any person may request in writing that an agency send to the person copies of the
9 agency's notices of intended action issued under subsection (1) of this section. The person must
10 provide an address where the person elects to receive notices. The address provided may be a postal
11 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
12 address.

13 (b) A request under this subsection must indicate that the person requests one of the following:

14 (A) The person may request that the agency mail paper copies of the proposed rule and other
15 information required by subsection (2) of this section to the postal mailing address.

16 (B) If the agency posts notices of intended action on a website, the person may request that the
17 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
18 dress with a reference to the website where electronic copies of the proposed rule and other infor-
19 mation required by subsection (2) of this section are posted.

20 (C) The person may request that the agency electronically mail the information required by
21 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
22 copies of the proposed rule and other information required by subsection (2) of this section or pro-
23 vide a reference to a website where electronic copies of the proposed rule and other information
24 required by subsection (2) of this section are posted.

25 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
26 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
27 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
28 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
29 the lists.

30 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
31 tion may request that an agency furnish paper copies of the notices.

32 (9) This section does not apply to rules establishing an effective date for a previously effective
33 rule or establishing a period during which a provision of a previously effective rule will apply.

34 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to
35 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
36 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
37 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
38 279C.800 to 279C.870 relating to public contracts and purchasing.

39 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
40 in substantial compliance with the provisions of this section in effect on the date that the notice
41 required under subsection (1) of this section is delivered to the Secretary of State for the purpose
42 of publication in the bulletin referred to in ORS 183.360.

43 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
44 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS
45 183.715.

1 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
2 subsection (2)(a)(A) of this section.

3 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
4 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
5 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
6 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
7 rule.

8 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
9 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
10 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
11 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS
12 183.333.

13 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
14 agency need not be based upon or supported by an evidentiary record.

15 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
16 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
17 agency or person unless the extension applies equally to all interested agencies and persons. An
18 agency shall not consider any submission made by another agency after the final deadline has
19 passed.

20 (15) The notices required under subsections (1) and (3) of this section must be given by the
21 agency to the following persons:

22 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
23 within two years before notice is given under subsection (1) of this section, notice shall be given to
24 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
25 cochairs of all committees that reported the bill out, except for those committees whose sole action
26 on the bill was referral to another committee.

27 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
28 passed within two years before notice is given under subsection (1) of this section, notice shall be
29 given to the chair or cochairs of any interim or session committee with authority over the subject
30 matter of the rule.

31 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
32 to the Speaker of the House of Representatives and to the President of the Senate who are in office
33 on the date the notice is given.

34 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
35 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
36 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
37 with the legislation from which the proposed adoption, amendment or repeal results.

38 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
39 to the agency proposing the adoption, amendment or repeal.

40

House Bill 4118

Sponsored by Representative HEARD (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**.

Allows person to contest civil penalty in circuit court.

A BILL FOR AN ACT

Relating to appeals of agency orders; amending ORS 183.400, 183.415, 183.745, 418.993, 441.712, 443.795, 527.687, 536.905, 603.995, 616.997, 619.996, 621.995, 622.996, 625.995, 628.995, 632.995, 634.905, 635.995, 645.215, 673.732, 688.715, 689.832, 697.832, 704.900 and 822.080.

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

SECTION 1. ORS 183.745 is amended to read:

183.745. (1) Except as otherwise provided by law, an agency may [*only*] impose a civil penalty **only** as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to [*make written application for a hearing*] **file an appeal of the order**. The agency may by rule provide for a longer period of time in which [*application for a hearing may be made*] **an appeal may be filed**. If [*no application for a hearing is made*] **the person does not file an appeal** within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

[(4) *Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as*]

(4) A person may file an appeal:

(a) By requesting a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470[.];

(b) If the order proposes a civil penalty of \$10,000 or greater, by filing a petition for judicial review of the order in the appropriate circuit court; or

(c) If the order proposes a civil penalty of less than \$10,000, by commencing an action, as provided in ORS 46.425, in the small claims department of the Circuit Court for Marion County or the circuit court for the county in which the person resides or has a principal place of business.

(5)(a) Judicial review of an order made after a hearing under subsection [(4)] **(4)(a)** of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

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 **(b) Judicial review under subsection (4)(b) or (c) of this section shall be as provided in**
 2 **ORS 183.484, 183.486, 183.490, 183.497 and 183.500 for judicial review of an order in other than**
 3 **a contested case except that the petitioner has a right to a jury trial if the action is filed**
 4 **pursuant to subsection (4)(b) of this section.**

5 (6) When an order assessing a civil penalty under this section becomes final by operation of law
 6 or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final,
 7 the order may be recorded with the county clerk in any county of this state. The clerk shall there-
 8 upon record the name of the person incurring the penalty and the amount of the penalty in the
 9 County Clerk Lien Record.

10 (7) This section does not apply to penalties:

- 11 (a) Imposed under the tax laws of this state;
- 12 (b) Imposed under the provisions of ORS 646.760 or 652.332;
- 13 (c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or
- 14 (d) Imposed by the Public Utility Commission.

15 (8) This section creates no new authority in any agency to impose civil penalties.

16 (9) This section does not affect:

17 (a) Any right under any other law that an agency may have to bring an action in a court of this
 18 state to recover a civil penalty; or

19 (b) The ability of an agency to collect a properly imposed civil penalty under the provisions of
 20 ORS 305.830.

21 (10) The notice provided for in subsection (2) of this section may be made part of any other
 22 notice served by the agency under ORS 183.415.

23 (11) Informal disposition of proceedings under this section, whether by stipulation, agreed
 24 settlement, consent order or default, may be made at any time.

25 (12) In addition to any other remedy provided by law, recording an order in the County Clerk
 26 Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125
 27 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

28 (13) As used in this section:

- 29 (a) “Agency” has that meaning given in ORS 183.310.
- 30 (b) “Civil penalty” includes only those monetary penalties that are specifically denominated as
 31 civil penalties by statute.

32 **SECTION 2.** ORS 183.400 is amended to read:

33 183.400. (1) The validity of any rule may be determined upon a petition by any person to the
 34 Court of Appeals in the manner provided for review of orders in contested cases. The court shall
 35 have jurisdiction to review the validity of the rule whether or not the petitioner has first requested
 36 the agency to pass upon the validity of the rule in question, but not when the petitioner is a party
 37 to an order or a contested case in which the validity of the rule may be determined by a court.

38 (2) The validity of any applicable rule may also be determined by a court, upon review of an
 39 order in any manner provided by law or pursuant to ORS 183.480 **or 183.745** or upon enforcement
 40 of such rule or order in the manner provided by law.

41 (3) Judicial review of a rule shall be limited to an examination of:

- 42 (a) The rule under review;
- 43 (b) The statutory provisions authorizing the rule; and
- 44 (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking
 45 procedures.

1 (4) The court shall declare the rule invalid only if it finds that the rule:

2 (a) Violates constitutional provisions;

3 (b) Exceeds the statutory authority of the agency; or

4 (c) Was adopted without compliance with applicable rulemaking procedures.

5 (5) In the case of disputed allegations of irregularities in procedure which, if proved, would
6 warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed
7 by the court to take evidence and make findings of fact. The court's review of the master's findings
8 of fact shall be de novo on the evidence.

9 (6) The court shall not declare a rule invalid solely because it was adopted without compliance
10 with applicable rulemaking procedures after a period of two years after the date the rule was filed
11 in the office of the Secretary of State, if the agency attempted to comply with those procedures and
12 its failure to do so did not substantially prejudice the interests of the parties.

13 **SECTION 3.** ORS 183.415 is amended to read:

14 183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state
15 agencies have a right to be informed of their rights and remedies with respect to the actions.

16 (2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable
17 notice, served personally or by registered or certified mail.

18 (3) Notice under this section must include:

19 (a) A statement of the party's right to hearing, with a description of the procedure and time to
20 request a hearing, or a statement of the time and place of the hearing;

21 (b) A statement of the authority and jurisdiction under which the hearing is to be held;

22 (c) A reference to the particular sections of the statutes and rules involved;

23 (d) A short and plain statement of the matters asserted or charged;

24 (e) A statement indicating whether and under what circumstances an order by default may be
25 entered; and

26 (f) A statement that active duty servicemembers have a right to stay proceedings under the
27 federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Mil-
28 itary Department for more information. The statement must include the toll-free telephone numbers
29 for the Oregon State Bar and the Oregon Military Department and the Internet address for the
30 United States Armed Forces Legal Assistance Legal Services Locator website.

31 **(4) If a contested case order includes a civil penalty, the notice must include a statement**
32 **of the party's rights under ORS 183.745.**

33 **SECTION 4.** ORS 418.993 is amended to read:

34 418.993. (1) Any civil penalty under ORS 418.992 shall be imposed in the manner provided in
35 ORS 183.745.

36 (2) Notwithstanding ORS 183.745, the private child-caring agency to whom the notice is ad-
37 dressed shall have 10 days from the date of service of the notice in which to [*make written applica-*
38 *tion for a hearing*] **file an appeal:**

39 **(a) Requesting a hearing** before the Director of Human Services[.] **in accordance with ORS**
40 **183.745 (4)(a); or**

41 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

42 **SECTION 5.** ORS 441.712 is amended to read:

43 441.712. (1) Any civil penalty under ORS 441.710 shall be imposed in the manner provided by
44 ORS 183.745.

45 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days

1 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

2 **(a) Requesting a hearing, in accordance with ORS 183.745 (4)(a), before:**

3 *[(a)] (A) The Director of Human Services if the facility is a long term care facility, residential*
 4 *care facility, residential training facility or residential training home; or*

5 *[(b)] (B) The Director of the Oregon Health Authority if the facility is a residential treatment*
 6 *facility or residential treatment home[.]; or*

7 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

8 **SECTION 6.** ORS 443.795 is amended to read:

9 443.795. (1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.745.

10 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 11 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

12 **(a) Requesting a hearing, in accordance with ORS 183.745 (4)(a), before the director of the**
 13 **licensing agency[.]; or**

14 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

15 (3) **If the person requests a hearing,** the licensing agency shall conduct the hearing and issue
 16 the final order within 180 days after any hearing request.

17 **SECTION 7.** ORS 527.687 is amended to read:

18 527.687. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992
 19 shall be imposed in the manner provided in ORS 183.745.

20 (2) In no case shall a hearing requested under ORS 183.745 (4)(a) be held less than 45 days from
 21 the date of service of the notice of penalty to allow the party to prepare testimony. The hearing
 22 shall be held not more than 180 days following issuance of the notice unless all parties agree on an
 23 extension.

24 (3) Hearings under this section shall be conducted by an administrative law judge assigned from
 25 the Office of Administrative Hearings established under ORS 183.605.

26 (4) Except as provided in subsection (5) of this section, all civil penalties recovered under ORS
 27 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund.

28 (5) Civil penalties recovered under ORS 527.685 (5) shall be deposited in the State Forestry De-
 29 partment Account under ORS 526.060 and used, consistently with ORS 527.690, by the State Forester
 30 to reforest the land that is the subject of a violation of ORS 527.745 or rules for reforestation
 31 adopted pursuant to ORS 527.745. Civil penalties described in this subsection that exceed the costs
 32 of reforestation shall be paid to the General Fund.

33 **SECTION 8.** ORS 536.905 is amended to read:

34 536.905. (1) Any civil penalty under ORS 536.900 shall be imposed as provided in ORS 183.745.

35 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 36 from the date of service of the notice in which to *[make written application for]* **file an appeal:**

37 **(a) Requesting a hearing before the commission[.] in accordance with ORS 183.745 (4)(a); or**

38 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

39 **SECTION 9.** ORS 603.995 is amended to read:

40 603.995. (1) In addition to any penalty available under ORS 561.190 or 603.992, the State De-
 41 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules adopted
 42 under this chapter. For the purposes of this section, each day a violation continues after the period
 43 of time established for compliance shall be considered a separate violation unless the department
 44 finds that a different period of time is more appropriate to describe a specific violation event.

45 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-

1 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 2 violation.

3 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 4 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 5 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 6 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 7 civil penalty[.], **file an appeal:**

8 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 9 **or**

10 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

11 (4) Moneys received by the department from civil penalties imposed under this section shall be
 12 deposited in the General Fund to the credit of the Department of Agriculture Account.

13 **SECTION 10.** ORS 616.997 is amended to read:

14 616.997. (1) In addition to any penalty available under ORS 561.190, 616.992 or 616.994, the State
 15 Department of Agriculture may impose a civil penalty for a violation of this chapter or of rules,
 16 regulations or standards adopted under this chapter. For the purposes of this section, each day a
 17 violation continues after the period of time established for compliance shall be considered a separate
 18 violation unless the department finds that a different period of time is more appropriate to describe
 19 a specific violation event.

20 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 21 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 22 violation.

23 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 24 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 25 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 26 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 27 civil penalty[.], **file an appeal:**

28 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 29 **or**

30 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

31 (4) Moneys received by the department from civil penalties imposed under this section shall be
 32 deposited in the General Fund to the credit of the Department of Agriculture Account.

33 **SECTION 11.** ORS 619.996 is amended to read:

34 619.996. (1) In addition to any penalty available under ORS 561.190 or 619.993, the State De-
 35 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules adopted
 36 under this chapter. For the purposes of this section, each day a violation continues after the period
 37 of time established for compliance shall be considered a separate violation unless the department
 38 finds that a different period of time is more appropriate to describe a specific violation event.

39 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 40 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 41 violation.

42 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 43 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 44 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 45 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of

1 civil penalty[.], **file an appeal:**

2 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

3 **or**

4 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

5 (4) Moneys received by the department from civil penalties imposed under this section shall be
6 deposited in the General Fund to the credit of the Department of Agriculture Account.

7 **SECTION 12.** ORS 621.995 is amended to read:

8 621.995. (1) In addition to any penalty available under ORS 561.190 or 621.991, the State De-
9 partment of Agriculture may impose a civil penalty for a violation of ORS 621.056, 621.057, 621.062,
10 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198,
11 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730 or of rules, regulations
12 or standards adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261. For the purposes of
13 this section, each day a violation continues after the period of time established for compliance shall
14 be considered a separate violation unless the department finds that a different period of time is more
15 appropriate to describe a specific violation event.

16 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
17 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
18 violation.

19 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
20 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
21 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
22 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
23 civil penalty[.], **file an appeal:**

24 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

25 **or**

26 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

27 (4) Moneys received by the department from civil penalties imposed under this section shall be
28 deposited in the General Fund to the credit of the Department of Agriculture Account.

29 **SECTION 13.** ORS 622.996 is amended to read:

30 622.996. (1) In addition to any penalty available under ORS 561.190 or 622.992, the State De-
31 partment of Agriculture may impose a civil penalty for a violation of ORS 622.010 to 622.180 or of
32 rules adopted under ORS 622.180. For the purposes of this section, each day a violation continues
33 after the period of time established for compliance shall be considered a separate violation unless
34 the department finds that a different period of time is more appropriate to describe a specific vi-
35 olation event.

36 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
37 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
38 violation.

39 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
40 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
41 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
42 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
43 civil penalty[.], **file an appeal:**

44 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**

45 **or**

1 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

2 (4) Moneys received by the department from civil penalties imposed under this section shall be
3 deposited in the General Fund to the credit of the Department of Agriculture Account.

4 **SECTION 14.** ORS 625.995 is amended to read:

5 625.995. (1) In addition to any penalty available under ORS 561.190 or 625.990, the State De-
6 partment of Agriculture may impose a civil penalty for a violation of ORS 625.010 to 625.270 or of
7 rules or regulations adopted under ORS 625.010 to 625.270. For the purposes of this section, each
8 day a violation continues after the period of time established for compliance shall be considered a
9 separate violation unless the department finds that a different period of time is more appropriate to
10 describe a specific violation event.

11 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
12 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
13 violation.

14 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
15 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
16 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
17 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
18 civil penalty[.], **file an appeal:**

19 **(a) Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
20 **or**

21 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

22 (4) Moneys received by the department from civil penalties imposed under this section shall be
23 deposited in the General Fund to the credit of the Department of Agriculture Account.

24 **SECTION 15.** ORS 628.995 is amended to read:

25 628.995. (1) In addition to any penalty available under ORS 561.190 or 628.990, the State De-
26 partment of Agriculture may impose a civil penalty for a violation of ORS 628.210 to 628.370 or of
27 rules or regulations adopted under ORS 628.210 to 628.370. For the purposes of this section, each
28 day a violation continues after the period of time established for compliance shall be considered a
29 separate violation unless the department finds that a different period of time is more appropriate to
30 describe a specific violation event.

31 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
32 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
33 violation.

34 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
35 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
36 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
37 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
38 civil penalty[.], **file an appeal:**

39 **(a) Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
40 **or**

41 **(b) In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

42 (4) Moneys received by the department from civil penalties imposed under this section shall be
43 deposited in the General Fund to the credit of the Department of Agriculture Account.

44 **SECTION 16.** ORS 632.995 is amended to read:

45 632.995. (1) In addition to any penalty available under ORS 561.190 or 632.990, the State De-

1 department of Agriculture may impose a civil penalty for a violation of ORS 632.216, 632.226, 632.275
 2 to 632.290, 632.450 to 632.490, 632.625, 632.705 to 632.815 or 632.900 to 632.985 or of rules adopted
 3 under ORS 632.216, 632.226, 632.275 to 632.290, 632.450 to 632.490, 632.625, 632.705 to 632.815 or
 4 632.900 to 632.985. For the purposes of this section, each day a violation continues after the period
 5 of time established for compliance shall be considered a separate violation unless the department
 6 finds that a different period of time is more appropriate to describe a specific violation event.

7 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 8 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 9 violation.

10 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 11 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 12 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 13 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 14 civil penalty[.], **file an appeal:**

15 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 16 **or**

17 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

18 (4) Moneys received by the department from civil penalties imposed under this section shall be
 19 deposited in the General Fund to the credit of the Department of Agriculture Account.

20 **SECTION 17.** ORS 634.905 is amended to read:

21 634.905. (1) Any civil penalty under ORS 634.900 shall be imposed as provided in ORS 183.745.

22 (2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 23 from the date of service of the notice in which to [*make written application for*] **file an appeal:**

24 (a) **Requesting** a hearing before the Director of Agriculture **in accordance with ORS 183.745**
 25 **(4)(a); or**

26 (b) **In circuit court in accordance with ORS 183.745 (4)(c).**

27 **SECTION 18.** ORS 635.995 is amended to read:

28 635.995. (1) In addition to any penalty available under ORS 561.190 or 635.991, the State De-
 29 partment of Agriculture may impose a civil penalty for a violation of this chapter or of rules or
 30 regulations adopted under this chapter. For the purposes of this section, each day a violation con-
 31 tinues after the period of time established for compliance shall be considered a separate violation
 32 unless the department finds that a different period of time is more appropriate to describe a specific
 33 violation event.

34 (2) The department may adopt rules establishing a schedule of civil penalties that may be im-
 35 posed under this section. Civil penalties imposed under this section may not exceed \$10,000 for each
 36 violation.

37 (3) When the department imposes a civil penalty under subsection (1) of this section, the de-
 38 partment shall impose the penalty in the manner provided by ORS 183.745, except that the [*written*
 39 *application for a hearing must be received by the department*] **person to whom the notice is ad-**
 40 **dressed must**, no later than 10 days after the date of mailing or personal service of the notice of
 41 civil penalty[.], **file an appeal:**

42 (a) **Requesting a hearing before the department in accordance with ORS 183.745 (4)(a);**
 43 **or**

44 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

45 (4) Moneys received by the department from civil penalties imposed under this section shall be

1 deposited in the General Fund to the credit of the Department of Agriculture Account.

2 **SECTION 19.** ORS 645.215 is amended to read:

3 645.215. (1) *[Except as provided in]* **Notwithstanding** ORS 183.745, upon the entry of an order
4 under this chapter, the director shall promptly give to all interested persons notice of the order and
5 notice that a hearing will be held on the order if a written demand for a hearing is filed with the
6 director within 20 days after the date of service of the order.

7 (2) If timely demand for a hearing is filed, the director shall hold a hearing on the order as
8 provided by ORS chapter 183. In the absence of a timely demand for a hearing, no person shall be
9 entitled to judicial review of the order.

10 (3) After the hearing, the director shall enter a final order vacating, modifying or affirming the
11 order.

12 **SECTION 20.** ORS 673.732 is amended to read:

13 673.732. (1) *[Except as provided in]* **Notwithstanding** ORS 183.745, upon entry of a cease and
14 desist order under ORS 673.605 to 673.740, the State Board of Tax Practitioners shall promptly give
15 appropriate notice of the cease and desist order as provided in this section. The notice shall state
16 that a hearing will be held on the cease and desist order if written demand for a hearing is filed
17 with the board within 20 days after the date of service of the cease and desist order.

18 (2) If timely demand for a hearing is filed under subsection (1) of this section, the board shall
19 hold a contested case hearing on the cease and desist order as provided by ORS chapter 183. In the
20 event of a contested case hearing, the civil penalties assessed in the cease and desist order are
21 suspended until issuance of a final order, but the remaining provisions of the cease and desist order
22 shall remain in full force and effect until issuance of the final order. A person is not entitled to ju-
23 dicial review of a cease and desist order unless the person has made a timely demand for a hearing.

24 (3) After the hearing, the board shall enter a final order vacating, modifying or affirming the
25 cease and desist order.

26 (4) A person aggrieved by a cease and desist order of the board that was the subject of a timely
27 application for hearing shall be entitled to judicial review of the cease and desist order under ORS
28 chapter 183.

29 (5) A judgment of a reviewing court under ORS chapter 183 does not bar the board from there-
30 after vacating or modifying a cease and desist order involved in the proceeding for review, or en-
31 tering any new order, for a proper cause that was not decided by the reviewing court.

32 (6) The board may file an injunction against a person for failure to comply with a cease and
33 desist order.

34 **SECTION 21.** ORS 688.715 is amended to read:

35 688.715. The Health Licensing Office is granted authority to carry out the following duties:

36 (1) Adopt rules that are necessary to conduct business, carry out duties and administer the
37 provisions of ORS 688.701 to 688.734.

38 (2) Issue registrations, including temporary registrations, permits, waivers and other authori-
39 zations to practice athletic training as determined by the Board of Athletic Trainers.

40 (3) Authorize all necessary disbursements to carry out the provisions of ORS 688.701 to 688.734,
41 including but not limited to payment for necessary supplies, office equipment, books and expenses
42 for the conduct of examinations, payment for legal and investigative services rendered to the office
43 and such other expenditures as are provided for in ORS 688.701 to 688.734.

44 (4) Employ inspectors, examiners, special agents, investigators, clerical assistants and account-
45 ants as are necessary for the investigation and prosecution of alleged violations and the enforcement

1 of ORS 688.701 to 688.734, and for such other purposes as the office may require. Nothing in ORS
 2 688.701 to 688.734 shall be construed to prevent assistance being rendered by an employee of the
 3 office in any hearing called by it. However, all obligations for salaries and expenses incurred under
 4 ORS 688.701 to 688.734 shall be paid only from the fees accruing to the office under ORS 688.701 to
 5 688.734.

6 (5) Provide the board with such administrative services and employees as the board requires to
 7 carry out its duties.

8 (6) Maintain an accurate record of all proceedings of the board and of all its meetings, receipts
 9 and disbursements, civil penalties and orders for violation of ORS 688.701 to 688.734, records for
 10 registration to practice athletic training together with the addresses of those registered, and the
 11 names of all persons whose registration has been subject to disciplinary action.

12 (7) Investigate complaints, take disciplinary action, including assessment of civil penalties, and
 13 provide opportunity [*for hearing*] **to file an appeal** according to ORS 183.745.

14 (8) 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 duties of the board granted under ORS 688.701 to 688.734.

17 **SECTION 22.** ORS 689.832 is amended to read:

18 689.832. (1) In addition to any other liability or penalty provided by law, the State Board of
 19 Pharmacy may impose a civil penalty for any violation of the provisions of this chapter or ORS
 20 chapter 475 or any rule of the board. A civil penalty imposed under this subsection may not exceed
 21 \$1,000 for each violation by an individual and \$10,000 for each violation by a drug outlet.

22 (2) All penalties recovered under this section shall be deposited into the State Board of Phar-
 23 macy Account established in ORS 689.139.

24 (3) Any civil penalty under this section shall be imposed in the manner provided in ORS 183.745.

25 (4) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days
 26 from the date of service of the notice in which to [*make written application for a hearing before the*
 27 *board.*] **file an appeal:**

28 (a) **Requesting a hearing before the board in accordance with ORS 183.745 (4)(a); or**

29 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

30 **SECTION 23.** ORS 697.832 is amended to read:

31 697.832. (1) In addition to any other liability or penalty provided by law, the Director of the
 32 Department of Consumer and Business Services may impose a civil penalty on a person in an amount
 33 not to exceed \$5,000 for each violation of ORS 697.612 or 697.642 to 697.702, rules adopted under
 34 ORS 697.632 or order issued under ORS 697.825.

35 (2) The director shall impose a civil penalty on a person under this section in the manner pro-
 36 vided in ORS 183.745.

37 (3) Notwithstanding ORS 183.745, the person to whom the notice is addressed has 10 days from
 38 the date on which the notice was mailed in which to [*apply for a hearing before the director.*] **file**
 39 **an appeal:**

40 (a) **Requesting a hearing, in accordance with ORS 183.745 (4)(a), before the director; or**

41 (b) **In circuit court in accordance with ORS 183.745 (4)(c).**

42 (4) Paying or tendering payment for a civil penalty imposed under this section does not relieve
 43 a person from the obligation to comply with the applicable statute or rule.

44 (5) All penalties recovered under this section shall be paid into the State Treasury and credited
 45 to the General Fund and are available for general governmental expenses.

1 **SECTION 24.** ORS 704.900 is amended to read:

2 704.900. (1) In addition to any other penalty provided by law, the State Marine Board may im-
3 pose a civil penalty for failure to comply with ORS 704.020, 704.021, 704.065 or 704.070 or for vio-
4 lation of ORS 704.030.

5 (2) Any civil penalty under this section shall be imposed in the manner provided by ORS 183.745.

6 (3) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 30 days
7 from the date of service of the notice in which to [*make written application for a hearing before the*
8 *board.*] **file an appeal:**

9 (a) **Requesting a hearing before the board in accordance with ORS 183.745 (4)(a); or**

10 (b) **In circuit court in accordance with ORS 183.745 (4)(b) or (c).**

11 (4) The board shall adopt rules implementing these provisions, including a schedule of civil
12 penalties. The civil penalty for each violation shall not exceed \$500.

13 (5) A civil penalty imposed under this section may be remitted or reduced upon such terms and
14 conditions as the board considers proper and consistent with the public health and safety.

15 (6)(a) In imposing a penalty pursuant to the schedule adopted pursuant to this section, the board
16 shall consider the following factors:

17 (A) Any prior violations of ORS 704.020, 704.021, 704.030, 704.065 or 704.070.

18 (B) The immediacy and extent to which the violation threatens the public health or safety.

19 (b) The penalty imposed under this section may be remitted or mitigated upon such terms and
20 conditions as the board determines to be proper and consistent with the public benefit. Upon the
21 request of the person incurring the penalty, the board shall consider evidence of the economic and
22 financial conditions of the person in determining whether a penalty shall be remitted or mitigated.

23 (7) All penalties recovered under this section shall be paid into the State Treasury and credited
24 to the Outfitters and Guides Account.

25 **SECTION 25.** ORS 822.080 is amended to read:

26 822.080. (1) **Except as otherwise provided in this section,** civil penalties under ORS 822.009
27 shall be imposed in the manner provided in ORS 183.745.

28 (2) An application for a hearing on a civil penalty imposed under ORS 822.009:

29 (a) Must be in writing;

30 (b) Must be postmarked or received by the Department of Transportation within 20 days from
31 the date of service of the notice provided for in ORS 183.745;

32 (c) Must state the name and address of the person requesting a hearing; and

33 (d) Must state the action being contested.

34 (3) Hearings on civil penalties imposed under ORS 822.009 shall be conducted by an adminis-
35 trative law judge assigned from the Office of Administrative Hearings established under ORS
36 183.605.

37 (4) The department may, at its option, assign any unpaid civil penalty to the Department of
38 Revenue for collection. The Department of Revenue shall deduct reasonable expenses from any
39 amounts collected.

40 (5) All civil penalties received under ORS 822.009 shall be paid into the State Treasury each
41 month and credited to the Department of Transportation Operating Fund established by ORS 184.642
42 (1) and (2).

43

House Bill 4130

Sponsored by Representative HOYLE (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 state agency public records policies, and public record retention schedules of state agencies and political subdivisions of this state, to require retention of public records for a minimum of two years.

Requires public bodies to provide standardized acknowledgment of receipt of requests for public records within five business days of receipt of request. Requires public bodies to provide records, or to assert exemption from required disclosure, within 30 days of receipt of request. Permits public body to exceed 30-day deadline if public body provides requester with estimated time that records will be disclosed or exemptions claimed. Permits requesters to petition for administrative or judicial review if public body fails to meet 30-day deadline.

Limits amounts public bodies with 10 or more full-time equivalent employees may charge as fees for producing public records.

Directs county clerks and city elections officers to give notice to Secretary of State regarding petitions for county or local initiative measures, and requires secretary to provide reasonable statewide notice of county or local initiative measures.

Appropriates moneys from General Fund to Secretary of State to implement statewide notice of county or local initiative measures.

Declares emergency, effective on passage.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A BILL FOR AN ACT

Relating to transparency in governmental decision-making; creating new provisions; amending ORS 147.421, 171.427, 192.018, 192.105, 192.440, 192.450, 192.460, 192.465 and 802.183; and declaring an emergency.

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

PUBLIC RECORDS RETENTION

SECTION 1. ORS 192.018 is amended to read:

192.018. (1) Each state agency shall have a written policy that sets forth the agency's use, retention and ownership of public records. The policy shall ensure that public records are being maintained and managed consistently within the agency from the time of creation of a public record to the time of final disposition of the public record.

(2) Each state agency shall submit the written policy and any subsequent amendment of the policy to the State Archivist for approval before the policy takes effect or the amendment to the policy takes effect.

(3) A written policy or amendment of the policy must provide for a retention period for a public record that is at least two years in duration from the time the record is created or comes into the possession of a custodian, as defined in ORS 192.410, until the record may be destroyed.

SECTION 2. ORS 192.105 is amended to read:

192.105. (1)(a) Except as otherwise provided by law, the State Archivist may grant to public of-

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 officials of the state or any political subdivision specific or continuing authorization for the retention
 2 or disposition of public records that are in their custody, after the records have been in existence
 3 for a specified period of time. In granting such authorization, the State Archivist shall consider the
 4 value of the public records for legal, administrative or research purposes and shall establish rules
 5 for procedure for the retention or disposition of the public records.

6 **(b) The State Archivist may not grant authorization under this section for the de-**
 7 **struction of a public record that has not been retained for a period of at least two years by**
 8 **the public official who has the public record in custody.**

9 (2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon
 10 receipt of an authorization or upon the effective date of the applicable rule, a state official who has
 11 public records in custody shall destroy or otherwise dispose of those records that are older than the
 12 specified period of retention established by the authorization or rule. An official of a local govern-
 13 ment may destroy such records if such destruction is consistent with the policy of the local gov-
 14 ernment. No record of accounts or financial affairs subject to audit shall be destroyed until released
 15 for destruction by the responsible auditor or representative of the auditor. If federal funds are in-
 16 volved, records retention requirements of the United States Government must be observed. Each
 17 state agency and political subdivision shall designate a records officer to coordinate its records
 18 management program and to serve as liaison with the State Archivist. The county records officers
 19 for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall
 20 be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from
 21 records officers about records management programs. The State Archivist may require state agency
 22 records designated as inactive by the State Archivist to be transferred to the State Records Center,
 23 pending the availability of space.

24 (b) The State Archivist shall determine which parts of a public record are acceptable for ad-
 25 mission to the State Records Center and may require the state agency or governing body to cause
 26 the unacceptable part to be removed before the record is submitted to the State Records Center.

27 (3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist,
 28 or any board of county commissioners, to state agencies, schools, school districts, soil and water
 29 conservation districts, or county officials and offices shall remain in effect until they are adopted
 30 or amended by the State Archivist.

31 (4) This section does not apply to legislative records, as defined in ORS 171.410.

32 **SECTION 3.** ORS 171.427 is amended to read:

33 171.427. The Legislative Administration Committee and State Archivist shall establish and from
 34 time to time may revise a schedule that shall govern the retention and destruction or other dispo-
 35 sition of legislative records delivered to and in the custody of the archivist under ORS 171.420 or
 36 171.430 and of sound recordings retained by a committee under ORS 171.430 (2). The schedule agreed
 37 upon by the committee and archivist shall:

38 (1) Be set forth in the rules and regulations issued by the archivist[.]; **and**

39 (2) **Require legislative records to be retained for a period of at least two years.**

40
 41 **PUBLIC RECORDS PRODUCTION**

42
 43 **SECTION 4.** ORS 192.440 is amended to read:

44 192.440. (1) The custodian of any public record that a person has a right to inspect shall give
 45 the person, upon request:

1 (a) A copy of the public record if the public record is of a nature permitting copying; or

2 (b) A reasonable opportunity to inspect or copy the public record.

3 (2) If a person makes a written request to inspect a public record or to receive a copy of a
4 public record, the public body receiving the request shall respond [*as soon as practicable and without*
5 *unreasonable delay*] **within five business days of receipt of the request.** The public body may re-
6 quest additional information or clarification from the requester for the purpose of expediting the
7 public body's response to the request. The response of the public body **must be in a standard form,**
8 must acknowledge receipt of the request and must include one of the following:

9 (a) A statement that the public body does not possess, or is not the custodian of, the public re-
10 cord.

11 (b) Copies of all requested public records for which the public body does not claim an exemption
12 from disclosure under ORS 192.410 to 192.505.

13 (c) A statement that the public body is the custodian of at least some of the requested public
14 records, an estimate of the time the public body requires before the public records may be inspected
15 or copies of the records will be provided and an estimate of the fees that the requester must pay
16 under subsection [(4)] (5) of this section as a condition of receiving the public records.

17 (d) A statement that the public body is the custodian of at least some of the requested public
18 records and that an estimate of the time and fees for disclosure of the public records will be pro-
19 vided by the public body within a reasonable time.

20 (e) A statement that the public body is uncertain whether the public body possesses the public
21 record and that the public body will search for the record and make an appropriate response as soon
22 as practicable.

23 (f) A statement that state or federal law prohibits the public body from acknowledging whether
24 the record exists or that acknowledging whether the record exists would result in the loss of federal
25 benefits or other sanction. A statement under this paragraph must include a citation to the state
26 or federal law relied upon by the public body.

27 **(3) A public body must within 30 days of receipt of the request:**

28 **(a) Produce all requested public records within the possession or custody of the public**
29 **body;**

30 **(b) Claim an exemption from disclosure under ORS 192.410 to 192.505 with respect to re-**
31 **quested records and explain with specificity the reason the exemption applies to the re-**
32 **quested records; or**

33 **(c) State that the public body is still gathering the requested records and provide an es-**
34 **timated date when the requested records will be ready for inspection or delivery to the re-**
35 **quester, or when the public body will be able to claim an exemption from disclosure of the**
36 **requested records.**

37 [(3)] (4) If the public record is maintained in a machine readable or electronic form, the custo-
38 dian shall provide a copy of the public record in the form requested, if available. If the public record
39 is not available in the form requested, the custodian shall make the public record available in the
40 form in which the custodian maintains the public record.

41 [(4)(a)] (5)(a) The public body may establish fees reasonably calculated to reimburse the public
42 body for the public body's actual cost of making public records available, including costs for sum-
43 marizing, compiling or tailoring the public records, either in organization or media, to meet the
44 person's request.

45 (b) The public body may include in a fee established under paragraph (a) of this subsection the

1 cost of time spent by an attorney for the public body in reviewing the public records, redacting
 2 material from the public records or segregating the public records into exempt and nonexempt re-
 3 cords. The public body may not include in a fee established under paragraph (a) of this subsection
 4 the cost of time spent by an attorney for the public body in determining the application of the pro-
 5 visions of ORS 192.410 to 192.505.

6 **(c) Notwithstanding paragraph (a) or (b) of this subsection, a public body with 10 or more**
 7 **full-time equivalent employees may not establish fees under this subsection in which a com-**
 8 **ponent of the fee is the time of staff engaged in responding to the request that is calculated**
 9 **at more than \$30 per hour.**

10 [(c)] **(d)** The public body may not establish a fee greater than \$25 under this section unless the
 11 public body first provides the requestor with a written notification of the estimated amount of the
 12 fee and the requestor confirms that the requestor wants the public body to proceed with making the
 13 public record available. **Any period of time after the public body has supplied a written esti-**
 14 **mate to a requester and before the requester confirms the requester’s interest in proceeding**
 15 **with the request is not taken into account in determining the public body’s compliance with**
 16 **deadlines established under subsection (3) of this section.**

17 [(d)] **(e)** Notwithstanding paragraphs (a) to [(c)] **(d)** of this subsection, when the public records
 18 are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees
 19 for furnishing copies, summaries or compilations of the public records are those established by the
 20 Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

21 [(5)] **(6)** The custodian of any public record may furnish copies without charge or at a substan-
 22 tially reduced fee if the custodian determines that the waiver or reduction of fees is in the public
 23 interest because making the record available primarily benefits the general public.

24 [(6)] **(7)** A person who believes that there has been an unreasonable denial of a fee waiver or
 25 fee reduction may petition the Attorney General or the district attorney in the same manner as a
 26 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The
 27 Attorney General, the district attorney and the court have the same authority in instances when a
 28 fee waiver or reduction is denied as it has when inspection of a public record is denied.

29 [(7)] **(8)** A public body shall make available to the public a written procedure for making public
 30 record requests that includes:

31 (a) The name of one or more persons to whom public record requests may be sent, with ad-
 32 dresses; and

33 (b) The amounts of and the manner of calculating fees that the public body charges for re-
 34 sponding to requests for public records.

35 [(8)] **(9)** This section does not apply to signatures of individuals submitted under ORS chapter
 36 247 for purposes of registering to vote as provided in ORS 247.973.

37 **SECTION 5.** ORS 192.450 is amended to read:

38 192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right
 39 to inspect or to receive a copy of any public record of a state agency, **or who has not received**
 40 **copies of the requested records or an opportunity to inspect the requested records within 30**
 41 **days of the request**, may petition the Attorney General to review the public record to determine
 42 if it may be withheld from public inspection **or to determine if the agency is being unreasonably**
 43 **slow in responding to the request.** Except as provided in subsection (5) of this section, the burden
 44 is on the agency to sustain its action. Except as provided in subsection (5) of this section, the At-
 45 torney General shall issue an order denying or granting the petition, or denying it in part and

1 granting it in part, within seven days from the day the Attorney General receives the petition.

2 (2) If the Attorney General grants the petition and orders the state agency to disclose the re-
3 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose
4 a portion of the record, the state agency shall comply with the order in full within seven days after
5 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-
6 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as
7 provided in subsection (6) of this section, in the circuit court of the county where the record is held.
8 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner
9 at the address shown on the petition. The state agency shall institute the proceedings within seven
10 days after it issues its notice of intention to do so. If the Attorney General denies the petition in
11 whole or in part, or if the state agency continues to withhold the record or a part of it
12 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may
13 institute such proceedings.

14 (3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-
15 section (2) of this section if the suit arises out of a determination by the Attorney General that the
16 public record should not be disclosed, or that a part of the public record should not be disclosed if
17 the state agency has fully complied with the order of the Attorney General requiring disclosure of
18 another part or parts of the public record, and in no other case. In any case in which the Attorney
19 General is prohibited from serving as counsel for the state agency, the agency may retain special
20 counsel.

21 (4) A person denied the right to inspect or to receive a copy of any public record of a health
22 professional regulatory board, as defined in ORS 676.160, that contains information concerning a
23 licensee or applicant, and petitioning the Attorney General to review the public record shall, on or
24 before the date of filing the petition with the Attorney General, send a copy of the petition by first
25 class mail to the health professional regulatory board. Not more than 48 hours after the board re-
26 ceives a copy of the petition, the board shall send a copy of the petition by first class mail to the
27 licensee or applicant who is the subject of any record for which disclosure is sought. When sending
28 a copy of the petition to the licensee or applicant, the board shall include a notice informing the
29 licensee or applicant that a written response by the licensee or applicant may be filed with the At-
30 torney General not later than seven days after the date that the notice was sent by the board. Im-
31 mediately upon receipt of any written response from the licensee or applicant, the Attorney General
32 shall send a copy of the response to the petitioner by first class mail.

33 (5) The person seeking disclosure of a public record of a health professional regulatory board,
34 as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or
35 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing
36 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
37 but not limited to the public interest in nondisclosure. The Attorney General shall issue an order
38 denying or granting the petition, or denying or granting it in part, not later than the 15th day fol-
39 lowing the day that the Attorney General receives the petition. A copy of the Attorney General's
40 order granting a petition or part of a petition shall be served by first class mail on the health pro-
41 fessional regulatory board, the petitioner and the licensee or applicant who is the subject of any
42 record ordered to be disclosed. The health professional regulatory board shall not disclose any re-
43 cord prior to the seventh day following the service of the Attorney General's order on a licensee
44 or applicant entitled to receive notice under this subsection.

45 (6) If the Attorney General grants or denies the petition for a record of a health professional

1 regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or ap-
 2 plicant, the board, a person denied the right to inspect or receive a copy of the record or the
 3 licensee or applicant who is the subject of the record may institute proceedings for injunctive or
 4 declaratory relief in the circuit court for the county where the public record is held. The party
 5 seeking disclosure of the record shall have the burden of demonstrating by clear and convincing
 6 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including
 7 but not limited to the public interest in nondisclosure.

8 (7) The Attorney General may comply with a request of a health professional regulatory board
 9 to be represented by independent counsel in any proceeding under subsection (6) of this section.

10 **SECTION 6.** ORS 192.460 is amended to read:

11 192.460. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive
 12 a copy of any public record of a public body other than a state agency **or when a public body is**
 13 **being unreasonably slow in responding to the request**, except that:

14 (a) The district attorney of the county in which the public body is located, or if it is located in
 15 more than one county the district attorney of the county in which the administrative offices of the
 16 public body are located, shall carry out the functions of the Attorney General;

17 (b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of
 18 this subsection; and

19 (c) The district attorney may not serve as counsel for the public body, in the cases permitted
 20 under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

21 (2) Disclosure of a record to the district attorney in compliance with subsection (1) of this sec-
 22 tion does not waive any privilege or claim of privilege regarding the record or its contents.

23 (3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled
 24 disclosure for purposes of ORS 40.285.

25 **SECTION 7.** ORS 192.465 is amended to read:

26 192.465. (1) The failure of the Attorney General or district attorney to issue an order under ORS
 27 192.450 or 192.460 denying, granting, or denying in part and granting in part, a petition to require
 28 disclosure within seven days from the day of receipt of the petition shall be treated as an order
 29 denying the petition for the purpose of determining whether a person may institute proceedings for
 30 injunctive or declaratory relief under ORS 192.450 or 192.460.

31 (2) The failure of an elected official to [*deny, grant, or deny in part and grant in part a request*
 32 *to inspect or receive a copy of a public record within seven*] **issue a response described in ORS**
 33 **192.440 (2) within five business** days from the day of receipt of the request shall be treated as a
 34 denial of the request for the purpose of determining whether a person may institute proceedings for
 35 injunctive or declaratory relief under ORS 192.450 or 192.460.

36 (3) **The failure of an elected official to provide a requester with copies of requested re-**
 37 **records, or an opportunity to inspect requested records, within 30 days of receipt of the request**
 38 **shall be treated as a denial of the request for the purpose of determining whether a person**
 39 **may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.**

40
 41 **NOTICE OF LOCAL INITIATIVES**

42
 43 **SECTION 8.** Section 9 of this 2016 Act is added to and made a part of ORS chapter 250.

44 **SECTION 9.** (1) Upon receiving a prospective petition for an initiative measure:

45 (a) Under ORS 250.165, the county clerk shall provide notice to the Secretary of State of

1 the prospective petition for an initiative measure.

2 (b) Under ORS 250.265, the city elections officer shall provide notice to the Secretary of
3 State of the prospective petition for an initiative measure.

4 (2) Upon receipt of notice of a prospective petition for an initiative measure under sub-
5 section (1) of this section, the Secretary of State shall provide reasonable statewide notice
6 of the prospective petition for an initiative measure.

7 (3) Upon determining whether a prospective petition for an initiative measure:

8 (a) Meets the requirements of Article IV, section 1 (2)(d), and Article VI, section 10, of
9 the Oregon Constitution, the county clerk shall provide notice to the Secretary of State of
10 the clerk’s determination.

11 (b) Meets the requirements of Article IV, section 1 (2)(d) and (5), of the Oregon Consti-
12 tution, the city elections officer shall provide notice to the Secretary of State of the elections
13 officer’s determination.

14 (4) The Secretary of State shall provide reasonable statewide notice of determinations
15 made under subsection (3) of this section.

16
17 **APPROPRIATION**

18
19 **SECTION 10.** In addition to and not in lieu of any other appropriation, there is appro-
20 priated to the Secretary of State, for the biennium ending June 30, 2017, out of the General
21 Fund, the amount of \$_____ for the purpose of implementing the provisions of section 9
22 of this 2016 Act.

23
24 **CONFORMING AMENDMENTS**

25
26 **SECTION 11.** ORS 147.421 is amended to read:

27 147.421. (1) If a public body is the custodian of any of the following information, upon the re-
28 quest of the victim, the public body shall provide to the victim any of the following information of
29 which it is the custodian and that is about the defendant or convicted criminal:

- 30 (a) The conviction and sentence;
- 31 (b) Criminal history;
- 32 (c) Imprisonment; and
- 33 (d) Future release from physical custody.

34 (2) A public body, in its discretion, may provide the requested information by furnishing the
35 victim with copies of public records. The public body may charge the victim its actual cost for
36 making public records available as provided in ORS 192.440 [(4)] (5).

37 (3) As used in this section:

38 (a) “Criminal history” means a description of the prior arrests, convictions and sentences of the
39 person.

40 (b) “Future release” means the projected or scheduled date of release of the person from con-
41 finement, the name and location of the correctional facility from which the person is to be released
42 and the community where the person is scheduled to reside upon release.

43 (c) “Imprisonment” means the name and location of the correctional facility in which the person
44 is confined.

45 (d) “Public body” has the meaning given that term in ORS 192.410.

1 **SECTION 12.** ORS 802.183 is amended to read:

2 802.183. (1) The Department of Transportation may establish fees reasonably calculated to re-
3 imburse it for its actual cost in making personal information available to a person or government
4 agency authorized under ORS 802.179 to obtain the information. Fees established under this sub-
5 section are subject to the provisions of ORS 192.440 [(4) to (6)] **(5) to (7)**.

6 (2) The department may adopt rules specifying conditions that must be met by a person or gov-
7 ernment agency requesting personal information under ORS 802.179. Such conditions may include
8 but need not be limited to:

9 (a) Providing reasonable assurance of the identity of the requester;

10 (b) Providing reasonable assurance of the uses to which the personal information will be put, if
11 applicable;

12 (c) Showing that the individual whose personal information is to be disclosed has given permis-
13 sion for the disclosure, if permission is required; and

14 (d) Submitting a written request for the personal information in a form prescribed by the de-
15 partment.

16

17

CAPTIONS

18

19 **SECTION 13.** **The unit captions used in this 2016 Act are provided only for the conven-**
20 **ience of the reader and do not become part of the statutory law of this state or express any**
21 **legislative intent in the enactment of this 2016 Act.**

22

23

EMERGENCY CLAUSE

24

25 **SECTION 14.** **This 2016 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
27 **on its passage.**

28

Senate Bill 1504

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care)

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**.

Enacts interstate Physical Therapy Licensure Compact.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to physical therapy; creating new provisions; amending ORS 688.110 and 688.160; and declaring an emergency.

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

SECTION 1. The provisions of the Physical Therapy Licensure Compact are as follows:

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states' ability to protect the public's health and safety;

3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "Active Duty Military" means full-time duty status in the active uniformed service of

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 the United States, including members of the National Guard and Reserve on active duty or-
2 ders pursuant to 10 U.S.C. Section 1209 and 1211.

3 2. "Adverse Action" means disciplinary action taken by a physical therapy licensing board
4 based upon misconduct, unacceptable performance, or a combination of both.

5 3. "Alternative Program" means a non-disciplinary monitoring or practice remediation
6 process approved by a physical therapy licensing board. This includes, but is not limited to,
7 substance abuse issues.

8 4. "Compact privilege" means the authorization granted by a remote state to allow a
9 licensee from another member state to practice as a physical therapist or work as a physical
10 therapist assistant in the remote state under its laws and rules. The practice of physical
11 therapy occurs in the member state where the patient/client is located at the time of the
12 patient/client encounter.

13 5. "Continuing competence" means a requirement, as a condition of license renewal, to
14 provide evidence of participation in, and/or completion of, educational and professional ac-
15 tivities relevant to practice or area of work.

16 6. "Data system" means a repository of information about licensees, including examina-
17 tion, licensure, investigative, compact privilege, and adverse action.

18 7. "Encumbered license" means a license that a physical therapy licensing board has
19 limited in any way.

20 8. "Executive Board" means a group of directors elected or appointed to act on behalf
21 of, and within the powers granted to them by, the Commission.

22 9. "Home state" means the member state that is the licensee's primary state of resi-
23 dence.

24 10. "Investigative information" means information, records, and documents received or
25 generated by a physical therapy licensing board pursuant to an investigation.

26 11. "Jurisprudence Requirement" means the assessment of an individual's knowledge of
27 the laws and rules governing the practice of physical therapy in a state.

28 12. "Licensee" means an individual who currently holds an authorization from the state
29 to practice as a physical therapist or to work as a physical therapist assistant.

30 13. "Member state" means a state that has enacted the Compact.

31 14. "Party state" means any member state in which a licensee holds a current license
32 or compact privilege or is applying for a license or compact privilege.

33 15. "Physical therapist" means an individual who is licensed by a state to practice phys-
34 ical therapy.

35 16. "Physical therapist assistant" means an individual who is licensed/certified by a state
36 and who assists the physical therapist in selected components of physical therapy.

37 17. "Physical therapy," "physical therapy practice," and "the practice of physical
38 therapy" mean the care and services provided by or under the direction and supervision of
39 a licensed physical therapist.

40 18. "Physical Therapy Compact Commission" or "Commission" means the national ad-
41 ministrative body whose membership consists of all states that have enacted the Compact.

42 19. "Physical therapy licensing board" or "licensing board" means the agency of a state
43 that is responsible for the licensing and regulation of physical therapists and physical ther-
44 apist assistants.

45 20. "Remote State" means a member state other than the home state, where a licensee

1 is exercising or seeking to exercise the compact privilege.

2 21. "Rule" means a regulation, principle, or directive promulgated by the Commission
3 that has the force of law.

4 22. "State" means any state, commonwealth, district, or territory of the United States
5 of America that regulates the practice of physical therapy.

6 **SECTION 3. STATE PARTICIPATION IN THE COMPACT**

7 **A. To participate in the Compact, a state must:**

8 1. Participate fully in the Commission's data system, including using the Commission's
9 unique identifier as defined in rules;

10 2. Have a mechanism in place for receiving and investigating complaints about licensees;

11 3. Notify the Commission, in compliance with the terms of the Compact and rules, of any
12 adverse action or the availability of investigative information regarding a licensee;

13 4. Fully implement a criminal background check requirement, within a time frame es-
14 tablished by rule, by receiving the results of the Federal Bureau of Investigation record
15 search on criminal background checks and use the results in making licensure decisions in
16 accordance with Section 3.B.4.;

17 5. Comply with the rules of the Commission;

18 6. Utilize a recognized national examination as a requirement for licensure pursuant to
19 the rules of the Commission; and

20 7. Have continuing competence requirements as a condition for license renewal.

21 **B. Upon adoption of this statute, the member state shall have the authority to obtain**
22 **biometric-based information from each physical therapy licensure applicant and submit this**
23 **information to the Federal Bureau of Investigation for a criminal background check in ac-**
24 **cordance with 28 U.S.C. §534 and 42 U.S.C. §14616.**

25 **C. A member state shall grant the compact privilege to a licensee holding a valid unen-**
26 **umbered license in another member state in accordance with the terms of the Compact and**
27 **rules.**

28 **D. Member states may charge a fee for granting a compact privilege.**

29 **SECTION 4. COMPACT PRIVILEGE**

30 **A. To exercise the compact privilege under the terms and provisions of the Compact, the**
31 **licensee shall:**

32 1. Hold a license in the home state;

33 2. Have no encumbrance on any state license;

34 3. Be eligible for a compact privilege in any member state in accordance with Section 4D,
35 G and H;

36 4. Have not had any adverse action against any license or compact privilege within the
37 previous 2 years;

38 5. Notify the Commission that the licensee is seeking the compact privilege within a re-
39 mote state(s);

40 6. Pay any applicable fees, including any state fee, for the compact privilege;

41 7. Meet any jurisprudence requirements established by the remote state(s) in which the
42 licensee is seeking a compact privilege; and

43 8. Report to the Commission adverse action taken by any non-member state within 30
44 days from the date the adverse action is taken.

45 **B. The compact privilege is valid until the expiration date of the home license. The**

1 licensee must comply with the requirements of Section 4A to maintain the compact privilege
 2 in the remote state.

3 C. A licensee providing physical therapy in a remote state under the compact privilege
 4 shall function within the laws and regulations of the remote state.

5 D. A licensee providing physical therapy in a remote state is subject to that state's reg-
 6 ulatory authority. A remote state may, in accordance with due process and that state's laws,
 7 remove a licensee's compact privilege in the remote state for a specific period of time, im-
 8 pose fines, and/or take any other necessary actions to protect the health and safety of its
 9 citizens. The licensee is not eligible for a compact privilege in any state until the specific
 10 time for removal has passed and all fines are paid.

11 E. If a home state license is encumbered, the licensee shall lose the compact privilege in
 12 any remote state until the following occur:

- 13 1. The home state license is no longer encumbered; and
- 14 2. Two years have elapsed from the date of the adverse action.

15 F. Once an encumbered license in the home state is restored to good standing, the
 16 licensee must meet the requirements of Section 4A to obtain a compact privilege in any re-
 17 mote state.

18 G. If a licensee's compact privilege in any remote state is removed, the individual shall
 19 lose the compact privilege in any remote state until the following occur:

- 20 1. The specific period of time for which the compact privilege was removed has ended;
- 21 2. All fines have been paid; and
- 22 3. Two years have elapsed from the date of the adverse action.

23 H. Once the requirements of Section 4G have been met, the license must meet the re-
 24 quirements in Section 4A to obtain a compact privilege in a remote state.

25 **SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

26 A licensee who is active duty military or is the spouse of an individual who is active duty
 27 military may designate one of the following as the home state:

- 28 A. Home of record;
- 29 B. Permanent Change of Station (PCS); or
- 30 C. State of current residence if it is different than the PCS state or home of record.

31 **SECTION 6. ADVERSE ACTIONS**

32 A. A home state shall have exclusive power to impose adverse action against a license
 33 issued by the home state.

34 B. A home state may take adverse action based on the investigative information of a
 35 remote state, so long as the home state follows its own procedures for imposing adverse
 36 action.

37 C. Nothing in this Compact shall override a member state's decision that participation
 38 in an alternative program may be used in lieu of adverse action and that such participation
 39 shall remain non-public if required by the member state's laws. Member states must require
 40 licensees who enter any alternative programs in lieu of discipline to agree not to practice in
 41 any other member state during the term of the alternative program without prior authori-
 42 zation from such other member state.

43 D. Any member state may investigate actual or alleged violations of the statutes and
 44 rules authorizing the practice of physical therapy in any other member state in which a
 45 physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4D against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex-officio, nonvoting member from the recognized national physical therapy professional association; and

1 **c. One ex-officio, nonvoting member from the recognized membership organization of the**
2 **physical therapy licensing boards.**

3 **2. The ex-officio members will be selected by their respective organizations.**

4 **3. The Commission may remove any member of the Executive Board as provided in by-**
5 **laws.**

6 **4. The Executive Board shall meet at least annually.**

7 **5. The Executive Board shall have the following Duties and responsibilities:**

8 **a. Recommend to the entire Commission changes to the rules or bylaws, changes to this**
9 **Compact legislation, fees paid by Compact member states such as annual dues, and any**
10 **commission Compact fee charged to licensees for the compact privilege;**

11 **b. Ensure Compact administration services are appropriately provided, contractual or**
12 **otherwise;**

13 **c. Prepare and recommend the budget;**

14 **d. Maintain financial records on behalf of the Commission;**

15 **e. Monitor Compact compliance of member states and provide compliance reports to the**
16 **Commission;**

17 **f. Establish additional committees as necessary; and**

18 **g. Other duties as provided in rules or bylaws.**

19 **E. Meetings of the Commission**

20 **1. All meetings shall be open to the public, and public notice of meetings shall be given**
21 **in the same manner as required under the rulemaking provisions in Section 9.**

22 **2. The Commission or the Executive Board or other committees of the Commission may**
23 **convene in a closed, non-public meeting if the Commission or Executive Board or other**
24 **committees of the Commission must discuss:**

25 **a. Non-compliance of a member state with its obligations under the Compact;**

26 **b. The employment, compensation, discipline or other matters, practices or procedures**
27 **related to specific employees or other matters related to the Commission's internal person-**
28 **nel practices and procedures;**

29 **c. Current, threatened, or reasonably anticipated litigation;**

30 **d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real**
31 **estate;**

32 **e. Accusing any person of a crime or formally censuring any person;**

33 **f. Disclosure of trade secrets or commercial or financial information that is privileged**
34 **or confidential;**

35 **g. Disclosure of information of a personal nature where disclosure would constitute a**
36 **clearly unwarranted invasion of personal privacy;**

37 **h. Disclosure of investigative records compiled for law enforcement purposes;**

38 **i. Disclosure of information related to any investigative reports prepared by or on behalf**
39 **of or for use of the Commission or other committee charged with responsibility of investi-**
40 **gation or determination of compliance issues pursuant to the Compact; or**

41 **j. Matters specifically exempted from disclosure by federal or member state statute.**

42 **3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the**
43 **Commission's legal counsel or designee shall certify that the meeting may be closed and shall**
44 **reference each relevant exempting provision.**

45 **4. The Commission shall keep minutes that fully and clearly describe all matters dis-**

1 cussed in a meeting and shall provide a full and accurate summary of actions taken, and the
2 reasons therefore, including a description of the views expressed. All documents considered
3 in connection with an action shall be identified in such minutes. All minutes and documents
4 of a closed meeting shall remain under seal, subject to release by a majority vote of the
5 Commission or order of a court of competent jurisdiction.

6 **F. Financing of the Commission**

7 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of
8 its establishment, organization, and ongoing activities.

9 2. The Commission may accept any and all appropriate revenue sources, donations, and
10 grants of money, equipment, supplies, materials, and services.

11 3. The Commission may levy on and collect an annual assessment from each member
12 state or impose fees on other parties to cover the cost of the operations and activities of the
13 Commission and its staff, which must be in a total amount sufficient to cover its annual
14 budget as approved each year for which revenue is not provided by other sources. The ag-
15 gregate annual assessment amount shall be allocated based upon a formula to be determined
16 by the Commission, which shall promulgate a rule binding upon all member states.

17 4. The Commission shall not incur obligations of any kind prior to securing the funds
18 adequate to meet the same; nor shall the Commission pledge the credit of any of the member
19 states, except by and with the authority of the member state.

20 5. The Commission shall keep accurate accounts of all receipts and disbursements. The
21 receipts and disbursements of the Commission shall be subject to the audit and accounting
22 procedures established under its bylaws. However, all receipts and disbursements of funds
23 handled by the Commission shall be audited yearly by a certified or licensed public account-
24 ant, and the report of the audit shall be included in and become part of the annual report
25 of the Commission.

26 **G. Qualified Immunity, Defense, and Indemnification**

27 1. The members, officers, executive director, employees and representatives of the Com-
28 mission shall be immune from suit and liability, either personally or in their official capacity,
29 for any claim for damage to or loss of property or personal injury or other civil liability
30 caused by or arising out of any actual or alleged act, error or omission that occurred, or that
31 the person against whom the claim is made had a reasonable basis for believing occurred
32 within the scope of Commission employment, duties or responsibilities; provided that nothing
33 in this paragraph shall be construed to protect any such person from suit and/or liability for
34 any damage, loss, injury, or liability caused by the intentional or willful or wanton miscon-
35 duct of that person.

36 2. The Commission shall defend any member, officer, executive director, employee or
37 representative of the Commission in any civil action seeking to impose liability arising out
38 of any actual or alleged act, error, or omission that occurred within the scope of Commission
39 employment, duties, or responsibilities, or that the person against whom the claim is made
40 had a reasonable basis for believing occurred within the scope of Commission employment,
41 duties, or responsibilities; provided that nothing herein shall be construed to prohibit that
42 person from retaining his or her own counsel; and provided further, that the actual or al-
43 leged act, error, or omission did not result from that person's intentional or willful or
44 wanton misconduct.

45 3. The Commission shall indemnify and hold harmless any member, officer, executive di-

1 rector, employee, or representative of the Commission for the amount of any settlement or
 2 judgment obtained against that person arising out of any actual or alleged act, error or
 3 omission that occurred within the scope of Commission employment, duties, or responsibil-
 4 ities, or that such person had a reasonable basis for believing occurred within the scope of
 5 Commission employment, duties, or responsibilities, provided that the actual or alleged act,
 6 error, or omission did not result from the intentional or willful or wanton misconduct of that
 7 person.

8 SECTION 8. DATA SYSTEM

9 A. The Commission shall provide for the development, maintenance, and utilization of a
 10 coordinated database and reporting system containing licensure, adverse action, and inves-
 11 tigative information on all licensed individuals in member states.

12 B. Notwithstanding any other provision of state law to the contrary, a member state
 13 shall submit a uniform data set to the data system on all individuals to whom this Compact
 14 is applicable as required by the rules of the Commission, including:

15 1. Identifying information;

16 2. Licensure data;

17 3. Adverse actions against a license or compact privilege;

18 4. Non-confidential information related to alternative program participation;

19 5. Any denial of application for licensure, and the reason(s) for such denial; and

20 6. Other information that may facilitate the administration of this Compact, as deter-
 21 mined by the rules of the Commission.

22 C. Investigative information pertaining to a licensee in any member state will only be
 23 available to other party states.

24 D. The Commission shall promptly notify all member states of any adverse action taken
 25 against a licensee or an individual applying for a license. Adverse action information per-
 26 taining to a licensee in any member state will be available to any other member state.

27 E. Member states contributing information to the data system may designate informa-
 28 tion that may not be shared with the public without the express permission of the contrib-
 29 uting state.

30 F. Any information submitted to the data system that is subsequently required to be
 31 expunged by the laws of the member state contributing the information shall be removed
 32 from the data system.

33 SECTION 9. RULEMAKING

34 A. The Commission shall exercise its rulemaking powers pursuant to the criteria set
 35 forth in this Section and the rules adopted thereunder. Rules and amendments shall become
 36 binding as of the date specified in each rule or amendment.

37 B. If a majority of the legislatures of the member states rejects a rule, by enactment of
 38 a statute or resolution in the same manner used to adopt the Compact within 4 years of the
 39 date of adoption of the rule, then such rule shall have no further force and effect in any
 40 member state.

41 C. Rules or amendments to the rules shall be adopted at a regular or special meeting of
 42 the Commission.

43 D. Prior to promulgation and adoption of a final rule or rules by the Commission, and
 44 at least thirty (30) days in advance of the meeting at which the rule will be considered and
 45 voted upon, the Commission shall file a Notice of Proposed Rulemaking:

- 1 **1. On the website of the Commission or other publicly accessible platform; and**
- 2 **2. On the website of each member state physical therapy licensing board or other publicly**
- 3 **accessible platform or the publication in which each state would otherwise publish proposed**
- 4 **rules.**

5 **E. The Notice of Proposed Rulemaking shall include:**

- 6 **1. The proposed time, date, and location of the meeting in which the rule will be consid-**
- 7 **ered and voted upon;**
- 8 **2. The text of the proposed rule or amendment and the reason for the proposed rule;**
- 9 **3. A request for comments on the proposed rule from any interested person; and**
- 10 **4. The manner in which interested persons may submit notice to the Commission of their**
- 11 **intention to attend the public hearing and any written comments.**

12 **F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit**

13 **written data, facts, opinions, and arguments, which shall be made available to the public.**

14 **G. The Commission shall grant an opportunity for a public hearing before it adopts a rule**

15 **or amendment if a hearing is requested by:**

- 16 **1. At least twenty-five (25) persons;**
- 17 **2. A state or federal governmental subdivision or agency; or**
- 18 **3. An association having at least twenty-five (25) members.**

19 **H. If a hearing is held on the proposed rule or amendment, the Commission shall publish**

20 **the place, time, and date of the scheduled public hearing. If the hearing is held via electronic**

21 **means, the Commission shall publish the mechanism for access to the electronic hearing.**

22 **1. All persons wishing to be heard at the hearing shall notify the executive director of**

23 **the Commission or other designated member in writing of their desire to appear and testify**

24 **at the hearing not less than five (5) business days before the scheduled date of the hearing.**

25 **2. Hearings shall be conducted in a manner providing each person who wishes to com-**

26 **ment a fair and reasonable opportunity to comment orally or in writing.**

27 **3. All hearings will be recorded. A copy of the recording will be made available on re-**

28 **quest.**

29 **4. Nothing in this section shall be construed as requiring a separate hearing on each rule.**

30 **Rules may be grouped for the convenience of the Commission at hearings required by this**

31 **section.**

32 **I. Following the scheduled hearing date, or by the close of business on the scheduled**

33 **hearing date if the hearing was not held, the Commission shall consider all written and oral**

34 **comments received.**

35 **J. If no written notice of intent to attend the public hearing by interested parties is re-**

36 **ceived, the Commission may proceed with promulgation of the proposed rule without a public**

37 **hearing.**

38 **K. The Commission shall, by majority vote of all members, take final action on the pro-**

39 **posed rule and shall determine the effective date of the rule, if any, based on the rulemaking**

40 **record and the full text of the rule.**

41 **L. Upon determination that an emergency exists, the Commission may consider and**

42 **adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided**

43 **that the usual rulemaking procedures provided in the Compact and in this section shall be**

44 **retroactively applied to the rule as soon as reasonably possible, in no event later than ninety**

45 **(90) days after the effective date of the rule. For the purposes of this provision, an emer-**

1 **gency rule is one that must be adopted immediately in order to:**

2 **1. Meet an imminent threat to public health, safety, or welfare;**

3 **2. Prevent a loss of Commission or member state funds;**

4 **3. Meet a deadline for the promulgation of an administrative rule that is established by**
5 **federal law or rule; or**

6 **4. Protect public health and safety.**

7 **M. The Commission or an authorized committee of the Commission may direct revisions**
8 **to a previously adopted rule or amendment for purposes of correcting typographical errors,**
9 **errors in format, errors in consistency, or grammatical errors. Public notice of any revisions**
10 **shall be posted on the website of the Commission. The revision shall be subject to challenge**
11 **by any person for a period of thirty (30) days after posting. The revision may be challenged**
12 **only on grounds that the revision results in a material change to a rule. A challenge shall**
13 **be made in writing, and delivered to the chair of the Commission prior to the end of the**
14 **notice period. If no challenge is made, the revision will take effect without further action.**
15 **If the revision is challenged, the revision may not take effect without the approval of the**
16 **Commission.**

17 **SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

18 **A. Oversight**

19 **1. The executive, legislative, and judicial branches of state government in each member**
20 **state shall enforce this Compact and take all actions necessary and appropriate to effectuate**
21 **the Compact's purposes and intent. The provisions of this Compact and the rules**
22 **promulgated hereunder shall have standing as statutory law.**

23 **2. All courts shall take judicial notice of the Compact and the rules in any judicial or**
24 **administrative proceeding in a member state pertaining to the subject matter of this Com-**
25 **compact which may affect the powers, responsibilities or actions of the Commission.**

26 **3. The Commission shall be entitled to receive service of process in any such proceeding,**
27 **and shall have standing to intervene in such a proceeding for all purposes. Failure to provide**
28 **service of process to the Commission shall render a judgment or order void as to the Com-**
29 **mission, this Compact, or promulgated rules.**

30 **B. Default, Technical Assistance, and Termination**

31 **1. If the Commission determines that a member state has defaulted in the performance**
32 **of its obligations or responsibilities under this Compact or the promulgated rules, the Com-**
33 **mission shall:**

34 **a. Provide written notice to the defaulting state and other member states of the nature**
35 **of the default, the proposed means of curing the default and/or any other action to be taken**
36 **by the Commission; and**

37 **b. Provide remedial training and specific technical assistance regarding the default.**

38 **2. If a state in default fails to cure the default, the defaulting state may be terminated**
39 **from the Compact upon an affirmative vote of a majority of the member states, and all**
40 **rights, privileges and benefits conferred by this Compact may be terminated on the effective**
41 **date of termination. A cure of the default does not relieve the offending state of obligations**
42 **or liabilities incurred during the period of default.**

43 **3. Termination of membership in the Compact shall be imposed only after all other means**
44 **of securing compliance have been exhausted. Notice of intent to suspend or terminate shall**
45 **be given by the Commission to the governor, the majority and minority leaders of the de-**

1 faulting state's legislature, and each of the member states.

2 4. A state that has been terminated is responsible for all assessments, obligations, and
3 liabilities incurred through the effective date of termination, including obligations that ex-
4 tend beyond the effective date of termination.

5 5. The Commission shall not bear any costs related to a state that is found to be in de-
6 fault or that has been terminated from the Compact, unless agreed upon in writing between
7 the Commission and the defaulting state.

8 6. The defaulting state may appeal the action of the Commission by petitioning the U.S.
9 District Court for the District of Columbia or the federal district where the Commission has
10 its principal offices. The prevailing member shall be awarded all costs of such litigation, in-
11 cluding reasonable attorney's fees.

12 **C. Dispute Resolution**

13 1. Upon request by a member state, the Commission shall attempt to resolve disputes
14 related to the Compact that arise among member states and between member and non-
15 member states.

16 2. The Commission shall promulgate a rule providing for both mediation and binding
17 dispute resolution for disputes as appropriate.

18 **D. Enforcement**

19 1. The Commission, in the reasonable exercise of its discretion, shall enforce the pro-
20 visions and rules of this Compact.

21 2. By majority vote, the Commission may initiate legal action in the United States Dis-
22 trict Court for the District of Columbia or the federal district where the Commission has its
23 principal offices against a member state in default to enforce compliance with the provisions
24 of the Compact and its promulgated rules and bylaws. The relief sought may include both
25 injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing
26 member shall be awarded all costs of such litigation, including reasonable attorney's fees.

27 3. The remedies herein shall not be the exclusive remedies of the Commission. The
28 Commission may pursue any other remedies available under federal or state law.

29 **SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR**
30 **PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND**
31 **AMENDMENT**

32 **A.** The Compact shall come into effect on the date on which the Compact statute is en-
33 acted into law in the tenth member state. The provisions, which become effective at that
34 time, shall be limited to the powers granted to the Commission relating to assembly and the
35 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking pow-
36 ers necessary to the implementation and administration of the Compact.

37 **B.** Any state that joins the Compact subsequent to the Commission's initial adoption of
38 the rules shall be subject to the rules as they exist on the date on which the Compact be-
39 comes law in that state. Any rule that has been previously adopted by the Commission shall
40 have the full force and effect of law on the day the Compact becomes law in that state.

41 **C.** Any member state may withdraw from this Compact by enacting a statute repealing
42 the same.

43 1. A member state's withdrawal shall not take effect until six (6) months after enactment
44 of the repealing statute.

45 2. Withdrawal shall not affect the continuing requirement of the withdrawing state's

1 physical therapy licensing board to comply with the investigative and adverse action report-
 2 ing requirements of this act prior to the effective date of withdrawal.

3 D. Nothing contained in this Compact shall be construed to invalidate or prevent any
 4 physical therapy licensure agreement or other cooperative arrangement between a member
 5 state and a non-member state that does not conflict with the provisions of this Compact.

6 E. This Compact may be amended by the member states. No amendment to this Compact
 7 shall become effective and binding upon any member state until it is enacted into the laws
 8 of all member states.

9 **SECTION 12. CONSTRUCTION AND SEVERABILITY**

10 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
 11 provisions of this Compact shall be severable and if any phrase, clause, sentence or provision
 12 of this Compact is declared to be contrary to the constitution of any party state or of the
 13 United States or the applicability thereof to any government, agency, person or circumstance
 14 is held invalid, the validity of the remainder of this Compact and the applicability thereof to
 15 any government, agency, person or circumstance shall not be affected thereby. If this Com-
 16 pact shall be held contrary to the constitution of any party state, the Compact shall remain
 17 in full force and effect as to the remaining party states and in full force and effect as to the
 18 party state affected as to all severable matters.

21 **SECTION 2.** The Legislative Assembly of the State of Oregon hereby ratifies the Physical
 22 Therapy Licensure Compact set forth in section 1 of this 2016 Act.

23 **SECTION 3.** ORS 688.110 is amended to read:

24 688.110. (1) The Physical Therapist Licensing Board, in its discretion, may issue without exam-
 25 ination a temporary permit to a person to practice as a physical therapist or to work as a physical
 26 therapist assistant in this state if the person files an application for license as provided in ORS
 27 688.040 or 688.080, and pays to the board at the time of filing the application the temporary permit
 28 fee.

29 (2) A person holding a temporary permit may practice physical therapy only under the direction
 30 of a physical therapist licensed under ORS 688.010 to 688.201.

31 (3) The temporary permit shall be granted for a period not to exceed three months. The board
 32 may renew the temporary permit at its discretion for [*an additional three months, but no longer*] **no**
 33 **more than 90 days.**

34 **SECTION 4.** ORS 688.160 is amended to read:

35 688.160. (1) The Physical Therapist Licensing Board operates as a semi-independent state agency
 36 subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 688.010 to
 37 688.201 and 688.990. The Physical Therapist Licensing Board consists of eight members appointed
 38 by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562
 39 and 171.565. All members of the board must be residents of this state. Of the members of the board:

40 (a) Five must be physical therapists who are Oregon residents, possess unrestricted licenses to
 41 practice physical therapy in this state, have been practicing in this state for at least two years im-
 42 mediately preceding their appointments and have been practicing in the field of physical therapy for
 43 at least five years.

44 (b) One must be a licensed physical therapist assistant.

45 (c) Two must be public members who have an interest in consumer rights and who are not:

- 1 (A) Otherwise eligible for appointment to the board; or
 2 (B) The spouse, domestic partner, child, parent or sibling of a physical therapist or physical
 3 therapist assistant.
- 4 (2)(a) Board members required to be physical therapists or physical therapist assistants may be
 5 selected by the Governor from a list of three to five nominees for each vacancy, submitted by the
 6 Oregon Physical Therapy Association.
- 7 (b) In selecting the members of the board, the Governor shall strive to balance the represen-
 8 tation on the board according to:
- 9 (A) Geographic areas of this state; and
 10 (B) Ethnic group.
- 11 (3)(a) The term of office of each member is four years, but a member serves at the pleasure of
 12 the Governor. The terms must be staggered so that no more than three terms end each year. A
 13 member is eligible for reappointment.
- 14 (b) In the event of a vacancy in the office of a member of the board other than by reason of the
 15 expiration of a term, the Governor, not later than 90 days after the occurrence of the vacancy, shall
 16 appoint a person to fill the vacancy for the unexpired term.
- 17 (c) A board member shall be removed immediately from the board if, during the member's term,
 18 the member:
- 19 (A) Is not a resident of this state;
 20 (B) Has been absent from three consecutive board meetings, unless at least one absence is ex-
 21 cused;
 22 (C) Is not a licensed physical therapist or a retired physical therapist who was a licensed
 23 physical therapist in good standing at the time of retirement, if the board member was appointed to
 24 serve on the board as a physical therapist; or
 25 (D) Is not a licensed physical therapist assistant or a retired physical therapist assistant who
 26 was a licensed physical therapist assistant in good standing at the time of retirement, if the board
 27 member was appointed to serve on the board as a retired physical therapist assistant.
- 28 (4) Each member of the board is entitled to compensation and expenses as provided in ORS
 29 292.495. The board may provide by rule for compensation to board members for the performance of
 30 official duties at a rate that is greater than the rate provided in ORS 292.495.
- 31 (5) A board member who acts within the scope of board duties, without malice and in reasonable
 32 belief that the member's action is warranted by law, is immune from civil liability.
- 33 (6) The board shall have power to:
- 34 (a) Establish matters of policy affecting administration of ORS 688.010 to 688.201;
 35 (b) Provide for examinations for physical therapists and physical therapist assistants and adopt
 36 passing scores for the examinations;
 37 (c) Adopt rules necessary to carry out and enforce the provisions of ORS 688.010 to 688.201;
 38 (d) Establish standards and tests to determine the qualifications of applicants for licenses to
 39 practice physical therapy in this state;
 40 (e) Issue licenses to persons who meet the requirements of ORS 688.010 to 688.201;
 41 (f) Adopt rules relating to the supervision and the duties of physical therapist aides who assist
 42 in performing routine work under supervision;
 43 (g) Adopt rules establishing minimum continuing *[education]* **competency** requirements for all
 44 licensees;
 45 (h) Exercise general supervision over the practice of physical therapy within this state;

1 (i) Establish and collect fees for the application or examination for, or the renewal, rein-
2 statement or duplication of, a license under ORS 688.040, 688.080 or 688.100 or for the issuance of
3 a temporary permit under ORS 688.110; and

4 (j) Establish and collect fees to carry out and enforce the provisions of ORS 688.010 to 688.201.

5 (7) The board shall meet as determined by the board and at any other time at the call of the
6 board chairperson, who shall be elected by the members of the board. All members have equal voting
7 privileges.

8 (8) The board may appoint and fix the compensation of staff as necessary to carry out the op-
9 erations of the board.

10 (9) The board shall:

11 (a) Maintain a current list of all persons regulated under ORS 688.010 to 688.201, including the
12 persons' names, current business and residential addresses, telephone numbers, electronic mail ad-
13 dresses and license numbers.

14 (b) Provide information to the public regarding the procedure for filing a complaint against a
15 physical therapist or physical therapist assistant.

16 (c) Publish at least annually, and in a format or place determined by the board, final disciplinary
17 actions taken against physical therapists and physical therapist assistants and other information,
18 including rules, in order to guide physical therapists and physical therapist assistants regulated
19 pursuant to ORS 688.010 to 688.201.

20 **SECTION 5. The amendments to ORS 688.110 and 688.160 by sections 3 and 4 of this 2016**
21 **Act apply to applications for licenses and permits received by the Physical Therapist Li-**
22 **censing Board, and licenses and permits issued or renewed by the board, on or after the ef-**
23 **fective date of this 2016 Act.**

24 **SECTION 6. This 2016 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
26 **on its passage.**

27

Senate Bill 1538

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Information Management and Technology)

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 state agencies to notify Legislative Fiscal Office promptly concerning information security incidents and provide office with copies of and report results of information security assessments.

Requires heads of certain state agencies to provide annual report concerning information security to Joint Legislative Committee on Information Management and Technology.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to information security for the State of Oregon; and declaring an emergency.

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

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

5 (a) **“Information resources” means data and the means for storing, retrieving, connect-**
6 **ing or using data, including but not limited to records, files, databases, documents, software,**
7 **equipment and facilities that a state agency owns or leases.**

8 (b) **“Information security assessment” means:**

9 (A) **An organized method to determine a risk to or vulnerability of an information sys-**
10 **tem, including but not limited to:**

11 (i) **A risk assessment;**

12 (ii) **A vulnerability assessment; and**

13 (iii) **A security penetration test; and**

14 (B) **An independent examination and review of records, logs, policies, activities and**
15 **practices to:**

16 (i) **Assess whether a state agency’s information system is vulnerable to an information**
17 **security incident;**

18 (ii) **Ensure compliance with rules, policies, standards and procedures that the State Chief**
19 **Information Officer adopts or otherwise promulgates; and**

20 (iii) **Recommend necessary changes to a state agency’s information system, rules, poli-**
21 **cies, standards and procedures to ensure compliance and prevent information security inci-**
22 **dents.**

23 (c) **“Information security incident” means an incident in which:**

24 (A) **Access to, or viewing, copying, transmission, theft or usage of, a state agency’s**
25 **sensitive, protected or confidential information occurs without authorization from the state**
26 **agency;**

27 (B) **A failure of compliance with a state agency’s security or acceptable use policies or**
28 **practices occurs that could or does leave the state agency’s information system or informa-**

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 tion resources vulnerable to access, viewing, copying, transmission, theft or usage without
2 authorization from the state agency; or

3 (C) A state agency's information system or information resources become unavailable in
4 a reliable and timely manner to authorized individuals or organizations, or are modified or
5 deleted, under circumstances that the state agency does not plan or initiate.

6 (d) "Information system" means a system of computers and related hardware, software,
7 storage media and networks and any other means by which a state agency collects, uses or
8 manages the state agency's information resources.

9 (e) "State agency" means an agency or instrumentality of this state the costs of which
10 are paid wholly or in part from funds held in the State Treasury, except:

11 (A) Public universities listed in ORS 352.002; and

12 (B) The Oregon State Lottery and entities with which the Oregon State Lottery has a
13 contract or agreement with respect to the Oregon State Lottery's gaming systems or net-
14 works.

15 (2) A state agency shall promptly notify the Legislative Fiscal Office of an information
16 security incident and in the notification describe the actions the state agency has taken or
17 must reasonably take to prevent, mitigate or recover from damage to, unauthorized access
18 to, unauthorized modifications or deletions of or other impairments of the integrity of the
19 state agency's information system or information resources.

20 (3) Each state agency shall periodically conduct, oversee or cooperate with an informa-
21 tion security assessment and shall provide the Legislative Fiscal Office with copies of and
22 report the results of the information security assessment of the state agency's information
23 system or information resources within 30 days after the state agency receives the results
24 of the information security assessment.

25 (4)(a) The State Chief Information Officer, the Secretary of State, the State Treasurer,
26 the Attorney General, the State Court Administrator and the Legislative Administrator shall
27 each submit to, and present in an appropriate hearing or other proceeding before, the Joint
28 Legislative Committee on Information Management and Technology an annual report con-
29 cerning the security of the information systems and information resources over which the
30 State Chief Information Officer, the Secretary of State, the State Treasurer, the Attorney
31 General, the State Court Administrator or the Legislative Administrator has direct or su-
32 pervisory control.

33 (b) Notwithstanding ORS 192.660 (8), the Joint Legislative Audit Committee and the Joint
34 Legislative Committee on Information Management and Technology may hold executive ses-
35 sions under ORS 192.660 to consider or discuss reports, documents, testimony or other ma-
36 terials that are exempt from public disclosure under ORS 192.410 to 192.505 or to discuss
37 information about reviewing or approving programs related to information security.

38 (5)(a) The Legislative Fiscal Office shall use the notification the office receives under
39 subsection (2) of this section and the copies and reports the office receives under subsection
40 (3) of this section solely for the purpose of providing support and assistance to the Joint
41 Legislative Committee on Information Management and Technology and the Joint Legislative
42 Audit Committee.

43 (b)(A) Except as provided in subparagraph (B) of this paragraph, the Legislative Fiscal
44 Officer or an employee of the Legislative Fiscal Office may not reveal to any other person
45 the nature or contents of the notifications that the office receives under subsection (2) of

1 this section or the copies and reports the office receives under subsection (3) of this section
2 to the extent that the notifications, copies or reports are exempt from disclosure under ORS
3 192.410 to 192.505.

4 (B) The Legislative Fiscal Officer or an employee of the Legislative Fiscal Office may
5 disclose the nature or contents of the notifications, copies or reports described in subpara-
6 graph (A) of this paragraph solely with the written consent of:

7 (i) The State Chief Information Officer, with respect to materials that a state agency
8 within the executive department, as defined in ORS 174.112, provided;

9 (ii) The Secretary of State, with respect to materials that the office of the Secretary of
10 State provided;

11 (iii) The State Treasurer, with respect to materials that the office of the State Treasurer
12 provided;

13 (iv) The Attorney General, with respect to materials that the Department of Justice
14 provided;

15 (v) The State Court Administrator, with respect to materials that a court or a state
16 agency within the judicial department, as defined in ORS 174.113, provided; or

17 (vi) The Legislative Administrator, with respect to materials that a state agency within
18 the legislative department, as defined in ORS 174.114, provided.

19 **SECTION 2.** (1) Section 1 of this 2016 Act becomes operative on July 1, 2016.

20 (2) A state agency may adopt rules and take any other action before the operative date
21 specified in subsection (1) of this section that is necessary to enable the state agency to ex-
22 ercise, on and after the operative date specified in subsection (1) of this section, all of the
23 duties, functions and powers conferred on the state agency by section 1 of this 2016 Act.

24 **SECTION 3.** This 2016 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect
26 on its passage.

27

Senate Bill 1579

Sponsored by Senators WHITSETT, COURTNEY; Senators BAERTSCHIGER JR, BOQUIST, FERRIOLI, GIROD, HANSELL, KNOPP, OLSEN, THOMSEN, Representative NEARMAN (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 state agencies to provide summary of legal advice regarding validity or effect of proposed rule or written order.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to legal advice provided to state agencies; creating new provisions; amending ORS 183.335;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 183.335 is amended to read:

6 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
7 of its intended action:

8 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
9 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

10 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

11 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
12 subsection (8) of this section; and

13 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons
14 specified in subsection (15) of this section.

15 (2)(a) The notice required by subsection (1) of this section must include:

16 (A) A caption of not more than 15 words that reasonably identifies the subject matter of the
17 agency's intended action. The agency shall include the caption on each separate notice, statement,
18 certificate or other similar document related to the intended action.

19 (B) An objective, simple and understandable statement summarizing the subject matter and
20 purpose of the intended action in sufficient detail to inform a person that the person's interests may
21 be affected, and the time, place and manner in which interested persons may present their views on
22 the intended action.

23 (b) The agency shall include with the notice of intended action given under subsection (1) of this
24 section:

25 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
26 promulgation of the rule;

27 (B) A citation of the statute or other law the rule is intended to implement;

28 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
29 need;

30 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by

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 the agency in considering the need for and in preparing the rule, and a statement of the location
2 at which those documents are available for public inspection. The list may be abbreviated if neces-
3 sary, and if so abbreviated there shall be identified the location of a complete list;

4 (E) A statement of fiscal impact identifying state agencies, units of local government and the
5 public that may be economically affected by the adoption, amendment or repeal of the rule and an
6 estimate of that economic impact on state agencies, units of local government and the public. In
7 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
8 able information to project any significant economic effect of that action on businesses which shall
9 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
10 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
11 scribed in ORS 183.534;

12 **(F) A summary of any legal advice received by the agency regarding the validity or effect**
13 **of the rule;**

14 [(F)] (G) If an advisory committee is not appointed under the provisions of ORS 183.333, an ex-
15 planation as to why no advisory committee was used to assist the agency in drafting the rule; and

16 [(G)] (H) A request for public comment on whether other options should be considered for
17 achieving the rule's substantive goals while reducing the negative economic impact of the rule on
18 business.

19 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
20 section from publication in the bulletin referred to in ORS 183.360.

21 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
22 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
23 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
24 show all changes to the rule by striking through material to be deleted and underlining all new
25 material, or by any other method that clearly shows all new and deleted material.

26 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
27 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
28 request received from 10 persons or from an association having not less than 10 members before the
29 earliest date that the rule could become effective after the giving of notice pursuant to subsection
30 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
31 notice of the hearing at least 21 days before the hearing to the person who has requested the
32 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
33 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
34 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
35 consider fully any written or oral submission.

36 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
37 and the rule for which the hearing is to be conducted applies only to a limited geographical area
38 within this state, or affects only a limited geographical area within this state, the hearing shall be
39 conducted within the geographical area at the place most convenient for the majority of the resi-
40 dents within the geographical area. At least 14 days before a hearing conducted under this para-
41 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
42 in a newspaper of general circulation published within the geographical area that is affected by the
43 rule or to which the rule applies. If a newspaper of general circulation is not published within the
44 geographical area that is affected by the rule or to which the rule applies, the publication shall be
45 made in the newspaper of general circulation published closest to the geographical area.

1 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
2 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
3 in the proposed adoption, amendment or repeal of any rule to written submissions.

4 (d) If requested by at least five persons before the earliest date that the rule could become ef-
5 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
6 provide a statement that identifies the objective of the rule and a statement of how the agency will
7 subsequently determine whether the rule is in fact accomplishing that objective.

8 (e) An agency that receives data or views concerning proposed rules from interested persons
9 shall maintain a record of the data or views submitted. The record shall contain:

10 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
11 amend or repeal a rule.

12 (B) A recording or summary of oral submissions received at hearings held for the purpose of
13 receiving those submissions.

14 (C) Any public comment received in response to the request made under subsection [(2)(b)(G)]
15 **(2)(b)(H)** of this section and the agency's response to that comment.

16 (D) Any statements provided by the agency under paragraph (d) of this subsection.

17 (4) Upon request of an interested person received before the earliest date that the rule could
18 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
19 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
20 requesting person an opportunity to submit data, views or arguments concerning the proposed
21 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
22 to subsection (5) of this section.

23 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
24 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
25 practicable, if the agency prepares:

26 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
27 the public interest or the interest of the parties concerned and the specific reasons for its findings
28 of prejudice;

29 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
30 promulgation of the rule;

31 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
32 need;

33 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
34 the agency in considering the need for and in preparing the rule, and a statement of the location
35 at which those documents are available for public inspection; and

36 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
37 183.534.

38 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
39 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
40 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
41 (4) of this section.

42 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
43 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

44 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
45 prior notice or hearing if the amendment is solely for the purpose of:

- 1 (a) Changing the name of an agency by reason of a name change prescribed by law;
- 2 (b) Changing the name of a program, office or division within an agency as long as the change
3 in name does not have a substantive effect on the functions of the program, office or division;
- 4 (c) Correcting spelling;
- 5 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
6 meaning of the rule;
- 7 (e) Correcting statutory or rule references; or
- 8 (f) Correcting addresses or telephone numbers referred to in the rules.
- 9 (8)(a) Any person may request in writing that an agency send to the person copies of the
10 agency's notices of intended action issued under subsection (1) of this section. The person must
11 provide an address where the person elects to receive notices. The address provided may be a postal
12 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
13 address.
- 14 (b) A request under this subsection must indicate that the person requests one of the following:
- 15 (A) The person may request that the agency mail paper copies of the proposed rule and other
16 information required by subsection (2) of this section to the postal mailing address.
- 17 (B) If the agency posts notices of intended action on a website, the person may request that the
18 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
19 dress with a reference to the website where electronic copies of the proposed rule and other infor-
20 mation required by subsection (2) of this section are posted.
- 21 (C) The person may request that the agency electronically mail the information required by
22 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
23 copies of the proposed rule and other information required by subsection (2) of this section or pro-
24 vide a reference to a website where electronic copies of the proposed rule and other information
25 required by subsection (2) of this section are posted.
- 26 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
27 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
28 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
29 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
30 the lists.
- 31 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
32 tion may request that an agency furnish paper copies of the notices.
- 33 (9) This section does not apply to rules establishing an effective date for a previously effective
34 rule or establishing a period during which a provision of a previously effective rule will apply.
- 35 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to
36 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
37 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
38 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
39 279C.800 to 279C.870 relating to public contracts and purchasing.
- 40 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
41 in substantial compliance with the provisions of this section in effect on the date that the notice
42 required under subsection (1) of this section is delivered to the Secretary of State for the purpose
43 of publication in the bulletin referred to in ORS 183.360.
- 44 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
45 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS

1 183.715.

2 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
3 subsection (2)(a)(A) of this section.

4 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
5 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
6 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
7 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
8 rule.

9 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
10 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
11 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
12 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS
13 183.333.

14 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
15 agency need not be based upon or supported by an evidentiary record.

16 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
17 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
18 agency or person unless the extension applies equally to all interested agencies and persons. An
19 agency shall not consider any submission made by another agency after the final deadline has
20 passed.

21 (15) The notices required under subsections (1) and (3) of this section must be given by the
22 agency to the following persons:

23 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
24 within two years before notice is given under subsection (1) of this section, notice shall be given to
25 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
26 cochairs of all committees that reported the bill out, except for those committees whose sole action
27 on the bill was referral to another committee.

28 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
29 passed within two years before notice is given under subsection (1) of this section, notice shall be
30 given to the chair or cochairs of any interim or session committee with authority over the subject
31 matter of the rule.

32 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
33 to the Speaker of the House of Representatives and to the President of the Senate who are in office
34 on the date the notice is given.

35 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
36 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
37 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
38 with the legislation from which the proposed adoption, amendment or repeal results.

39 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
40 to the agency proposing the adoption, amendment or repeal.

41 **SECTION 2. Section 3 of this 2016 Act is added to and made a part of ORS chapter 183.**

42 **SECTION 3. An order expressed in writing by an agency must include a summary of any
43 legal advice received by the agency regarding the validity or effect of the order.**

44 **SECTION 4. (1) The amendments to ORS 183.335 by section 1 of this 2016 Act apply only
45 to notices of intended action given on or after the effective date of this 2016 Act.**

1 **(2) Section 3 of this 2016 Act applies only to orders issued on or after the effective date**
2 **of this 2016 Act.**

3 **SECTION 5.** **This 2016 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
5 **on its passage.**

6

Senate Joint Resolution 202

Sponsored by Senator GIROD; Senators BAERTSCHIGER JR, BOQUIST, FERRIOLI, HANSELL, KNOPP, KRUSE, OLSEN, THATCHER, THOMSEN, WHITSETT (Presession 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**.

Proposes amendment to Oregon Constitution to require Legislative Assembly to approve each administrative rule or amendment of administrative rule adopted by executive branch agency before taking effect. Authorizes Legislative Assembly to permit executive branch agencies to adopt or amend rules that take effect immediately if emergency conditions exist that satisfy criteria established by Legislative Assembly. Permits rule adopted or amended on emergency basis to be in effect for no more than 12 calendar months unless rule or amendment is approved by Legislative Assembly.

Applies to rules that are first adopted or amended on or after July 1, 2017.

Refers proposed amendment to people for their approval or rejection at next regular general election.

JOINT RESOLUTION

Be It Resolved by the Legislative Assembly of the State of Oregon:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by creating new sections 5 and 5a to be added to and made a part of Article III, such sections to read:

SECTION 5. Notwithstanding section 1 of this Article, the Legislative Assembly may by law require any administrative rule or amendment of an administrative rule that is adopted by an Executive Branch agency:

(1) To be approved by joint resolution of the Legislative Assembly prior to taking effect; or

(2) If the Executive Branch agency determines that the agency's failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice satisfy the conditions established by the Legislative Assembly by law for the emergency adoption or amendment of a rule, to take effect immediately following adoption of the rule or amendment but to be in effect for no more than 12 calendar months before being approved by the Legislative Assembly.

SECTION 5a. (1) Section 5 of this Article applies to administrative rules that are first adopted or amended by an Executive Branch agency on or after July 1, 2017.

(2) This section is repealed on June 30, 2019.

PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.

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.



EXECUTIVE ORDER NO. 16-06

PUBLIC RECORDS

Upon assuming the office of Governor in February 2015, I offered a package of bills to the Legislative Assembly relating to ethics and governmental accountability. A key component of that package was Senate Bill 9, which mandated that an audit be conducted of state agencies' responses to public records requests with respect to issues of cost, timeliness and procedures. The Legislature approved Senate Bill 9 and I signed it into law on June 15, 2015.

The Secretary of State's Audits Division has conducted the audit required by Senate Bill 9, and on November, 2015, released the audit results in a document entitled "State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies." (The audit and the audit results are hereinafter referred to collectively as the "Audit.") The Audit examined a sampling of large, medium and small agencies and found that for the most part Oregon state agencies handle routine requests well and struggle with complex requests.

The Audit also revealed other issues that affect agencies' ability to respond to requests such as retention policies, changing technologies and fee structures.

The Audit included specific recommendations, including a recommendation that the Oregon Department of Administrative Services ("DAS") create standardized rates for copying and standardized rates for employee labor among state agencies in order to resolve some of the inconsistency in public records requests fees statewide.

The Audit further recommended that DAS be empowered to provide guidance to agencies regarding communication technologies as they relate to public records.

The Audit found, further, that the variation in responses to public records requests is due, at least in part, to a lack of statewide policies and guidelines with regard to record types created by emergent technology, a standardized fee structure, and automated processes and procedures that make records retention arduous and subjective.

It is also clear that as a result of the rise of modern communications technology, the volume of records subject to search and potential legal review significantly impacts the ability for an agency to respond in a timely manner and causes concern and mistrust to grow in the public's view.



EXECUTIVE ORDER NO. 16-06
PAGE TWO

The purpose of the Government of the State of Oregon is to serve the people of Oregon. State government must therefore be open and transparent. All Oregonians deserve full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. DAS shall develop and promote model public records management policies, approved by the State Archivist, for use by executive branch agencies no later than June 30, 2016. All state agencies shall comply with ORS 192.018 within 90 days of DAS' promotion of model policies by either adopting the DAS policy or modifying it to meet agency-specific records management needs.
2. DAS shall improve accessibility and government transparency by fully implementing all of the recommendations outlined in the SOS audit, which are incorporated herein. DAS shall work with and report to the Governor's office in the implementation of the audit recommendations. This work shall begin immediately. The recommendations that shall be fully implemented include, but are not limited to:
 - a. Streamlining and standardizing state agency processes and procedures regarding responses to public records requests;
 - b. Working with state agencies to develop a standard protocol for tracking public records requests, and documentation related to each request;
 - c. Developing uniform statewide standards and guidelines on agency fee structures or charging policies; and





EXECUTIVE ORDER NO. 16-06
PAGE THREE

- d. Working with agencies to develop streamlined management processes, administrative rules, and statewide policy guidance regarding internal processes and procedures for records retention and management.
3. This Order shall remain in effect until it is otherwise modified, amended or terminated.

Done at Salem, Oregon, this 20th day of January, 2016.





Kate Brown
GOVERNOR

ATTEST:



Jeanne P. Atkins
SECRETARY OF STATE

State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies

Executive Summary

Oregon state agencies respond well to most public records requests for routine information, but the infrequent complex requests produce challenges. As a result, some requesters believe that agencies deliberately discourage, delay, or block the release of public information.

The Department of Administrative Services should provide guidance and training to help agencies develop procedures, and agencies should create timeliness goals for responding to requests. Better monitoring, consistent fees, use of technology, and third-party mediation could also help with the retention and disclosure of public records and improve trust in Oregon's government.

Oregon's public records law was enacted in 1973. Known primarily as a law of disclosure, the law grants all citizens within the state of Oregon the right to inspect all records – with some exceptions.

When the law first passed, it included 16 classes of records that could be exempt from disclosure for a total of 55 exemptions. Changes and revisions since that time have raised the total number of exemptions in Oregon law to more than 400. The intent, however, remains the same: that Oregon's government is accessible and transparent to its people.

For our audit, we examined nine agencies of varying sizes and missions to capture a fuller picture of public records in Oregon state agencies. The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

Agencies handle routine requests well, struggle with complex ones

We found that public records requests generally fall into one of two categories. The first is routine requests, or common requests for information that agencies have easy and ready access to. These requests, which generally make up 90 percent or more of an agency's total requests, can be fulfilled at little to no cost and within a couple of weeks.

The other category is non-routine or complex requests. These are voluminous in scope, ask for "any and all" information, or are otherwise complicated for an agency to complete. These are the requests that can take weeks or months to fulfill and often at a high cost.

In the selected files we reviewed, we found no evidence to suggest that agencies were regularly taking an unreasonably long time, or charging unreasonably high fees, to respond to records requests. But when agencies struggle to respond to complex, non-routine requests, it can foster suspicion and distrust, which in turn can undermine the credibility and transparency of both the agency and Oregon government.

To address this distrust, some states and provinces have established a neutral, third-party entity that helps mediate disagreements between requesters and agencies. An ombudsman or commission can help determine when a request is too broad or when an agency is taking an unreasonably long time to respond. Oregon has no such mechanism. The Attorney General's role is limited to denials based on exemptions and fee waivers.

Agencies retain public records longer than required

It is important that agencies properly retain and manage their public records so they can be efficiently located and disclosed in response to a records request. To do this, agencies must follow their retention schedules – guidelines, created and authorized by the Archives Division, that determine how long certain records must be kept before they are destroyed or transferred to the State Archives for permanent retention.

But we found that agencies are keeping too many records for too long, resulting in a large volume of information. Some employees are too cautious about accidentally deleting or losing track of a public record, and so have a tendency to "keep everything."

We found that better management tools and specific training on the issue of record retention may help state employees better manage records. This can reduce the volume of public information statewide and assist agencies to more efficiently respond to public records requests.

Exemptions remain an issue and may require a closer look

Exemptions – those instances in which a record may be exempt from disclosure – make up a major portion of Oregon's public records law.

Agencies generally understand which exemptions most commonly apply to the records in their care. But due to the sheer number of exemptions in the law, including how they are worded and where in statute they are located, staff sometimes must consult with experts or the Department of Justice.

There is a perception among some requesters that agencies inappropriately use exemptions to block the release of public information. Most of Oregon's exemptions are applied at the agency's discretion. After weighing the public interest, these records may be disclosed *even if* an exemption applies. The exception is confidential information, which is legally prohibited from release.

These issues regarding exemptions are not new. After a national report gave Oregon a failing grade in government transparency eight years ago, state officials closely examined the law and accepted feedback from requesters and public officials. Their findings, published in 2010 as the Attorney General's Government Transparency Report, found that "Any meaningful overhaul of Oregon's public records law must reorganize and make coherent sense of the numerous exemptions."

A bill was subsequently introduced in the 2011 legislative session to address some of these recommendations, but it failed to pass. A task force was recently convened by the Attorney General to examine in greater detail the issues of exemptions in Oregon law.

Variations in responses frustrate some requesters

Requesters expect their government will be transparent and open, that fees charged for requests will be reasonable and records will be made available as quickly as possible. They expect agencies that fail to do so will be held accountable.

But variation among agencies' responses to records requests – in both fees and timeliness – can lead to confusion and frustration among requesters when they are not sure what kind of response to expect.

Agencies charge differing fees to provide public information. This variation extends to both the fees for copying costs and the charge for staff time to respond to a request. Agencies charge anywhere from \$0.05 to \$0.25 per page in copying costs, and from \$15 to \$40 per hour for staff time.

We also found a time variation among agencies in responding to requests, due largely to the differences between routine and non-routine requests. First, agencies have varying internal guidelines for what it means to be timely, if they have any internal guidelines at all. Second, timeliness depends largely on the type of request an agency receives. We found that routine requests were fulfilled within 14 days, while non-routine requests could take upwards of 265 days to fulfill.

We saw no evidence to suggest that adding a specific deadline in law would positively affect agencies' abilities to respond to requests in a timely fashion. But agencies that set internal guidelines or goals to respond to

requests hold themselves accountable to requesters while maintaining the flexibility provided in Oregon law.

Agencies are not keeping up with changing technologies

Oregon's public records law was updated in 2011 to extend the definition of a public record to electronic or digital messages. Agencies have taken a longer time to update their own policies to include emerging technologies such as email, text, and instant messages.

More than half of the agencies we examined had policies to address email as it relates to public records. But only one agency had specific language to address the use of a personal or private email account in conducting the public's business. Only one agency had a policy to address the use of instant messages, and no agencies had policies regarding text messages, as public records.

A few agencies have adopted policies to address social media, which appear to draw language from the Social Networking Media guide provided by the Department of Administrative Services.

Technologies like those mentioned above have changed how government and its agencies communicate with the public. Technology can also help agencies improve transparency by being proactive and making information available online. Several agencies have done so with commonly requested information, which can help reduce the overall number of public records requests.

Recommendations

Our recommendations are addressed to three groups: the Department of Administrative Services (DAS), all state agencies, and the Oregon Legislature.

We recommend the Department of Administrative Services create statewide, standard rates for copying and rates for employee labor, to resolve some of the inconsistency in public records requests fees statewide. We also recommend they provide guidance to agencies regarding communication technologies as they relate to public records, including personal email, text and instant messages, and social media.

For agencies, we recommend they create policies and procedures to clearly address communication technologies under the guidance of DAS. We also recommend they adopt tools to help manage both record retention and public records requests.

For the Legislature, we recommend they consider creating a neutral third-party, such as an ombudsman, to mediate disputes between requesters and agencies. We also encourage them to consider the forthcoming results from the Attorney General's task force for any recommended changes regarding the public records law.

For a complete list of our recommendations, see page 24 in this report.

Agency Response

The response from the Department of Administrative Services is attached at the end of the report.

Background

The origin of public records in Oregon

The passage of Oregon's public records law

The right to inspect public records in Oregon dates back to the early 1900s, when the Legislature first enacted the statute granting citizens the right to inspect public records. This right was subjected to three limitations:

- The inspection of records is to be for a lawful purpose.
- Inspection is to be conducted during business hours.
- Inspection should not interfere with the regular duties of the officer who possessed the records.

But in putting the statute into practice, officials realized there were circumstances that warranted certain limitations. This led to the Legislature passing the 1973 Public Records Act.

The 1973 law gave citizens the right to inspect all records, with some exceptions. Sixteen classes of records were exempted from disclosure for a total of 55 exemptions, covering records such as accident reports, student records, and personal information in which disclosure would result in an invasion of privacy.

Passage of the 1973 law also gave citizens an avenue to obtain records they believed belonged to the public. Anyone who is denied access to records can petition the Attorney General or a district attorney for an order requiring the public body to allow inspection.

The public records laws governing retention and disposition were originally enacted in 1961. The 1973 law established the right of the public to access those records.

The current public records law includes changes and additions made since 1973, but the intent of the law remains the same: that Oregon's government is accessible and transparent to its people.

Current laws regarding record retention, fees, timeliness, and exemptions

The current public records law includes an overview of how state agencies should retain their records and how to respond to public records requests. The law allows agencies to charge fees and set guidelines for turnaround time. The law also identifies which records may be exempt from disclosure.

Agencies are required to maintain public records according to retention schedules. Schedules are set based on the content of the record and not the format in which it is recorded.

An agency is allowed to charge fees to recoup the actual cost of making public records available. Fees may include the cost for summarizing,

The definition of a public record regarding disclosure:

Any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. ORS 192.410

compiling or tailoring the public records (either in organization or format) to meet a person's request. Fees may also cover the cost of time spent by an attorney in reviewing and redacting requested records or identifying exempt and non-exempt records. Agencies also have the ability to waive or reduce these fees.

The definition of a public record regarding retention:

Any information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of the state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. ORS 192.005

After an agency receives a public records request, it is required to respond "as soon as practicable and without unreasonable delay." Agencies must acknowledge the receipt of the request.

The law lists records that are currently exempt from disclosure. These include, but are not limited to, trade secrets, information relating to the appraisal of real estate prior to its acquisition, and investigatory information compiled for criminal law purposes. Other public records exempt from disclosure include information of a personal nature such as medical files or employee or volunteer Social Security numbers.

Most of these exemptions are considered conditional, meaning that a public body is free to disclose a record or information even if an exemption applies to the record. Agencies must consider the public interest when determining if an exempt record should be disclosed.

Other records are always considered confidential, meaning that agencies are legally prohibited from releasing that information. For example, agencies are prohibited from releasing a public employee's photo I.D. badge or card without that employee's written consent.

Overview of the process for requesting public records

A public records request can vary in formality, from a simple telephone call to ask for a document to a composed letter that cites the public records law. For the purposes of this audit, we refer to public records requests as those that were documented as such by each agency.

Anyone can request public records by submitting a written request or contacting the agency via telephone or in person. The request usually includes a description of the information, the type of records, subject matter, approximate dates the records were created, names of any people involved, and contact information for the requester.

The custodian (public body mandated to create, maintain, care for or control a public record) has the duty to make non-exempt public records available for inspection and copying. The custodian receives a request, reviews it, and retrieves the records and, if they are not exempt from disclosure, provides the records to the requester.

Generally, a request that requires payment goes through the same process. In the cases where a fee would exceed \$25, the custodian must provide a fee estimate to the requester before the information is retrieved. The requester pays for the fees before records are disclosed.

We asked nine agencies about the public records requests they received between January 2014 and when we contacted them in the summer of 2015. Their responses varied, from one agency receiving approximately 49 requests in that timeframe to another receiving more than 10,000. Some agency staff reported the number of requests for public records has increased in recent years.

Our audit objective was to examine state agency retention and disclosure practices concerning public records and the consistency among agencies in complying with Oregon's public records law. We focused on nine selected agencies of varying sizes and missions.

The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

Audit Results

Oregon state agencies are successfully complying with the public records law in responding to routine requests for information. These requests are common and can be fulfilled within a few days at little or no cost.

But agencies struggle to respond to the non-routine requests, which are complex or voluminous in scope. These requests can take weeks or months to fulfill, sometimes at a cost of hundreds of dollars.

We found that poor record retention management may contribute to challenges in responding to records requests. We found that agencies are keeping records for longer than the retention schedules require, resulting in a high volume of public records that are difficult to efficiently manage.

Oregon has also failed to keep up with emerging technologies, such as text and instant messages. Some agencies do not have policies in place to address these technologies, nor do they have policies to govern the use of private email accounts or devices when they are used for the public's business.

We identified a number of steps Oregon government and state agencies can take to approach public records requests with greater accountability and greater consistency.

How well agencies respond to requests depends on how routine or complex the request is

Majority of requests are routine, easy to fulfill

When it comes to the vast majority of public records requests, agencies we reviewed were successful in complying with the public records law.

The majority of the records requests agencies receive are routine. They are simple, common and narrow in scope, often asking for one or two documents. For example, more than half of the public records requests the Public Employees Retirement System receives are from members asking to see their own pension records.

The Department of Human Services considers 98 percent of its total requests to be routine. At both the Oregon State Board of Nursing and the Oregon Real Estate Agency, almost all of the total requests received are considered routine.

Our file reviews showed these routine requests did not usually invoke exemptions, if at all. They were often for records the agency had ready and easy access to. Agencies were generally able to provide these records for little or no cost and within a couple of weeks, falling well within the scope of the public records law's "as soon as practicable and without unreasonable delay" provision.

The remaining small percent of non-routine requests are challenging for agencies to fulfill, leading to a perception that agencies deliberately use methods such as high fees and lengthy delays to avoid releasing records.

Non-routine, complex requests take longer, cost more

Non-routine requests are those that are unusually complicated, voluminous or otherwise beyond the scope of what agencies typically see in a public records request. These requests are frequently for large amounts of information or for records spanning a lengthy period of time.

Our file reviews showed that many times, these requests begin with the phrase “any and all.” They can include any and all documentation related to a particular person or entity; often, the request is for any and all correspondence related to a particular subject, including letters, memos, and emails.

One such request was made of the Department of Human Services in April 2014, asking for an entire file related to the licensing of a nursing facility. The request included evidence of any contested case involving the licensee, transcriptions, audio records and any and all correspondence. It took the agency 118 days – nearly four months – to fulfill this request, which included removing exempted material, at a charge of \$742 (down from the initial estimate of about \$1,000).

A request may also be complex if it is unique to an agency. The Oregon Employment Department recently received a public records request that included electronic correspondence – specifically, text messages. Staff told us it was the first instance such a request had ever been made of the agency.

Requests for information that may be exempt from disclosure can also be challenging for an agency. Agency staff will sometimes consult with attorneys to ensure such exemptions are properly applied; attorneys may need to review documents for sensitive information prior to their release. This extra attention can translate into longer wait times, higher fees for more staff time, or additional attorney fees.

Because of the factors mentioned above, there is a perception among some requesters that agencies could game the system. From their perspective, silence from an agency may be suspicious. Requests for records that contain sensitive information may take weeks to be released, leaving requesters questioning the reason for the delay.

For this reason, the Attorney General has recommended that agencies keep open lines of communication with the requester:

“Upon receiving a records request, review the request to see if it is ambiguous, overly broad or misdirected. If so, contact the requester for clarification ... A brief conversation with a requester can save considerable time and expense in responding to records requests.”

Journalists we spoke to cited both delays and high costs as frequent tools they believe are used to block records requests. One journalist told us that when he sees a high cost in response to a request, it makes him wonder what the agency is hiding. Another said he was convinced agencies deliberately delayed releasing records for their own benefit, fully aware of the strict deadlines under which the media operate.

In our review of selected public records requests, we found no evidence to suggest that agencies were employing these tactics. But when agencies struggle to respond to complex, non-routine requests, it can foster suspicion and distrust, which in turn can undermine the credibility and transparency of both the agency and Oregon government.

Role of Attorney General is limited in mediating timeliness, fees

Requesters are limited in how to proceed if they are dissatisfied with an agency's response to a public records request.

In some instances, Oregon's Attorney General may be petitioned to order an agency to release public records. Beyond the Attorney General, requesters may also choose to sue in court. However, the Attorney General's role extends only as far as denials of public records requests or denials of fee waivers or reductions. Requesters who feel that an agency is violating the "unreasonable delay" provision of Oregon law, or who feel that an agency is charging prohibitively high fees, have no such avenue.

Several other jurisdictions have neutral, third-party entities that mediate such disagreements between agencies and requesters. Connecticut has a Freedom of Information Commission, which is a quasi-judicial commission of nine members and 15 supporting staff, who respond to complaints about public records. Complaints are resolved through the commission's hearing process.

In Washington, the Open Government Ombudsman assists both citizens and public agencies to comply with the state Public Disclosure Act. The ombudsman is a single individual appointed by the Attorney General.

British Columbia has an Information and Privacy Commissioner, who has the power to investigate and mediate disputes over privacy and access to information. The commissioner, with the assistance of an external six-member advisory board, provides independent oversight and enforcement of the province's freedom of information laws.

Oregon currently has no such mechanism to help mediate disputes between requesters and agencies over high fees or lengthy disclosure timelines.

Agencies retain public records longer than required

Chapter 192 of Oregon law – more commonly known as the public records law – begins with the subject of retention. "The records of the state and its

political subdivisions are so interrelated and interdependent,” legislators wrote, “that the decision as to what records are retained or destroyed is a matter of statewide public policy.”

Those political subdivisions, defined in the law as “a city, county, district or any other municipal or public corporation in this state,” include state agencies.

The state and its political subdivisions, the law continues, have a responsibility to “insure orderly retention and destruction of all public records ... and to insure the preservation of public records of value for administrative, legal and research purposes.”

But the challenges of manually managing electronic records, along with a tendency to be too cautious, has led Oregon agencies to retain records for longer than necessary, resulting in too many records that complicate agency efforts to efficiently manage the public information with which they have been entrusted.

Agencies must adhere to their retention schedules

Record retention schedules specify both the minimum and maximum length of time that a public record must be kept to satisfy the administrative, legal, fiscal and historical requirements of that record.

To that end, state agencies must also *manage* their record retention processes, by doing the following:

- Ensure a reasonable level of protection for records.
- Comply with any applicable laws and policies.
- Maintain records in a manner that ensures timely, efficient and accurate retrieval of needed information.
- Provide secure and appropriate disposition or destruction for records that are no longer required to be kept.

This is achieved, in part, through the agency’s retention schedule – a document that indicates how long specific records must be kept. Retention schedules further specify what must happen to records at the end of that period, including destruction or transfer to the State Archives.

Each agency has a retention schedule created and approved by the Oregon State Archives. This schedule is the agency’s legal authorization to destroy public records.

There is a general retention schedule that applies to records common to all state agencies, plus agency-specific retention schedules that include records unique to that agency. For example, at the Department of Environmental Quality, air quality special projects records must be retained for 10 years and then be destroyed.

Agencies struggle with the volume of records

As important as retention schedules are, agency staff are not always following them. Instead, many employees are keeping far more records than necessary, complicating record management efforts.

In interviews, some employees told us they have a tendency to “hold on to everything,” instead of destroying records that reach their disposition date. In some instances, employees create duplicate copies of records by printing off electronic records and keeping both, expressing distrust with electronic storage systems.

Agency staff may worry about losing track of a public record or accidentally destroying it too soon – actions that may have consequences. They may feel it is safer to simply hold on to everything.

But it is equally important that agencies adhere to their retention schedules, which includes destroying records at the appropriate date. Without the appropriate destruction of records, agencies accumulate more information they must manage, leading to this issue of volume.

Records retention is especially important in that it precedes records disclosure. After all, agencies cannot respond to a public records request and disclose records they do not have.

But they also cannot disclose records they cannot find. These large amounts of information are challenging for agencies to manage efficiently, particularly when trying to find among them a single record in response to a records request – like a needle in a haystack.

In fact, officials at both of the agencies with key public records responsibilities – the Oregon State Archives and the Department of Justice – said this tendency to stockpile records is one of Oregon’s biggest issues in public records management.

Training, technology can streamline management efforts

Training is important for an organization’s development and success – both for new employees and as a refresher for existing employees.

Agencies reported staff understood the significance of record retention. Each agency had staff dedicated to the task of managing public records. More than half of these employees had undergone training specific to public record retention, whether it was provided internally or by the Oregon State Archives.

However, as all state employees create public records in the course of their duties, the obligation for proper record retention lies with each state employee, not just a select few. We found that training on record retention is not consistently given to all agency staff. As a result, agencies risk noncompliance with retention schedules or internal policies and procedures.

Technology can be immensely beneficial to agencies as they manage increasing amounts of public information. Digital storage can be easier and more cost-efficient for an agency than keeping piles of boxes containing thousands of papers. Computers can search more quickly for a single document than a person can. And some software programs can automatically destroy digital information or remind the user to do so when the retention period has expired. As more records are being created digitally, digital-only storage and retention solutions are necessary.

One such program is HP Records Management, or HPRM, a records management program from Hewlett-Packard. The HPRM applies automatic retention and disposition control to all records and indexes the content of those records for searching, which can be helpful for responding to public records requests.

According to the Oregon State Archivist, several agencies in Oregon already use HPRM, formerly known as TRIM, or will be adopting it shortly, including the Department of Administrative Services and the Department of Environmental Quality. By purchasing the program in conjunction with other state agencies, such as the Secretary of State, the cost to each agency is approximately \$37 per user per month.

Other agencies use other records management programs. For example, the Public Employees Retirement System uses IBM FileNet instead of HPRM to manage its records, including member and employer files.

However, agencies have differing needs for record management. A large agency that is responsible for a large volume of confidential and private information will have more records to manage than a smaller agency with fewer records. Some technologies can be expensive and unwieldy, or unable to securely store records with confidential information. Therefore, agencies should proceed with care when selecting and implementing record management programs.

In addition to helping agencies manage record retention, technology can be beneficial to agencies in tracking the public records requests they receive and how they respond to those requests.

Under a general retention schedule that applies to all state agencies, agencies are required to retain for five years any requests for disclosure of public records. They are also required to retain agency responses, including approvals, denials, Attorney General Orders, and any correspondence.

Many agencies we reviewed maintain a log to help keep track of these requests and their associated documentation. These logs vary in their appearance and level of complexity, from team collaboration software tools to simple spreadsheets. These logs can be useful in helping agencies keep track not only of how timely they were in responding to a request, but also of any documentation and correspondence associated with a request.

Not all agencies maintain a log; others have a log, but don't maintain it consistently. Some logs we saw were more thorough and detailed than others. And agencies that log requests differently within separate divisions are not consistently logging requests agency-wide.

Exemptions remain an issue and may require a closer look

A significant portion of Oregon's public records law is devoted to exemptions – meaning those instances in which a public record may be exempt from disclosure due to the sensitive or private nature of information it contains.

When the public records law was first enacted, it included only 55 exemptions. But over the years, the Legislature has gradually added more exemptions to this list. Today, Oregon's law contains more than 400 exemptions, scattered throughout various chapters and sections.

Compared to the federal public records law – the Freedom of Information Act, or FOIA – and some other states, this number appears high. The FOIA contains nine exemptions, while other states we examined had anywhere from approximately 18 to 175 exemptions built into their laws.

Generally, agency staff told us they had a clear understanding of which exemptions applied to most of their records. We found that most records, if they were subject to an exemption, fell under one of just a few common categories. For example, multiple agencies we visited said they had some records subject to attorney-client confidentiality.

However, due to the vast number of exemptions in the law – including how they are worded and where they are located – agency staff said they would sometimes consult with internal experts or with the Department of Justice to seek guidance on applying exemptions.

This process can delay the timeliness with which an agency responds to a public records request; it can also increase the cost both to an agency and to a requester. The more confusing the exemption, the greater the risk is that a request will both take longer to fulfill and cost more.

There is a perception among some journalists that agencies already use delays and high fees to limit access to public records. In addition to the effect exemptions can have on these factors, there is also a perception among some requesters that agencies improperly use exemptions themselves to decline a request for a public record.

This perception may stem from the discretionary nature of most of Oregon's exemptions. As noted earlier, many records can be disclosed at an agency's discretion even if an exemption applies to that record.

In making that determination, agencies are required to weigh public interests favoring nondisclosure against public interests favoring

disclosure, with a presumption toward disclosure – meaning the right of the public to know what its government is doing on the job. The exception is confidential information, which is legally prohibited from release.

However, it is not clear that agencies are weighing these competing interests in determining whether or not to release a public record. In interviews with agency staff, very few discussed weighing the public interest. According to one Department of Justice official, some agencies may misunderstand this conditional aspect of some of the law’s exemptions.

These difficulties surrounding the exemptions in Oregon’s public records law are not new. In 2007, a national report that gave Oregon a failing grade in terms of its government transparency spurred officials to take a closer look at the law. Their findings, published in October 2010 as the Attorney General’s Government Transparency Report, encouraged the Legislature to make appropriate changes regarding timeliness, fees, and exemptions:

“The steady growth of exemptions is perhaps the most vexing problem with the public records law. Not only are there too many exemptions but they are haphazardly scattered throughout state law and thus difficult to find. Seemingly similar types of information may be subject to different rules depending on the particular language adopted by the legislature in a particular case. Any meaningful overhaul of Oregon’s public records law must reorganize and make coherent sense of the numerous exemptions. Some exemptions should be eliminated altogether.”

A bill was subsequently introduced during the 2011 legislative session to address some of these recommendations, but it failed to pass. An earlier bill introduced in 1993 that would have addressed exemptions also failed to pass. It appears that these issues regarding exemptions, outlined years ago, remain issues to this day.

We did not attempt to determine whether or not agencies are properly applying exemptions, due in part to the efforts of a task force that the Attorney General recently convened. Therefore, we did not draw any conclusions or make recommendations regarding exemptions. The Attorney General’s Public Records Law Reform Task Force plans to examine the issue of exemptions in Oregon law in more detail.

Variations in responses frustrate some requesters

At each of the agencies we reviewed, staff expressed their appreciation for the flexibility built into Oregon’s public records law. It allows them to balance the task of responding to records requests with their regular duties to serve the public. Agencies are able to set policies and procedures that are tailor-made for their individual missions and goals.

However, this flexibility has led to inconsistencies in how agencies are responding to public records requests. Requesters have an expectation that

state government will be accountable to the public, and that public information will be made available within a reasonable time and for a reasonable fee. When requesters are not sure what kind of response to expect from an agency, it can lead to confusion and frustration.

A one-size-fits-all solution regarding cost or timeliness is problematic, given the broad array of services within state and local governments. Prior efforts by the Legislature to apply such a solution have been met with resistance from local governments and smaller public bodies with limited resources.

However, agencies can take certain steps to bring *more* consistency to the process of disclosing public information.

Fees charged for material costs and staff time vary widely

Under Oregon law, agencies are allowed to establish fees reasonably calculated to reimburse the agency for the actual cost of making public records available. These fees can cover both the costs of any paper or materials to provide copies of a record, as well as the staff time taken to locate, compile, and provide the records.

Agencies are also required to establish fee schedules, which specify upfront the amounts and manner of calculating fees in responding to requests for public records.

The size and type of a records request will impact the fee an agency may charge to produce it. But we found that even the manner of calculating fees for such things as materials and staff time varies widely among agencies.

For instance, some agencies are charging \$0.25 per page for copies, while other agencies are charging only \$0.05 per page.

Furthermore, some agencies provide a limited number of copies, upfront, free of charge. For example, the Department of Human Services and the Oregon Employment Department provide the first 10 pages free of charge, and then at a cost of \$0.25 for each page beyond that.

When agencies do not consistently offer these initial free copies, it can lead to confusing variations in the cost for providing public records. It may appear that agencies are arbitrarily charging or waiving fees.

But the greatest variation in costs was how much agencies are charging for staff time. Much like the cost for materials, charges for staff time vary widely – anywhere from \$15 to \$40 per hour. Some agencies charge for the first 15 or 30 minutes of work. At other agencies, staff time is charged at the individual employee's hourly rate.

These variations have resulted in frustration and confusion for both agency staff and requesters. The fees paid by a requester do not always cover the cost of an employee's time in searching for and compiling a record. Flat rates such as \$28 per hour for labor, for instance, do not take into account

the variety in salaries among staff who are responding to records requests. In some instances, agency staff expressed confusion over determining when it is or is not appropriate to charge a requester for public information.

Meanwhile, requesters may see widely different costs for similar requests made of different agencies without understanding why. Journalists told us that the fees agencies set seem arbitrary. Several journalists we spoke to said that high fees had, at least once, stopped them from moving forward with a public records request.

Response times for disclosing records vary by agency

Oregon's public records law is vague in regards to timeliness. Rather than setting a deadline for agencies to respond to a public records request, the law states only that agencies "shall respond as soon as practicable and without unreasonable delay."

The Oregon Attorney General offers more specific guidelines to ensure that public records are being released in a timely fashion:

"In the usual case, we think that it should be possible to make requested records available within ten working days. We recognize that in some cases more time – even significantly more time – may be required."

We found these 'usual case' requests – routine requests – were indeed made available within a couple of weeks. It was the infrequent complex or non-routine requests that required more time.

The flexibility in the law allows agencies to set their own goals and guidelines regarding timeliness – as some agencies have. These deadlines vary, but some of the agencies we examined have adopted the Attorney General's recommendation. For example, the Oregon Employment Department, the Oregon Liquor Control Commission, and the Board of Parole and Post-Prison Supervision all have policies or goals to respond to public records requests within 10 days.

Although Oregon's flexible timeliness provision is not unique, many other states have set stricter requirements within their laws. In Washington and Illinois, for instance, agencies must respond to requests within five business days.

However, we found no evidence, in Oregon or other states, to suggest that implementing a deadline in law would speed up an agency's response. This is due largely to the differences between routine and non-routine requests.

Generally, agencies are already able to comply with routine requests within the Attorney General's recommended timeframe. Based on interviews, available agency turnaround time calculation, and our own analysis of an agency's public records log, we found that agencies generally completed routine requests within 14 days.

It is the non-routine or complex requests that take significantly longer. During our file reviews, we found instances where these requests can take as few as 14 days or upwards of 265 days to fulfill.

To determine this information, we asked each agency to provide us a log or tracking document for each request received between January 2014, and when we contacted them in the summer of 2015.

Most agencies were able to provide us with a log. Two agencies tracked requests individually by section or division and not agency-wide. Two agencies had only recently begun keeping a log of the requests received; those logs, therefore, did not date back to 2014. One agency did not log its public records requests at all.

Only two agencies maintained or tracked in their logs enough data to allow us to calculate timeliness in how the agency responded to all public records requests: the Public Employees Retirement System and the Department of Environmental Quality.

At the latter, employees regularly compile reports on the agency's timeliness. According to a recent staff report, more than 60 percent of public records requests received from 2014 to the second quarter of 2015 were completed within seven days. These reports are useful management tools for determining whether the agency is responding to requests in a timely fashion and seeing where improvements may be needed.

For most agencies, we were unable to determine timeliness due to insufficient data included in the logs. For example, several agencies did not include any dates in their logs – such as a date when a request was received or a date when the request was fulfilled. Other agencies said they did not regularly log every single request that they received.

We also reviewed a selection of agencies' files that related to public records requests. These files generally included the initial request, any correspondence the agency had with the requester, dates the request was received, invoices showing fees charged and paid, and information about what was requested.

To select files for these reviews, we asked agencies to identify requests that took a long time to fulfill or resulted in a fee. We also reviewed a file that we selected at random, in addition to the agency's most recently completed request. The file reviews provided us with a glimpse into the requests agencies receive and how they responded.

Journalists told us they believe there is a problem with agencies taking too long to release public records. They believe that, without specific deadlines, agencies are not holding themselves accountable for responding to requests in a timely fashion.

When agencies adopt their own policies to govern the timeliness for disclosing a public record, they offer requesters a standard to which they can be held accountable. But it also provides agencies with the same

flexibility to handle complex or voluminous requests that is currently built into Oregon's public records law.

However, agencies should better monitor their own timeliness in responding to public records requests to ensure compliance with internal guidelines, hold themselves accountable to requesters, and identify areas for improvement.

Agencies are struggling to keep up with changing expectations and technologies

Since the initial passage of Oregon's public records law, the Legislature over the years has made several changes to update the language or add more exemptions.

One such change, made in 2011, modified the definition of a public record to include digital or electronic records.

But while the law has been updated, agency policy hasn't necessarily followed. When it comes to addressing the use of email, text or instant messages and social media as public records, Oregon agencies have struggled to keep up.

Agencies' policies on email do not address private accounts, devices

Email is now widely accepted as a public record when state agencies use it to conduct the public's business.

More than half of the agencies we examined have already adopted specific policies governing the retention and use of email as a public record to ensure compliance with the law.

But not all agencies have these policies, or they may be unclear. This lack of clarity may put an agency at risk of failing to retain some public information, or failing to disclose it in response to a public records request.

Written policies can help prevent confusion and potential legal problems. Policies and procedures within an agency can establish a high degree of understanding, cooperation, and efficiency among employees.

Additionally, the distinction between public and private information in emails and on private devices such as laptops, smartphones, and tablets, is not always clear. Agencies and their employees face increasing confusion over when an email is or is not a public record – and how to treat it accordingly.

The new Governor recently adopted an email policy that clears up some of this confusion:

“When the Office of the Governor receives a public records request or valid subpoena, all official e-mail accounts and systems used for official Office business are subject to search and production.”

“To the extent that Office employees use personal e-mail addresses to communicate about official matters (that is, to the extent public records are associated with such addresses), those e-mails are similarly subject to search and production. Office employees are therefore strongly encouraged to engage in communications regarding official business only on their official e-mail accounts. If private accounts must be used, it is Office policy that employees copy their official e-mail accounts on all such outgoing communications, and forward any received messages on which their official e-mail accounts are not copied.”

Of the agencies we examined, which did not include the Governor’s Office, we found only one had adopted policies to specifically address the use of private email in conducting the public’s business.

Agencies are slower to address text, instant messages

Beyond email, public employees may be increasingly using other technologies to communicate – namely, text and instant messages. Similar to email, these communications fall under the scope of public records law when they are used in conducting the public’s business, and would require disclosure in response to a public records request.

The Governor’s Office mitigates this risk by specifically addressing both text and instant messages in its policy:

“Office of the Governor employees may use text messaging to communicate factual and logistical information: (a) that is not a substantive part of the Office’s work, or (b) that has been documented, or necessarily will be documented, in separate public records. In the absence of separate documentation, Office employees are not to use text messages for official purposes other than for routine communications that do not meet the definition of a “public record.” This Policy applies equally to an employee’s “official” mobile phone or computer and to an employee’s “personal” mobile phone or computer.”

We found that none of the agencies we examined had adopted clear policies to specifically address the use and retention of text messages as public records, and only the Department of Human Services (DHS) had a policy to clearly address instant messages.

Some agencies have policies in place, such as DHS, that refer to “other forms of electronic communications” as public records and may be interpreted to include text messages. However, this policy could be refined to include explicit guidance on the use and retention of text messages as public record.

Additionally, some agencies, such as the Public Employees Retirement System, told us they are in the process of trying some of these communications, like instant messaging. Should the agency choose to adopt

this form of communication, policies governing its use are anticipated to follow.

Social media creates a public record gray area

The proliferation of social media is also transforming the way state and local governments communicate with the public. Some Oregon agencies are creating Twitter accounts, and even publishing videos to YouTube.

As with any other writing that pertains to the public's business, these social media postings are included in the umbrella of public records – even if they consist only of 140 characters, as with Twitter.

Only a few agencies have established policies and procedures around social media, to ensure their use aligns with the requirements of the public records law.

Several of these policies appear to draw language from the Social Networking Media guide published by the Oregon Department of Administrative Services, which offers best practices on the use and retention of social media.

The policy also identifies a potential risk associated with a public body's use of social media. For instance, posts made to Twitter under an agency's account may not belong to the agency, but to Twitter. However, under Oregon's public records law, the agency still maintains responsibility for the information's retention.

According to the Oregon State Archivist, this is one portion of the law that has failed to keep up with emerging technologies. She noted that it is considered a best practice for agencies to post only duplicate information, so that they can maintain ownership of the original and compliance with the law.

Conflicting expectations of transparency and privacy

Emerging technologies have also impacted two conflicting interests: an increased expectation of transparency in our government, as well as an increased expectation of privacy for the individuals it serves.

Requesters who ask for any and all correspondence expect an abundance of information shedding light on conversations and decision-making that goes into the public business. But those records must also be carefully vetted to protect sensitive and confidential information – such as Social Security numbers or attorney-client communications. Disclosure of such confidential information has serious implications, even if it is done for the sake of transparency.

One way agencies can improve transparency is to use technology to be *proactive*, rather than *reactive* – that is, simply make public information available upfront, rather than waiting for the public to ask for it. This is the motivation behind Oregon's Open Data Portal, located at data.oregon.gov.

Several agencies have taken similar action. For example, the Oregon State Board of Nursing posts several types of public information online, including disciplinary actions against licensees. The Oregon Liquor Control Commission posts information about licensed businesses and new license applications it receives.

This kind of proactive accountability is beneficial both for agencies and for requesters. Requesters are able to quickly and easily locate information, eliminating the need for certain public records requests. Agencies, in turn, receive fewer requests and are able to devote more time and resources to unique requests or their other duties.

It does, however, come with its own risks. The Employment Department, for example, told us it has considered putting some information online – but certain information, due to confidentiality, simply cannot be posted. Agencies must be careful about the records they post online to avoid accidentally sharing sensitive or confidential information.

Recommendations

To bring more consistency to agency responses to public records requests, the Department of Administrative Services should provide statewide guidance and training on:

- procedures for handling non-routine and complex public records requests, including communicating with requesters regarding fees and timelines;
- procedures for the use and retention of electronic communication, including text and instant messaging as they relate to public records law; and
- procedures for the use of personal devices and personal email accounts, as they relate to public records law.

To address the variation in fees charged by state agencies, the Department of Administrative Services should also consider:

- creating rates to charge for the cost of copies of public records; and
- identifying rates to charge for labor for state employees working on public records requests.

To improve responses to public records requests, state agencies should create policies and procedures based on the guidance to be provided by the Department of Administrative Services, and:

- implement a record management program or process that fits the needs of each agency (e.g. HPRM or another system);
- create goals for turnaround time that fit agencies' processes based on past experiences with responding to requests;
- create and keep a tracking mechanism, such as a log, to measure adherence to turnaround time goals and to track documentation related to each request; and
- identify frequently requested information and consider proactively making the information available (e.g., posting more information on agency website or the Oregon Transparency Website).

To address concerns regarding high fees and long turnaround times for public records requests, the Oregon Legislature should:

- consider creating a third party, such as an ombudsman, to review disputes over non-routine requests; and
- take into consideration the results of the Attorney General's task force for any recommended changes to the public records law.

Objectives, Scope and Methodology

Our audit objective was to examine state agency retention and disclosure practices concerning public records and the consistency among agencies in complying with Oregon's public records law. We focused our reviews on nine selected agencies of varying sizes and missions.

The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

We also focused on public records requests received from January 2014 to when we contacted the agencies in the summer of 2015. Our audit work did not include reviews of local government agencies.

To address our audit objective, we reviewed Oregon's public records law and Administrative Rules, agencies' policies and procedures for record retention and disclosure, and researched other states' public records laws for disclosing public records.

We interviewed at least one employee from each selected agency who was knowledgeable about the agency's retention and disclosure processes. We also interviewed several public records requesters who are members of the media to gain an understanding of their experiences with the records request process.

We also conferred with the Oregon State Archives, which is a division of the Secretary of State's Office.

We obtained public records logs from the agencies and analyzed the logs for timeliness, frequency of requests and the types of information requested. We judgmentally selected a number of public records requests from the logs for file reviews. We reviewed files for consistency in complying with agencies' policies and public records laws.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained and reported provides a reasonable basis to achieve our audit objective.

Auditors from our office, who were not involved with the audit, reviewed our report for accuracy, checking facts and conclusions against our supporting evidence.



Oregon

Kate Brown, Governor

Department of Administrative Services

Office of the Chief Operating Officer

155 Cottage Street NE, U20

Salem, OR 97301

PHONE: 503-378-3104

FAX: 503-373-7643

November 13, 2015

Gary Blackmer, Director
Audits Division
Office of the Secretary of State
255 Capitol Street NE, Suite 500
Salem, OR 97310

RE: Audit Report, *State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies*

Dear Mr. Blackmer:

Thank you for providing the Department of Administrative Services (DAS) with the audit report noted above. This audit, originally requested by Governor Brown, is very important, and DAS and state agencies are ready to implement the recommendations. The report identified areas where improvement is necessary to better and more consistently respond to non-routine and complex public records requests. We appreciate the work of the Oregon Audits Division staff and agree with the recommendations set forth.

Below you will find DAS' response to the specific audit recommendations. Management generally agrees with the recommendations. While DAS was not one of the agencies surveyed in the audit, we understand we are being asked to respond because of our responsibility to provide general oversight to state agencies. In anticipation of the release of this report, DAS has already begun discussion with state agency leaders at the Enterprise Leadership Team about the need for standardization of public records policies and processes that still meet individual agency business needs.

Audits Division recommendation:

To bring more consistency to agency responses to public records requests, the Department of Administrative Services should provide statewide guidance and training on: *procedures for handling non-routine and complex public records requests, including communicating with requesters regarding fees and timelines; procedures for the use and retention of electronic communication, including text and instant messaging as they relate to public records law; and procedures for the use of personal devices and personal email accounts, as they relate to public records law.*

DAS' Response:

Management generally agrees with the recommendations. Development of statewide policy regarding text messages and social media is already underway in anticipation of needs

identified by a new communications contract. DAS will work with the State Archivist to create a menu of options to meet retention and disposition requirements that can be adopted based on business needs.

In addition, the Department will provide clear guidance to state agencies to help ensure accuracy and consistency in response to public records requests. DAS will convene agency public information officers (PIOs) to identify best practices and develop recommended policy and procedure guidance to help agencies resolve barriers to effective response to non-routine and complex public records requests. DAS will engage and coordinate with state agency leadership in finalizing that policy guidance.

Audits Division recommendation:

To address the variation in fees charged by state agencies, the Department of Administrative Services should also consider: *creating rates to charge for the cost of copies of public records; and identifying rates to charge for labor for state employees working on public records requests.*

DAS' Response:

Management generally agrees with the recommendation. As mentioned above, DAS and the Enterprise Leadership Team are ready and willing to see standardization that still accommodates agency business requirements. DAS will convene agency PIOs and business managers to identify best practices and develop recommended policy guidance regarding standardized fees and charges. DAS will work with agencies to ensure fees and charges are appropriately levied in alignment with these guidelines.

Audits Division recommendation:

To improve responses to public records requests, state agencies should create policies and procedures based on the guidance to be provided by the Department of Administrative Services, and: *implement a record management program or process that fits the needs of each agency (e.g. HPRM or another system); create goals for turnaround time that fit agencies' processes based on past experiences with responding to requests; create and keep a tracking mechanism, such as a log, to measure adherence to turnaround time goals and to track documentation related to each request; and identify frequently requested information and consider proactively making the information available (e.g., posting more information on agency website or the Oregon Transparency Website).*

DAS' Response:

Management generally agrees with the recommendations. While these recommendations are directed to state agencies in general, not DAS in specific, the Department will work closely with agencies to make sure the recommendations are communicated to agencies along with DAS' policy guidance.

DAS will work collaboratively with the Office of the State Chief Information Officer, the Governor's Office and the State Archivist to evaluate the feasibility of implementing a technology solution to streamline and automate appropriate records management statewide. As

November 13, 2015

Page 3

an agency, DAS is testing HPRM in the office of the COO with the intent of expanding its use, agency-wide, once testing is complete. DAS will create processes to evaluate effectiveness and monitor performance and will share that information with other state agencies. Any statewide solution will require careful planning and implementation.

Closing:

DAS management appreciates your audit team's efforts and for the recommendations made in the audit report. We look forward to working with the Secretary of State's Audits Division along with our statewide partners to improve responses to public records requests across the enterprise. If you have any general questions about this response, please contact Zachary Gehringer, Chief Audit Executive, at 503-378-3076.

Sincerely,

A handwritten signature in black ink, appearing to read "Clyde Saiki". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping underline.

Clyde Saiki
DAS Director and Chief Operating Officer

Cc: Barry Pack, DAS Deputy Chief Operating Officer
George Naughton, DAS Chief Financial Officer
Madilyn Zike, DAS Chief Human Resources Officer
Zachary Gehringer, DAS Chief Audit Executive

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division audits all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

Audit Team

William K. Garber, CGFM, MPA, Deputy Director

Sheronne Blasi, MPA, Audit Manager

Olivia M. Recheke, MPA, Senior Auditor

Caroline Zavitkovski, MPA, Senior Auditor

Laura Fosmire, MS, Staff Auditor

This report, a public record, is intended to promote the best possible management of public resources. Copies may be obtained from:

website: sos.oregon.gov/audits

phone: 503-986-2255

mail: Oregon Audits Division
255 Capitol Street NE, Suite 500
Salem, Oregon 97310

The courtesies and cooperation extended by officials and employees of the Department of Human Services, Oregon Employment Department, Department of Environmental Quality, Oregon Liquor Control Commission, Public Employees Retirement System, Oregon Department of Education, Oregon Real Estate Agency, Board of Parole and Post-Prison Supervision and Oregon State Board of Nursing during the course of this audit were commendable and sincerely appreciated.

Appn Year 2017
BOARD OF DENTISTRY
Fund 3400 BOARD OF DENTISTRY
For the Month of DECEMBER 2015

REVENUES

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
0205	OTHER BUSINESS LICENSES	623,277.00	16,130.00	639,407.00	3,141,259.00	2,501,852.00
0605	INTEREST AND INVESTMENTS	1,648.90	353.31	2,002.21	8,000.00	5,997.79
0975	OTHER REVENUE	8,024.81	857.50	8,882.31	55,001.00	46,118.69
0210	OTHER NONBUSINESS LICENSES AND FEES	2,250.00	0.00	2,250.00	16,000.00	13,750.00
0505	FINES AND FORFEITS	34,670.00	2,830.00	37,500.00	75,000.00	37,500.00
0410	CHARGES FOR SERVICES	6,149.50	0.00	6,149.50	17,200.00	11,050.50
		676,020.21	20,170.81	696,191.02	3,312,460.00	2,616,268.98

TRANSFER OUT

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
2443	TRANSFER OUT TO OREGON HEALTH AUTHORITY	0.00	0.00	0.00	216,000.00	216,000.00
		0.00	0.00	0.00	216,000.00	216,000.00

PERSONAL SERVICES

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
3270	FLEXIBLE BENEFITS	39,911.17	8,830.24	48,741.41	244,224.00	195,482.59
3250	WORKERS' COMPENSATION ASSESSMENT	87.02	18.87	105.89	552.00	446.11
3230	SOCIAL SECURITY TAX	13,001.82	2,935.23	15,937.05	87,416.00	71,478.95
3221	PENSION BOND CONTRIBUTION	9,210.72	1,708.36	10,919.08	58,360.00	47,440.92
3220	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	24,946.61	5,052.23	29,998.84	168,815.00	138,816.16
3180	SHIFT DIFFERENTIAL	18.38	0.00	18.38	0.00	-18.38
3170	OVERTIME PAYMENTS	976.99	0.00	976.99	3,771.00	2,794.01
3160	TEMPORARY APPOINTMENTS	1,652.65	967.40	2,620.05	3,920.00	1,299.95
3110	CLASS/UNCLASS SALARY & PER DIEM	168,491.20	37,198.87	205,690.07	1,099,464.00	893,773.93
3260	MASS TRANSIT	976.71	205.47	1,182.18	6,881.00	5,698.82
3210	ERB ASSESSMENT	46.08	9.60	55.68	352.00	296.32
3190	ALL OTHER DIFFERENTIAL	0.00	0.00	0.00	35,483.00	35,483.00
		259,319.35	56,926.27	316,245.62	1,709,238.00	1,392,992.38

SERVICES and SUPPLIES

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
4100	INSTATE TRAVEL	5,089.40	1,733.13	6,822.53	49,208.00	42,385.47
4300	PROFESSIONAL SERVICES	53,206.31	7,146.00	60,352.31	125,917.20	65,564.89
4150	EMPLOYEE TRAINING	5,632.56	1,935.49	7,568.05	68,577.04	61,008.99
4125	OUT-OF-STATE TRAVEL	0.00	0.00	0.00	0.00	0.00

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
4575	AGENCY PROGRAM RELATED SVCS & SUPP	32,051.84	0.00	32,051.84	165,516.01	133,464.17
4425	FACILITIES RENT & TAXES	32,142.92	6,466.25	38,609.17	154,455.00	115,845.83
4650	OTHER SERVICES AND SUPPLIES	14,660.38	1,468.26	16,128.64	71,185.81	55,057.17
4200	TELECOMM/TECH SVC AND SUPPLIES	3,608.37	156.96	3,765.33	23,155.99	19,390.66
4275	PUBLICITY & PUBLICATIONS	1,735.56	84.57	1,820.13	13,800.00	11,979.87
4250	DATA PROCESSING	1,506.67	307.00	1,813.67	6,412.00	4,598.33
4715	IT EXPENDABLE PROPERTY	601.00	0.00	601.00	5,421.00	4,820.00
4400	DUES AND SUBSCRIPTIONS	3,747.95	615.00	4,362.95	1,043.96	-3,318.99
4175	OFFICE EXPENSES	23,356.47	833.54	24,190.01	84,561.00	60,370.99
4225	STATE GOVERNMENT SERVICE CHARGES	18,625.08	30.35	18,655.43	39,124.99	20,469.56
4325	ATTORNEY GENERAL LEGAL FEES	26,384.00	0.00	26,384.00	224,149.00	197,765.00
4375	EMPLOYEE RECRUITMENT AND DEVELOPMENT	0.00	0.00	0.00	655.00	655.00
4700	EXPENDABLE PROPERTY \$250-\$5000	0.00	0.00	0.00	5,421.00	5,421.00
4475	FACILITIES MAINTENANCE	0.00	0.00	0.00	542.00	542.00
4315	IT PROFESSIONAL SERVICES	0.00	0.00	0.00	52,460.00	52,460.00
		222,348.51	20,776.55	243,125.06	1,091,605.00	848,479.94

SPECIAL PAYMENTS

Budget Obj	Budget Obj Title	Prior Month	Current Month	Bien to Date	Financial Plan	Unoblig
6443	DIST TO OREGON HEALTH AUTHORITY	0.00	0.00	0.00	185,128.00	185,128.00
		0.00	0.00	0.00	185,128.00	185,128.00

		3400		
		Monthly Activity	Biennium Activity	Financial Plan
REVENUES	REVENUE	20,170.81	696,191.02	3,312,460.00
	Total	20,170.81	696,191.02	3,312,460.00
EXPENDITURES	PERSONAL SERVICES	56,926.27	316,245.62	1,709,238.00
	SERVICES AND SUPPLIES	20,776.55	243,125.06	1,091,605.00
	SPECIAL PAYMENTS	0	0	185,128.00
	Total	77,702.82	559,370.68	2,985,971.00
TRANSFER OUT	TRANSFER OUT	0	0	216,000.00
	Total	0	0	216,000.00



Survey Reports

OBD

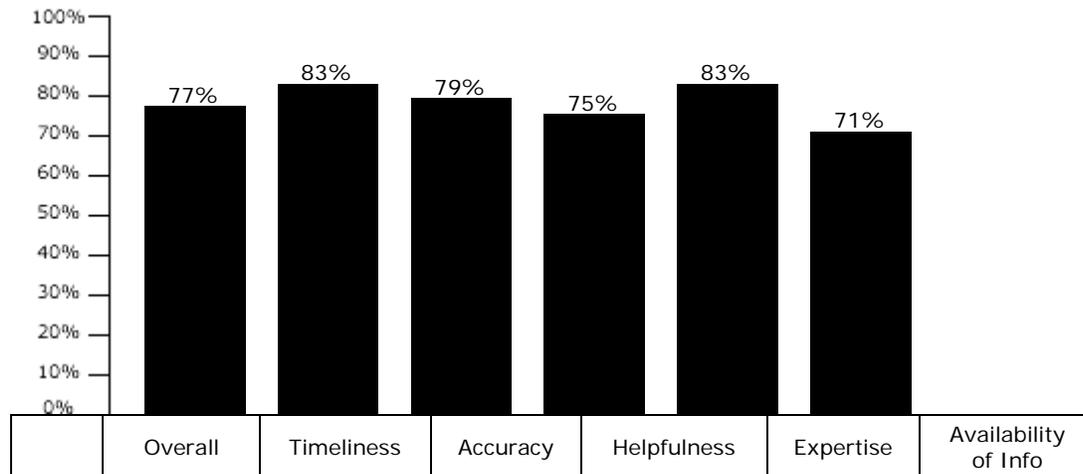
Showing Data for: OBD

Time Period: 7/2015 to 6/2016

Change View

Number of Responses: 58

Percent Rating Service Good or Excellent



Rating Totals By Question

Question	Don't Know	Poor	Fair	Good	Excellent
Q1	6	6	3	16	27
Q2	6	6	5	14	27
Q3	10	4	8	9	27
Q4	10	4	4	13	27
Q5	7	8	7	10	26
Q6	6	5	7	15	25

Question #1: TIMELINESS: How would you rate the timeliness of services provided by the Oregon Board of Dentistry?

Question #2: ACCURACY: How do you rate the ability of the Oregon Board of Dentistry to provide services correctly the first time?

Question #3: HELPFULNESS: How do you rate the helpfulness of the Oregon Board of Dentistry employees?

Question #4: EXPERTISE: How do you rate the knowledge and expertise of the Oregon Board of Dentistry employees?

Question #5: AVAILABILITY OF INFORMATION: How do you rate the availability of information at the Oregon Board of Dentistry?

Question #6: OVERALL SERVICE: How do you rate the overall quality of service provided by the Oregon Board of Dentistry?

Comments Received

Posted	Comment
1/11/2016 9:05:02 PM	After 3 attempts to discuss the questions that I have to transfer my dental hygiene license, I have had no success in contacting the professional that has the knowledge to help me.
1/10/2016 4:22:23 PM	I seem to get into the 15% random audit a lot
1/10/2016 4:22:17 PM	I seem to get into the 15% random audit a lot
12/22/2015 7:52:45 PM	I cannot open the newsletter. Also, I feel it was important see which professionals had violated the rules. I cannot possibly look up every individual, so it is not helpful or informative any more.
12/22/2015 6:18:02 PM	The mission statement of this agency has been to protect the public. Making it a challenge to find the names of licensees that have been disciplined protects the licensee, not the public.
12/22/2015 1:55:25 PM	Other than license renewals, I have never had any dealings with the Board.
12/22/2015 1:14:42 PM	If the audits are random and only 15% than why am I being audited for 2 consecutive renewals? Maybe they are alphabetically. You should change this to be more fair.
11/11/2015 9:03:10 PM	I appreciate all your help making this move easier Thank you Wendy
10/21/2015 7:09:40 AM	She just had to look I me up to see where my license renewal was due.
10/21/2015 7:09:34 AM	She just had to look I me up to see where my license renewal was due.
10/9/2015 11:53:53 AM	It took 3 phone calls to get the retirement form I needed. Ms Haynes quickly sent me an email form, the previous office help apparently couldn't get the request taken care of at all
9/10/2015 7:03:31 PM	Teresa was very prompt about sending my receipt for my license. Thank you, Barb
9/9/2015 7:47:23 PM	The board is not staffed sufficiently for investigators. Some cases take a year to resolve just due to sheer case load. The data provided is not a clear data visual representation. It would be great i
9/9/2015 4:00:35 PM	I would appreciate knowing what the mandatory five dollar workforce survey fee covers. A survey, in my experience, should be a voluntary experience to receive the best results.
9/9/2015 3:59:04 PM	why is a notary involved? that step will inhibit many providers from signing up. I don't have to have a notary for basically anything else these days.
9/9/2015 2:35:55 PM	I would like to see a response given when a provider gets their CE courses audited. A Pass for all courses accepted or a Fail if they aren't-some type of follow up for all the info we send in.
9/9/2015 12:12:54 PM	I have tried to use the Prescription Drug Monitoring website a few times and find it Very Difficult to Access patient information. Can you make more User Friendly?
9/1/2015 8:16:34 AM	I have called several times for licensing information. Each call, I received a warm, friendly correct answer instantly. Refreshing that this caliber of service does exist somewhere in the world.
8/7/2015 8:21:03 AM	You efficiently let us know of the meeting for rule changes, but what ARE the rule changes you are considering? Please email us of the summary of the issues with links of information on each issue.
8/5/2015 9:07:36 PM	Keep up the good work!
8/5/2015 5:22:46 PM	I am retired and won't be renewing my license.
8/4/2015 5:28:59 PM	End Tidal CO2 monitoring is unnecessary for enteral moderate sedation due to the fact that patients do not enter into significant respiratory depression.
8/4/2015 11:57:17 AM	it is ridiculous you are charging hygienist a mandatory 5.00 to take a survey. When I told the dentist I work for that, he laughed. That is extortion!!
8/4/2015 9:46:22 AM	Keep up the great work!
8/4/2015 7:22:27 AM	It would be nice if the Board of Dentistry would actually hire an Executive Director that had a clue about dentistry!
8/4/2015 7:14:06 AM	Happy with obd services.
7/24/2015 2:57:17 PM	Teresa gave excellent service and helped me immediately. She went over an above the expectation of service. She is knowledgeable, efficient and helpful. She helped me navigate the Web site.

UNFINISHED
BUSINESS
&
RULES

818-026-0070

General Anesthesia Permit

General anesthesia, deep sedation, moderate sedation, minimal sedation and nitrous oxide sedation.

(1) The Board shall issue a General Anesthesia Permit to an applicant who:

(a) Is a licensed dentist in Oregon;

(b) In addition to a current BLS for Healthcare Providers certificate or its equivalent, maintains a current Advanced Cardiac Life Support (ACLS) certificate and/or a Pediatric Advanced Life Support (PALS) certificate, whichever is appropriate for the patient being sedated, and

(c) Satisfies one of the following criteria:

(A) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007) consisting of a minimum of 2 years of a postgraduate anesthesia residency at the time training was commenced.

(B) Completion of any ADA accredited postdoctoral training program, including but not limited to Oral and Maxillofacial Surgery, which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in general anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedure and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope, capnograph, pulse oximeter, electrocardiograph monitor (ECG), automated external defibrillator (AED), oral and nasopharyngeal airways, laryngeal mask airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, intravenous medications for treatment of cardiac arrest, narcotic antagonist, antihistaminic, antiarrhythmics, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under general anesthesia, deep sedation, moderate sedation, minimal sedation or nitrous oxide sedation at the same time.

(4) During the administration of deep sedation or general anesthesia, and at all times while the patient is under deep sedation or general anesthesia, an anesthesia monitor, and one other person holding a current BLS for Healthcare Providers certificate or its equivalent, shall be present in the operatory in addition to the dentist performing the dental procedures.

(5) Before inducing deep sedation or general anesthesia the dentist who induces deep sedation or general anesthesia shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for general anesthesia or deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under deep sedation or general anesthesia shall be visually monitored at all times, including recovery phase. A dentist who induces deep sedation or general anesthesia or anesthesia monitor trained in monitoring patients under deep sedation or general anesthesia shall monitor and record the patient's condition on a contemporaneous record.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring of their heart rate, heart rhythm, oxygen saturation levels and respiration using pulse oximetry, electrocardiograph monitors (ECG) and End-tidal CO₂ monitors. The patient's blood pressure, heart rate and oxygen saturation shall be assessed every five minutes, and shall be contemporaneously documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. The person administering the anesthesia and the person monitoring the patient may not leave the patient while the patient is under deep sedation or general anesthesia;

(b) Once sedated, a patient shall remain in the operatory for the duration of treatment until criteria for transportation to recovery have been met.

(c) During the recovery phase, the patient must be monitored, including the use of pulse oximetry, by an individual trained to monitor patients recovering from general anesthesia.

(8) A dentist shall not release a patient who has undergone deep sedation or general anesthesia except to the care of a responsible third party. When a reversal agent is administered, the dentist shall document justification for its use and how the recovery plan was altered.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made in the patient's record by the dentist indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a General Anesthesia Permit, the permit holder must provide documentation of a current BLS for Healthcare Providers certificate or its equivalent; a current Advanced Cardiac Life Support (ACLS) certificate and/or a current Pediatric Advanced Life Support (PALS) certificate; and must complete 14 hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current ACLS and/or PALS certificates may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; Administrative correction 6-21-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 2-2011(Temp), f. 5-9-11, cert. ef. 6-1-11 thru 1-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14; OBD 4-2015, f. 9-8-15, cert. ef. 1-1-16

818-042-0115

Expanded Functions — Certified Anesthesia Dental Assistant

(1) A dentist holding the appropriate anesthesia permit may verbally authorize a Certified Anesthesia Dental Assistant to:

(a) Administer medications into an existing intravenous (IV) line of a patient under sedation or anesthesia under direct visual supervision.

(b) Administer emergency medications to a patient in order to assist the licensee in an emergent situation under direct visual supervision.

(2) A dentist holding the appropriate anesthesia permit may verbally authorize a Certified Anesthesia Dental Assistant to dispense to a patient, oral medications that have been prepared by the dentist and given to the anesthesia dental assistant by the supervising dentist for oral administration to a patient under Indirect Supervision.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020(1), 679.025(1) & 679.250(7)

Hist.: OBD 1-2001, f. & cert. ef. 1-8-01; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

CORRESPONDENCE

February 4, 2016

Dear Oregon Board of Dentistry,

I hope this letter finds you well.

By way of brief introduction, I am President of the American Academy of Facial Esthetics (AAFE). The American Academy of Facial Esthetics is an educational organization, which focuses on teaching non-surgical minimally invasive dental procedures for both dental esthetic and dental therapeutic purposes in the oral and maxillofacial region. The AAFE presents over 150 live patient courses a year in North America on the use of facial injectables such as Botox and dermal fillers within the scope of dental practice as well as hands-on courses on dental implants, bruxism therapy, dental sleep medicine, TMJ/orofacial pain therapy, porcelain veneers, and other dental procedures.

The AAFE has presented its live patient hands-on Botox and dermal filler training at a number of large dental meetings around the United States including the ADA Annual Meeting, the AGD Annual Session and many others. Additionally, please see the attached document where you can see a list of over 50 dental universities and dental society continuing education programs that have included Botox and dermal fillers lectures and training in the last three years.

The use of Botox and dermal fillers by general dentists is now a normative dental procedure, which is integrated into many dental treatment plans for both dental esthetic and dental therapeutic uses. The Oregon Board of Dentistry is to be congratulated on making Botox therapy available to dental patients.

I would like to ask the Board to consider addressing the use of dermal filler therapy by Oregon dentists. Most dermal fillers are placed in the oral and peri-oral areas which completely fit into the scope of dental practice of the Oregon Dental Practice Act.

The uses of dermal fillers in dentistry include and are not limited to:

- Establishing proper lip and smile lines for phonetics and esthetic dentistry
- Treatment of angular cheilitis
- Gummy smile treatment
- Treatment of deficient interdental papilla (black triangles)
- Volumizing lip volume for esthetic dentistry (non-surgical temporary lip enhancement, not lip augmentation which is a surgical permanent procedure)
- Adding lip and perioral volume for retention of removable prosthodontics

After working with so many state dental boards for a number of years, we all know that the primary purpose of the state dental board is to protect the public. It has been proven over the last 8 years that with proper training, general dentists can very safely provide these services to their patients and have been doing so in the majority of states. The attached article will demonstrate the range of dental uses for Botox and dermal fillers.

Certainly, it is the Board's prerogative to either consider a policy statement regarding dermal filler therapy or do what most state dental boards have done in allowing the use of dermal fillers in the oral and maxillofacial areas as these procedures are already covered in the Dental Practice Act as long as the dentist has had appropriate training in their use. The training standard in dentistry for dermal filler treatment is a 10 hour live patient training participation course.

Thank you for the consideration of this matter at the upcoming Board meeting. Please let us know how else we may help the Oregon Board of Dentistry.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Louis Malcmacher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Louis Malcmacher DDS MAGD
President
American Academy of Facial Esthetics

LJM/kp

Total Dental Aesthetics



Louis
Malcmacher,
DDS

INTRODUCTION

For years, those who teach aesthetic dentistry have given lip service (no pun intended) to the oral and maxillofacial areas surrounding the teeth and the importance of the extraoral soft tissue to aesthetic dentistry. I would like to challenge this thought process and say that we as dental clinicians and educators have been wrong for the last 30 years. The facial soft tissue is part and parcel of aesthetic dentistry and is as important or, dare I say, more important than the teeth in delivering a great-looking smile. Perhaps the patient has beautiful teeth with the new crowns you placed and has maxillary gingival excess (gummy smile); is that all there is to aesthetic dentistry? Maybe you have just placed and restored 6 anterior implants, and then the patient leaves your care with deficient lip volume and radial lip-lines. Is that aesthetic dentistry? What is the purpose of placing 20 veneers if patients cannot show their teeth because they can't raise their upper lip? In the past few years, with thousands of dentists being trained in the use of nonsurgical, minimally invasive facial injectables, such as Botox and dermal fillers, dental aesthetic and dental therapeutic (temporomandibular disorders, bruxism, myofascial pain), treatment has changed dentistry forever.

This article will present a case that clearly demonstrates how the right choices of dental technology, materials, and facial injectables in the oral and maxillofacial areas directly contribute to aesthetic dentistry in terms of function, smile-lines, lip-lines, and phonetics. You will see that the totality of intraoral and extraoral maxillofacial treatment is all truly aesthetic dentistry and with the right training, can be performed by every general dentist.

CASE REPORT

A few years ago, this patient had 2 all-ceramic crowns placed on her upper central incisors. In addition, she also had veneers placed on the upper and lower teeth (Figure 1). One day, she noticed that her upper left central incisor crown (tooth No. 9) seemed loose, and she came into the office with the chief complaint that her tooth was "wiggly." I touched the tooth and it was indeed wiggly! A radiograph was taken and it was



Figure 1. Patient presents with a loose crown on upper left central incisor.



Figure 2. Horizontal fracture apparent on radiograph.



Figure 3. Implant placed using conventional techniques.



Figure 4. Deficient interdental papilla (black triangles) as a result of implant surgery.



Figure 5. Dermal fillers used to restore interdental volume and eliminate black triangles.

immediately clear that she had a horizontal fracture (Figure 2). This tooth was obviously nonrestorable, so it was extracted and a bone level implant was placed (Figure 3). The implant was restored with a Procera

...treatment is all truly aesthetic dentistry and with the right training, can be performed by every general dentist.

(Nobel Biocare) crown, and the patient enjoyed newfound stability of this tooth. What she did not enjoy was the creation of deficient interdental papilla known as "black triangles" (Figure 4). This is one of the most frustrating aesthetic challenges that can happen with any kind of implant or crown and bridge procedure. An innovative procedure, pioneered by this author and the American Academy of Facial Esthetics (facialesthetics.org), is using dermal fillers (Juvederm Ultra XC) to replace volume to the interdental papilla to eliminate black triangles (Figure 5).

One Thing Leads to Another

After this initial treatment, the patient became interested in retreatment of her crowns and veneers. The issues that she complained about can be seen in Figure 6. The new crown on the upper left central incisor was a slightly darker shade than the other teeth and, when she smiled fully, she did not show as many teeth as she would have liked. She also wanted whiter teeth. The lower veneers were also chipping slowly throughout the last few years (Figure 7) and she had experienced annoying veneer debonds that would have to be recemented from time to time. She stated, "My lower teeth look short and stubby." This patient also presented with a very deep overbite (Figure 8).

I, along with anyone who has had proper training in both oral and facial aesthetics, can give you a new perspective as to what to look for now in this kind of case, and how the facial conditions observed here are part of her dental aesthetic diagnosis and treatment. Here is what I mean in this case, as clearly demonstrated in Figure 6. Look at this patient when she goes into her widest smile. The buccal corridors in the bicuspid region are hidden, preventing her from

continued on page 136

Total Dental Aesthetics

continued from page 134

showing a full and aesthetic smile. Because dental professionals are typically only focused on the dentition, most dentists assume that the only way to correct this is to restore the bicuspids with crowns or veneers to correct the buccal corridor deficiency. On this patient, and those like her, there are no dental solutions that would solve this aesthetic challenge because of the loss of midface volume. Adding volume to her midface would also correct the aesthetic relationship of her upper lip and teeth. In a full smile, the bottom of her upper lip should straddle the gingival margins of the upper central incisors. This was to be part of our treatment plan as we both restored her teeth and corrected the volume deficiency.

Turning Back the Hands of Time

It is going to happen to all of us. People typically lose dermal collagen and facial fat from approximately age 40 years and on, with accelerating changes starting at about age 50 years. This causes the oral and maxillofacial areas to sag and drop. This patient is a good example of this, and she demonstrates this facial aging pattern clinically by showing less of her upper teeth and more of her lower teeth. Because of this natural aging progress, she does not have the high cheekbones that she used to have, and she also has deeper nasolabial folds; and all of this contributes to the fact that

People typically lose dermal collagen and facial fat from approximately age 40 years and on....This causes the oral and maxillofacial areas to sag and drop.

her upper lip does not have the support it used to have and hides some of her teeth, especially in the posterior regions of her mouth. This challenge in aesthetic dentistry cannot be solved with restorative dentistry alone. Botox and dermal fillers are necessary, in addition to veneers, to solve the combination of dental and facial aesthetic challenges seen in this case.

Figure 9 shows the result using Botox and dermal fillers to correct muscular activity as well as the midfacial volume loss. Her zygomatic areas are now well supported and the volume restored. Now, she demonstrates the proper aesthetic smile and lip-lines when she is in function as described above. Her nasolabial folds demonstrate much less prominence, and now her upper lip has the support needed to show a wider smile. It is important in treatment planning a patient like this to have a well thought out plan of coordinating the soft-tissue treatment with the restorative dentistry.

In this case, a total 2.4 mL of a calcium hydroxylapatite dermal filler (Radiesse) was placed in the left and right zygomatic area, which supports the nasolabial folds and the upper lip. The nasolabial folds were treated with a total of 1.9 mL of a hyaluronic acid dermal filler (Juvederm Ultra XC) to

restore them to more fullness and further support the upper lip. This case shows that treatment of this midface area is as much a part of aesthetic and therapeutic dentistry as is treating the dentition.

Changing the Face Changes the Smile

Veneer retreatment can now be accomplished to complete the aesthetic dentistry. This patient can now show more teeth and is ready for the new veneers. Now we can properly address the challenges discussed previously. One other issue that the patient became concerned about is this: the upper left central incisor had a higher gingival margin than the upper right central incisor because that was the area where an implant was placed (Figure 10). This challenge would now be integrated into our treatment plan. The treatment plan consisted of 10 new veneers on the upper teeth and 10 new veneers on the lower teeth. The upper central incisors, though, did produce a challenge. Cutting off a Procera crown on a tooth with an implant is no dentist's idea of fun in the office. As a matter of fact, significant damage can be done to the implant abutment, and it is not a wise choice if other options are available. In this case, we chose the option of bond-

ing a porcelain veneer onto the existing upper central incisor crowns instead of trying to remove them. The system we chose to use was Cristal Veneers (Aurum Ceramics). Cristal Veneers are the next generation of a no-to-minimal preparation veneer system with veneers that can be made as thin as 0.3 mm and exhibit very high strength and excellent aesthetics. Cristal Veneers can also be made as thick as any other veneer.

All of the previous veneers were removed on the upper and lower teeth, and minimally invasive preparations were done on all of the teeth based on their treatment history. This case would have multiple thicknesses on every one of the veneers. Figure 11 shows the prep guide (Aurum Ceramics) and demonstrates the very minimal preparation on the 2 upper central incisor crowns so that the Cristal Veneers on these teeth will be approximately 0.3 mm in thickness while the veneers on the lateral incisors will be anywhere between 2.5 mm to 3 mm in thickness. All of the other veneers were of various thicknesses, as well as you can imagine by also looking at the lower no/minimal veneer preparations of the lower teeth in Figure 12.

At the veneer preparation appointment, the upper central incisor gingival levels were addressed. A hard- and soft-tissue laser (WaterLase iPlus [BIOLASE]) was used on the upper right central incisor to perform not only a gingivectomy, but also a closed sulcus crown lengthening procedure to match the gingival height of the upper left central incisor. The closed sulcus crown lengthening procedure is easy to accomplish with the proper technology and training. It can be done very precisely and conservatively with the WaterLase iPlus. Because of the predictable nature of this procedure, we were able to take the final impression on the very same day. You can see the teeth after preparation as well as after crown lengthening surgery in Figure 13. Because of the surgical aspect, precise temporization is especially crucial to make sure the gingiva can heal properly at the established gingival level. A new temporary material Dentocrown (Itena USA) was used because of its stability,



Figure 6. Smile is limited because of facial aging.



Figure 7. Close-up view shows significant chipping of existing veneers made from a low strength ceramic.



Figure 8. Patient demonstrates a deep overbite.



Figure 9. Patient shows a much wider smile after cheek and lower face volume restoration with dermal fillers.



Figure 10. The central incisors have uneven gingival margins.



Figure 11. Prep guide used for minimal and full veneer preparations.

excellent gingival adaptation, and its self-polishing abilities which promote gingival health, was used as the temporary material of choice (Figure 14). The temporary performed very well during the time needed for healing and veneer fabrication.

NOW THE BIG CHALLENGE

Now that the veneers were fabricated and returned from the laboratory, the real challenges began. Local anesthesia was delivered and the temporaries were removed. The laser bony crown lengthening procedure was successful

and the excellent gingival health (Figure 15) was a result of the laser precision and the unique temporary material used in this case.

Seating this case had a number of challenges. The first challenge was being able to effectively etch and bond to a variety of dental surfaces including enamel, dentin, cementum, and porcelain. Figure 16 shows the use of phosphoric acid etch on all enamel, dentin, and cementum surfaces; and a 4% buffered hydrofluoric acid etch Porcelain Etch (Ultradent Products) on all porcelain surfaces.



Figure 12. Lower minimal veneer preparations.



Figure 13. Veneer preparations and precise laser osseous closed sulcus crown lengthening to even the gingival margins (WaterLase iPlus [BIOLASE]).



Figure 14. Temporization of case with a unique temporary material (Dentocrown [Itena USA]).



Figure 15. Excellent gingival health can be seen after temporary removal.



Figure 16. Knowledge of how to etch various dental substrates is imperative.



Figure 17. Proper acid etching achieved as demonstrated by "frosty" appearance.



Figure 18. Final Cristal veneers (Aurum Ceramics). Note the even gingival margins on central incisors.



Figure 19. Total dental and facial aesthetics completed with porcelain veneers, Botox, and dermal fillers.

...aesthetic dentistry is not limited to only inside the oral cavity as previously thought.

The effectiveness of the etchant materials used can be seen in Figure 17. Silane was placed and thinned on the porcelain surfaces and Iperbond Ultra (Itena USA), a universal next generation bonding agent with excellent bonding strengths to all dental surfaces and substrates including many types of porcelains and zirconium, was placed on all the etched surfaces.

Anyone who has ever placed veneers with different thicknesses knows the biggest challenge is trying to match up the final shade. Seating these veneers is very time consuming in the office as the dentist is trying to use different resin cement shades and even different values of the resin cement shade to achieve a color match of all of the veneers. Personally, I have always believed that this should not be the dentist's problem. It should be the laboratory team's responsibility if they have the aesthetic expertise necessary and really understand the ceramics that they are using. Cristal Veneers porcelain was developed by Aurum Ceramics, giving them the aesthetic expertise to understand the optical qualities of the porcelain as well as the different opacities that will go into a challenging veneer case such as this one. This case came back to my office with all of the different thicknesses of porcelain veneers (and sometimes there are even different thicknesses on the same porcelain veneer), and because of this laboratory's expertise in producing these veneers, I was able to seat all of these veneers with one shade of cement. It is a huge advantage to have such a talented laboratory team, and here is where your choice of laboratories can make all of the difference in the world in terms of the ease of cementation, saving time, and producing an aesthetic result that you and the patient are proud of.

The chosen veneer shade was 020 for this case and the corresponding cement was used. I used a light-curing porcelain veneer cement (Nexus 3 [Kerr]) because of its ease of use, color stability, and great texture for seating any kind of veneer, whether thick or thin. Figure 18 shows the veneers cemented into place. The challenges presented above have been addressed completely. Look at the gingival mar-

gin of the upper right central incisor as it now exactly matches the gingival margin of the upper left central incisor. Remember that the veneers on the central incisors are approximately 0.3 mm and the rest of the veneers are anywhere from 1.0 to 3.5 mm in thickness and all of these veneers are the exact same shade. There was absolutely no need to try to use different shades of cement to achieve a final matching shade, but only one shade of cement was used. Notice also that the lower veneers now restore the proper height to the teeth, and they are no longer short and stubby, as the patient complained about before.

Bonding veneers to existing porcelain crowns includes the use of a number of agents and a sequenced approach. (Please go to my Web site commonsensdentistry.com for a full step-by-step technique as how to bond a porcelain veneer to an existing porcelain crown.)

Figure 19 shows a very happy patient who has been treated with total facial aesthetics, and we have addressed all of her concerns. The final dental aesthetic and therapeutic result is a combination of all of the oral and maxillofacial treatment both in and around the mouth. What is interesting about this case and similar treatment plans that include Botox, dermal fillers, and dental materials, is that the facial injectable treatment is much easier to perform with proper training.

CLOSING COMMENTS

This article clearly demonstrates that aesthetic dentistry is not limited to only inside the oral cavity as previously thought. Treatment of the oral and maxillofacial areas with intraoral treatment is true and total dental aesthetics. ♦

Dr. Malcmacher is a practicing general dentist and an internationally known lecturer and author. He is president of the American Academy of Facial Esthetics. His Web site, commonsensdentistry.com, contains information about his lecture schedule, live patient hands-on Botox and dermal filler training courses, Frontline TMJ/headaches/facial pain training course, his resource list, and free monthly e-newsletter. He can be reached at (800) 952-0521 or at drlouis@facialesthetics.com.

Disclosure: Dr. Malcmacher is president of the American Academy Facial Esthetics.



Dental education on Botox and dermal fillers for general dentists for therapeutic and esthetic purposes in the oral and maxillofacial areas 2008 – 2015

This partial list includes continuing education dental lectures and/or hands-on training programs that have been presented at the following dental universities (in residencies and continuing education courses for general dentists) and at the following dental associations and societies:

UCLA School of Dentistry	Quebec Dental Association Annual Meeting
USC School of Dentistry	Arizona Dental Association Annual Meeting
UCSF School of Dentistry	Texas Dental Association Meeting
UMDNJ School of Dentistry	Florida Dental Association Annual Meeting
Loma Linda School of Dentistry	Valley Forge Dental Association Meeting
University of Washington School of Dentistry	Greater Long Island Dental Meeting
University of Toronto School of Dentistry	Hinman Dental Meeting
University of Buffalo School of Dentistry	New Orleans Dental Conference
Iowa University Dental Society Meeting	Dentaltown Annual Meeting
Tufts University School of Dentistry	New Jersey Academy of General Dentistry
Boston University School of Dentistry	Sacramento District Dental Society
University of Michigan School of Dentistry	Maryland State Dental Association Meeting
University of British Columbia School of Dentistry	Michigan Dental Association Meeting
Louisiana State University School of Dentistry	Northern Virginia Dental Association Meeting
Nova Southeastern University School of Dentistry	Buffalo Niagara Dental Annual Meeting
University of Alabama School of Dentistry	Oregon Dental Association Annual Meeting
American Dental Association Annual Meeting	Texas Academy of General Dentistry Annual Meeting
American Academy of Facial Esthetics	Ontario Academy of General Dentistry Annual Meeting
Academy of General Dentistry	Alabama Academy of General Dentistry Annual Meeting
American Academy of Cosmetic Dentistry	Pennsylvania Academy of General Dentistry
California Dental Association Annual Meeting	Illinois Academy of General Dentistry Annual Meeting
Greater New York Dental Annual Meeting	Beverly Hills Dental Study Club
Chicago Dental Society Annual Meeting	Ohio Dental Association Annual Meeting
Northeastern Regional Dental Association	Maine Dental Association Annual Meeting
Kentucky Dental Association Annual Meeting	Detroit District Dental Society
North California Academy of General Dentistry	Utah Academy of General Dentistry
Indiana Dental Association	Florida National Dental Congress
Wisconsin Dental Association Annual Meeting	Hawaii Dental Association Annual Meeting
American Association of Dental Boards	Yankee Dental Congress

The American Academy of Facial Esthetics trains dentists in the use of Botox and dermal fillers in the oral and maxillofacial areas for dental esthetic and dental therapeutic uses. In the last 7 years, the American Academy of Facial Esthetics has educated over 10,000 healthcare professionals including over 8000 dental professionals including general dental and dental specialty offices from all 50 states and 42 countries through over 150 live patient training courses a year which has become the model and standard for accepted dental education in these procedures.

GENERAL PROVISIONS

679.010 Definitions. As used in this chapter and ORS 680.010 to 680.205, unless the context requires otherwise:

(1) “Dental assistant” means a person who, under the supervision of a dentist, renders assistance to a dentist, dental hygienist, dental technician or another dental assistant or renders assistance under the supervision of a dental hygienist providing dental hygiene.

(2) “Dental hygiene” means that portion of dentistry that includes the rendering of educational, preventive and therapeutic dental services and diagnosis and treatment planning for such services. “Dental hygiene” includes, but is not limited to, scaling, root planing, curettage, the application of sealants and fluoride and any related intraoral or extraoral procedure required in the performance of such services.

(3) “Dental hygienist” means a person who, under the supervision of a dentist, practices dental hygiene.

(4) “Dental technician” means that person who, at the authorization of a dentist, makes, provides, repairs or alters oral prosthetic appliances and other artificial materials and devices which are returned to a dentist and inserted into the human oral cavity or which come in contact with its adjacent structures and tissues.

(5) “Dentist” means a person who may perform any intraoral or extraoral procedure required in the practice of dentistry.

(6) “Dentist of record” means a dentist that either authorizes treatment for, supervises treatment of or provides treatment for a patient in a dental office or clinic owned or operated by an institution as described in ORS 679.020 (3).

(7) “Dentistry” means the healing art which is concerned with the examination, diagnosis, treatment planning, treatment, care and prevention of conditions within the human oral cavity and maxillofacial region and conditions of adjacent or related tissues and structures. The practice of dentistry includes but is not limited to the cutting, altering, repairing, removing, replacing or repositioning of hard or soft tissues and other acts or procedures as determined by the Oregon Board of Dentistry and included in the curricula of dental schools accredited by the Commission on Dental Accreditation of the American Dental Association, post-graduate training programs or continuing education courses.

(8) “Direct supervision” means supervision requiring that a dentist diagnose the condition to be treated, that a dentist authorize the procedure to be performed, and

that a dentist remain in the dental treatment room while the procedures are performed.

(9) “Expanded practice dental hygienist” means a dental hygienist who performs dental hygiene services in accordance with ORS 680.205 as authorized by an expanded practice dental hygienist permit issued by the board under ORS 680.200.

(10) “General supervision” means supervision requiring that a dentist authorize the procedures by standing orders, practice agreements or collaboration agreements, but not requiring that a dentist be present when the authorized procedures are performed. The authorized procedures may also be performed at a place other than the usual place of practice of the dentist.

(11) “Indirect supervision” means supervision requiring that a dentist authorize the procedures and that a dentist be on the premises while the procedures are performed. [Amended by 1983 c.169 §1; 1997 c.251 §4; 1999 c.188 §1; 2003 c.83 §1; 2005 c.52 §2; 2007 c.379 §1; 2011 c.716 §3; 2013 c.310 §1]

**DIVISION 12
STANDARDS OF PRACTICE**

**818-012-0005
Scope of Practice**

(1) No dentist may perform any of the procedures listed below:

- (a) Rhinoplasty;
- (b) Blepharoplasty;
- (c) Rhytidectomy;
- (d) Submental liposuction;
- (e) Laser resurfacing;
- (f) Browlift, either open or endoscopic technique;
- (g) Platysmal muscle plication;
- (h) Otoplasty;
- (i) Dermabrasion;
- (j) Lip augmentation;
- (k) Hair transplantation, not as an isolated procedure for male pattern baldness; and
- (l) Harvesting bone extra orally for dental procedures, including oral and maxillofacial procedures.

(2) Unless the dentist:

- (a) Has successfully completed a residency in Oral and Maxillofacial Surgery accredited by the American Dental Association, Commission on Dental Accreditation (CODA), and
- (b) Has successfully completed a clinical fellowship, of at least one continuous year in duration, in esthetic (cosmetic) surgery recognized by the American Association of Oral and Maxillofacial Surgeons or by the American Dental Association Commission on Dental Accreditation, or
- (c) Holds privileges either:
 - (A) Issued by a credentialing committee of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to perform these procedures in a hospital setting; or
 - (B) Issued by a credentialing committee for an ambulatory surgical center licensed by the State of Oregon and accredited by either the JCAHO or the Accreditation Association for Ambulatory Health Care (AAAHC).

(3) A dentist may utilize Botulinum Toxin Type A to treat a condition that is within the scope of the practice of dentistry after completing a minimum of 16 hours in a hands on clinical course(s) in which the provider is approved by the Academy of General Dentistry Program Approval for Continuing Education (AGD PACE) or by the American Dental Association Continuing Education Recognition Program (ADA CERP).

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.010(2), 679.140(1)(c), 679.140(2), 679.170(6) & 680.100

Hist.: OBD 6-2001, f. & cert. ef. 1-8-01; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 3-2013, f. 10-24-13, cert. ef. 1-1-14; OBD 6-2014, f. 7-2-14, cert. ef. 8-1-2014



February 8, 2016

800 NE Oregon Street, Suite 825
Portland, Oregon 97232
Voice: 971-673-0339
Fax: 971-673-0231
TTY: 971-673-0372

Northwest Portland Area Indian Health Board
Attention: Joe Finkbonner
Pam Johnson & Christina Peters
2121 SW Broadway Suite 300
Portland, Oregon 97201

RE: Dental Pilot Project Application #100, "Oregon Tribes Dental Health Aide Pilot Project,"
Approval with Addendum

Dear Mr. Finkbonner,

I am pleased to announce approval of the "Oregon Tribes Dental Health Aide Therapist Pilot Project," Dental Pilot Project Program Application #100 with Addendum received October 6, 2015.

This project will test, demonstrate and evaluate the role of Dental Health Aide Therapists (DHAT) in the following areas:

- **Develops new categories of dental health care personnel**
- **Teach new oral health care roles to previously untrained individuals**

The Northwest Portland Area Indian Health Board, as the project sponsor, is approved to proceed with all of the concepts and pilot sites proposed in its application for DPP #100.

Your application to the Dental Pilot Project Program has been approved to operate from June 1, 2016 through May 31, 2021.

Project Approval Period:	June 1, 2016 – May 31, 2021
Approved Project Sites:	
Training/Didactic Phase:	Alaska Native Tribal Health Consortium Dental Health Aide Training Program Anchorage, Alaska: Year One Bethel, Alaska: Year Two
Utilization Phase:	<ul style="list-style-type: none"> • Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians: CTCLUSI Dental Clinic • Coquille Indian Tribe: Coquille Indian Tribal Community Health Center (CITCHC)

Any modifications to the approved project must be submitted in writing to the Oregon Health Authority (OHA) Dental Pilot Project Program. Modifications require program approval prior to implementation.

Oregon Administrative Rules, 333-010-0460

Modifications:

- (1) Any modifications or additions to an approved project shall be submitted in writing to program staff. Modifications include, but are not limited to the following:
 - (a) Changes in the scope or nature of the project. Changes in the scope or nature of the project require program staff approval;
 - (b) Changes in selection criteria for trainees, supervisors, or employment/utilization sites; and
 - (c) Changes in project staff or instructors.
- (2) Changes in project staff or instructors do not require prior approval by program staff, but shall be reported to the program staff within two weeks after the change occurs along with the curriculum vitae for the new project staff and instructors.
- (3) All other modifications require program staff approval prior to implementation.

The sponsor shall work with the OHA Dental Pilot Project Program to determine the scope and timeline for data submission and reports during the initial six months of the pilot project.

- The Evaluation Plan is due to the program by **July 1, 2016**.
- Baseline data is due to the program by **August 6, 2016**.

Oregon Administrative Rules, 333-010-0435

Evaluation and Monitoring:

- (1) Evaluation Plan. A sponsor of a dental pilot project must have an evaluation plan that includes, but is not limited to the following:
 - (a) A description of the baseline data and information collected about the availability or provision of oral health care delivery, or both, prior to utilization of the trainee;
 - (b) A description of baseline data and information to be collected about trainee performance, acceptance among patient and community, and cost effectiveness;
 - (c) A description of methodology to be used in collecting and analyzing the data about trainee performance, acceptance, and cost effectiveness; and
 - (d) A provision for reviewing and modifying objectives and methodology at least annually.
- (2) Monitoring Plan. A sponsor of a dental pilot project must have a monitoring plan that ensures at least quarterly monitoring and describes how the sponsor will monitor and ensure:
 - (a) Patient safety;
 - (b) Trainee competency;
 - (c) Supervisor fulfillment of role and responsibilities; and
 - (d) Employment/utilization site compliance.
- (3) Data. A sponsor's evaluation and monitoring plans must describe:

- (a) How data will be collected;
 - (b) How data will be monitored for completeness; and
 - (c) How data will be protected and secured.
- (4) A sponsor must permit project staff or their designees to visit each employment/utilization site at least monthly during the first six month period and at least quarterly thereafter.
- (5) A sponsor must provide a report of information requested by the program in a format and timeframe requested.
- (6) A sponsor must report adverse events to the program the day they occur.

The OHA Dental Pilot Project Program is responsible for monitoring approved pilot projects. Program staff shall evaluate approved projects and the evaluation shall include, but is not limited to, reviewing progress reports and conducting site visits. The Program is responsible for ascertaining the progress of the project in meeting its stated objectives and in complying with program statutes and regulations.

The OHA Dental Pilot Project Program will monitor DPP #100 through written reports and site visit evaluations. In addition, we expect the Evaluation Committee to assist the Dental Pilot Project Program with the monitoring and development of guidelines to strengthen protocols, if possible, pursuant to their findings.

Oregon Administrative Rules, 333-010-0455

Program Responsibilities:

- (1) Project evaluation. Program staff shall evaluate approved projects and the evaluation shall include but is not limited to:
- (a) Periodically requesting written information from the project, at least annually to ascertain the progress of the project in meeting its stated objectives and in complying with program statutes and regulations; and
 - (b) Periodic, but at least annual, site visits to project offices, locations, or both, where trainees are being prepared or utilized.
- (2) Site visits.
- (a) Site visits shall include, but are not limited to:
 - (A) Determination that adequate patient safeguards are being utilized;
 - (B) Validation that the project is complying with the approved or amended application; and
 - (C) Interviews with project participants and recipients of care.
 - (b) An interdisciplinary team composed of representatives of the dental boards, professional organizations, and other state regulatory bodies may be invited to participate in the site visit.
 - (c) Written notification of the date, purpose, and principal members of the site visit team shall be sent to the project director at least 14 calendar days prior to the date of the site visit.
 - (d) Plans to interview trainees, supervisors, and patients or to review patient records shall be made in advance through the project director.

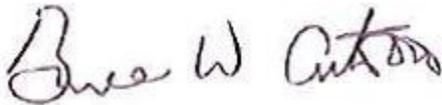
- (e) An unannounced site visit may be conducted by program staff if program staff have concerns about patient or trainee safety.
- (f) A report of findings and an indication of pass or fail for site visits shall be prepared by program staff and provided to the project director in written format within 60 calendar days following a site visit.

The OHA Dental Pilot Project Program will work collaboratively with the Northwest Portland Area Indian Health Board.

An Evaluation Committee will be developed to monitor and review the approved pilot project. The Evaluation Committee is an interdisciplinary team composed of representatives of the dental boards, professional organizations, other state regulatory bodies and interested parties that have applied to participate in evaluating the approved project.

Ms. Sarah Kowalski will serve as the Project Coordinator and you may contact her with any questions at 971-673-1563 or sarah.e.kowalski@state.or.us.

Respectfully,

A handwritten signature in black ink that reads "Bruce W. Austin". The signature is written in a cursive style with a large initial "B" and a stylized "A".

Bruce W. Austin, DMD
Oregon State Dental Director

From: Paul Kleinstub
Sent: Monday, January 25, 2016 6:48 AM
To: Stephen Prisby
Subject: FW: Minimal Sedation Supervision in Dentistry

For Board consideration..

From: Beagle 3 [<mailto:beagle3@outlook.com>]
Sent: Sunday, January 24, 2016 6:55 PM
To: help@oregonconsumer.gov; attorneygeneral@doj.state.or.us; nbudnick@oregonian.com
Cc: Paul Kleinstub
Subject: Minimal Sedation Supervision in Dentistry

To Who It May Concern:

If you wish further information on the failure of the Oregon Dental Board to protect the dental health of the citizens of Oregon, please feel free to contact me. The Dental Board has failed to act on their irregular sedation regulations for more than 19 months!

Bobbie Marshall (beagle3@outlook.com)

From: Paul.Kleinstub@state.or.us
To: beagle3@outlook.com
CC: Teresa.Haynes@state.or.us; Stephen.Prisby@state.or.us
Subject: RE: Minimal Sedation Supervision
Date: Fri, 15 Jan 2016 15:46:16 +0000

Dear Ms. Marshall,

As you can see from the following minutes from the Board's Anesthesia Committee meeting of August 27, 2014, your concerns about minimal sedation were addressed, but it appears that you did not attend the meeting to express any other concerns you had about any of the other anesthesia rules.

If you forward the details of your concerns to Governor Brown, Attorney General Rosenblum, and the *Oregonian* instead of the Board, please also copy the details of your concerns to the Board.

If you still do not provide the Board with any other details of your concerns about the anesthesia rules, I will forward this string of e-mails to the Board as your request for the Board to take action.

Anesthesia Committee Meeting

Minutes

August 27, 2014

MEMBERS PRESENT: Julie Ann Smith, M.D., D.D.S., Chair

Brandon Schwindt, D.M.D.

Rodney Nichols, D.M.D.

Daniel Rawley, D.D.S

Mark Mutschler, D.D.S.

Jay Wylam, D.M.D. (portion of meeting left at 9:00 p.m.)

Normund Auzins, D.M.D.

Eric Downey, D.D.S. Ryan Allred, D.M.D.

STAFF PRESENT: Patrick D. Braatz, Executive Director

Lori Lindley, Sr. Assistant Attorney General

Paul Kleinstub, D.D.S., M.S., Dental Director/Chief Investigator

Stephen Prisby, Office Manager

Teresa Haynes, Licensing Manager

VISITORS PRESENT: Les Sturgis, CRNA; Fariba Mutschler, D.D.S.; R. Dean Nyquist, D.M.D.; Michael Bepaly, M.D., Anesthesiologist

Call to Order: The meeting was called to order by the Chair at 7:00 p.m. at the Board office;
1500 SW 1st Ave., 7th Floor Conference Room, Portland, Oregon.

Minutes

Dr. Schwindt moved and Dr. Nichols seconded that the minutes of the February 26, 2014

Committee meeting be approved as amended. The motion passed with Dr. Schwindt, Dr. Nichols, Dr. Rawley, Dr. Mutschler, Dr. Wylam, Dr. Auzins, Dr. Downey, and Dr. Allred voting aye.

Correspondence

The Committee reviewed and discussed correspondence from Ms. Bobbie Marshall regarding the definition and route of administration of minimal sedation.

818-026-0010 – Definitions

Dr. Mutschler moved and Dr. Auzins seconded that the Committee recommend 818-026-0010 to the Rules Oversight Committee as amended below. The motion passed with Dr. Schwindt, Dr. Nichols, Dr. Rawley, Dr. Mutschler, Dr. Wylam, Dr. Auzins, Dr. Downey, and Dr. Allred voting aye.

Anesthesia Committee Meeting

August 27, 2014

Page 1 of 7

Attachment # 1

From: Beagle 3 [<mailto:beagle3@outlook.com>]

Sent: Thursday, January 14, 2016 12:05 PM

To: Paul Kleinstub

Cc: Stephen Prisby; Teresa Haynes; office@drjonnahongo.com; Julie Ann Smith D.D.S., M.D.

Subject: RE: Minimal Sedation Supervision

Dear Paul:

I have been sending YOU e-mails regarding the Oregon Dental Board's **irregular sedation regulations** since June 17, 2014. You and the Board have FAILED to act on your irregular sedation regulations. I have also sent my concerns to: Mr. Prisby,

Ms. Haynes, Mr. Braatz, Ms. Conway, Dr Hongo, and Dr. Smith.

Do you want me to start sending my concerns to Govenor Brown, Attorney General Rosenblum, and to the *Oregonian* ?

I have repeatedly been informed that my concerns were being reviewed by the Anesthesia Committee! Meanwhile, patients are being exposed to sedation by untrained and unqualified dental professionals that the Oregon Board of Dentistry allows to practice sedation because of "**irregular sedation regulations**".

What are you going to do about your irregular sedation regulations? You have had 19 months to get off your ass and

review and correct your fucking regulations. I apologize for my language but I have been very patient with the Board.

I have seen no movement by the Board to correct their **irregular sedation regulations!**

Bonnie Marshall

From: Paul.Kleinstub@state.or.us
To: beagle3@outlook.com
CC: Stephen.Prisby@state.or.us; Teresa.Haynes@state.or.us
Subject: RE: Minimal Sedation Supervision
Date: Thu, 14 Jan 2016 15:58:06 +0000

Just a thought...

How about documenting ALL of the irregular sedation regulations that you feel that the Board needs to address so that a review of your concerns can be placed on the agenda for the next meeting of the Board's Anesthesia Committee?

As you know, this is a public meeting that you could attend and also provide a forum to provide your insight on the ongoing issues that you have been addressing.

From: Beagle 3 [<mailto:beagle3@outlook.com>]
Sent: Wednesday, January 13, 2016 9:44 PM
To: Paul Kleinstub
Cc: Stephen Prisby; Teresa Haynes
Subject: RE: Minimal Sedation Supervision

This fact has been known for several years and nothing has been done to protect the public!
Hygienists, who do not have minimal sedation permits, are allowed to work on minimally sedated patients without direct

supervision from a permit holder!!!

On the other hand, a trained and licensed Oregon dentist who does not have a minimal sedation license is not allowed

to practice dentistry under minimal sedation unless the permit holder is in the room--under direct supervision!!!

In addition, your Dental Board allows other irregular sedation regulations to be practiced!! For example:

Under a minimal sedation permit, a dentist is allowed to use IM injections to sedate his patients!! However, the

continuing education classes that teach minimal sedation DO NOT teach the IM route for minimal sedation!!!

Furthermore, all dental schools, the ADA, and all continuing education providers consider the IM route of sedation to

be a moderate sedation route (this includes OHSU Dental School)!!!!!!!

WHY DOES THE OREGON DENTAL BOARD ALLOW THIS TO CONTINUE?

I suggest that the Dental Board re-evaluate their regulations ASAP.

Bobbie Marshall

From: Paul.Kleinstub@state.or.us

To: beagle3@outlook.com

CC: Stephen.Prisby@state.or.us; Teresa.Haynes@state.or.us

Subject: RE: Minimal Sedation Supervision

Date: Wed, 13 Jan 2016 20:25:16 +0000

Dear Ms. Marshall,

It appears that you are correct in your analysis of the disparity in the rules as far as the requirements for the presence of the sedation provider in the treatment room while sedation is being provided during treatment, so the matter will be referred to the Board's Anesthesia Committee for further action.

Paul Kleinstub, D.D.S., M.S.

Dental Director/Chief Investigator

Oregon Board of Dentistry

1500 SW 1st Avenue, Suite 770

Portland, OR 97201

Telephone (971) 673-3200

Fax (971) 673-3202

There are in nature neither rewards nor punishments - there are only consequences. Robert G. Ingersoll

Data Classification Level 4 - Restricted

This e-mail is intended for the named recipient only and may not be read, copied, discussed, or distributed by anyone except the named recipient or the agent or employee of the named recipient upon the named recipient's directions. The named recipient is responsible for the confidentiality of the message. Please notify the sender should any part of the following document(s) fail to transmit correctly. Please destroy incorrectly transmitted documents immediately.

Your opinion matters. Please complete our Customer Satisfaction Survey at

<http://obd.oregonsurveys.com/>

From: Beagle 3 [<mailto:beagle3@outlook.com>]
Sent: Tuesday, January 12, 2016 10:31 PM
To: Paul Kleinstub; Teresa Haynes; Stephen Prisby; Jessica Conway
Subject: RE: Minimal Sedation Supervision

Dear Mr. Kleinstub:

Under rule 818-026-0055 (1) a dental hygienist can work on a patient who is under minimal sedation using:

"INDIRECT SUPERVISION"

Under rule 818-026-0080 (6) a dentist can work on a patient who is under minimal sedation **ONLY** when the"

"The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition

until the patient is discharged and record the patient's condition at discharge in the patient's

dental record.."

These regulations refer to providers who do not have minimal sedation permits--but have a sedation permit holder

induce the proper sedation level for them.

818-026-0055

Dental Hygiene and Dental Assistant Procedures Performed Under Nitrous Oxide or Minimal Sedation

(1) Under indirect supervision, dental hygiene procedures may be performed for a patient who is under nitrous oxide or minimal sedation under the following conditions:

818-026-0080

Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia

(6) The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of anesthesia being induced. The anesthesia record shall be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures.

Please respond.

Thank you,

Bobbie Marshall

From: Paul.Kleinstub@state.or.us
To: beagle3@outlook.com
Subject: RE: Minimal Sedation Supervision
Date: Mon, 11 Jan 2016 15:02:28 +0000

Dear Ms. Marshall,

Which rule requires a dentist to have direct supervision?

From: Beagle 3 [<mailto:beagle3@outlook.com>]
Sent: Sunday, January 10, 2016 9:14 AM
To: Paul Kleinstub; Teresa Haynes; Stephen Prisby; Jessica Conway
Subject: FW: Minimal Sedation Supervision

I sent this e-mail 10 days ago and asked for an explanation of why the Dental Board of Oregon believes that a dental hygienist is better qualified to treat a minimally sedated patient with indirect supervision, while a dentist is required to have direct supervision. I have not received a response!

Please send me an explanation.

Thank you,

Bobbie Marshall

From: beagle3@outlook.com
To: paul.kleinstub@state.or.us; teresa.haynes@state.or.us; stephen.prisby@state.or.us; jessica.conway@state.or.us
Subject: Minimal Sedation Supervision
Date: Tue, 29 Dec 2015 23:54:37 -0800

Why does the Dental Board require that a dentist with a minimal sedation permit be present at all times when he sedates a patient for another dentist who does not have a minimal sedation permit?

In other words, by direct supervision!

On the other hand, why does the Dental Board require only **indirect supervision** when a dentist with a minimal sedation permit sedates a patient for a hygienist?

It appears that the Dental Board believes that a hygienist is better qualified to treat a patient without direct supervision while her patient is minimal sedated. It appears that the Dental Board believes that a dentist is not qualified to treat a patient under minimal sedation unless there is direct supervision.

Please explain.

Thank you,

Bobbie Marshall

OREGON SOCIETY OF ORAL AND MAXILLOFACIAL SURGEONS



Stephen Prisby
Executive Director
Oregon Board of Dentistry
RE: Certification for Anesthesia Assistants

December 15, 2015

Dear Oregon Board of Dentistry:

I am writing as the current president and representative of the Oregon Society of Oral and Maxillofacial Surgeons regarding our perceived ambiguity pertaining to the certification of a dental assistant as an anesthesia assistant.

It has come to our attention that one of our members voluntarily called the board and requested clarification on what is expected by the board to be compliant with regard to anesthesia assistants. Following their inquiry, they promptly demanded their dental assistants to complete an application for an anesthesia assistant certificate. Following that voluntary inquiry, they received notification of investigation from the board with allegations of non-compliance. To our knowledge, all of the assistants that perform advanced anesthesia assistance had received proper training and are certified by either AAOMS or CALAOMS. As a society, we would prefer to establish more of a collegial and collaborative relationship with the new leadership within the board.

Currently, there is statewide confusion amongst our membership as to whether an oral surgery assistant who has been properly trained, completed one of the board approved anesthesia assistant's courses, and passed the examination, must register with the board for a certificate designating them an "Anesthesia Assistant" prior to performing advanced anesthesia assistant procedures.

Under the list of prohibited acts for a dental assistant includes the following language:

An assistant may not administer any medication. except for....

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

Many members perceive the phrase "adequate training" as requiring certification from the anesthesia courses, not as a mandate to apply for the anesthesia assistant certificate.

Moving forward, we are requesting clarification from the board on this issue and perhaps a change of language in the ORS to remove ambiguity. Additionally, as a society, we respectfully request the courtesy of communicating with the OSOMS when anesthesia related changes to ORS are being considered by the anesthesia committee. We have a wealth of knowledge and experience

and are willing to collaborate or advise the members of the anesthesia committee and board at large.

I speak on behalf of all Oregon OMSs and can assure you that we are passionate about the safe practice of surgery and anesthesia. Our goal is not only to be in compliance, but more so to set the standard in these areas.

The AAOMS office anesthesia evaluation program carried out by OSOMS ensures our assistants are certified and our ability to maintain membership and malpractice insurance hinges on successful maintenance of the OAE(Office Anesthesia Evaluation). The OAE program is also recognized by the OBME as sufficient for compliance.

If the Board mandates the registration of OMS anesthesia assistants, then we respectfully request a period of time to ensure compliance of this regulation by our entire membership. We also request that our members who have been practicing safe outpatient anesthesia according to AAOMS and the Office Anesthesia Evaluation Program have the opportunity to register their anesthesia assistants without fear of reprisal. I can personally assure the board that OSOMS board will communicate to our members with vigor to ensure all our members are knowledgeable to these regulatory changes.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BU', is positioned below the word 'Sincerely,'.

Brett A. Ueeck MD, DMD, FACS
President, Oregon Society of Oral and Maxillofacial Surgeons
Diplomate American Board of OMS
Chief, Division of OMS, St. Vincent Hospital
Chair, OSOMS Committee on Anesthesia

OTHER ISSUES

Tab 7. Request a letter be sent to WREB approving Sara Hill, R.D.H. to become WREB Restorative Examiners

Pursuant to WREB's requirements licensees who wish to become a WREB Examiner must be approved by the State Board in which they practice. Ms. Sara Hill (Attachment 1) is requesting the Board approve her to become WREB Restorative Examiner.

For All Other Practicing, Non-Educator Dentists and Dental Hygienists:

- 1) Provide a current CV
- 2) Provide 2 professional letters of recommendation including one letter from a current WREB examiner
- 3) Be approved by the State Board in which they practice.**
- 4) Must observe one WREB exam at own expense, with prior approval of the WREB office. Observation includes participating in a full calibration day as well as one clinical day of the exam.
- 5) Be a licensed practitioner and actively practicing for 5 years in the state that is approving them.

Dental Hygiene Educators:

- 1) Receive a letter of approval as an examiner from the State Board in the state where they teach and a recommendation from the Director or Program Chair of the school where they teach**

OR

- 2) Have served on a WREB Committee and receive a recommendation from the Director or Program Chair at the School where they teach.

AND

- 3) Must observe one WREB exam at their expense, with prior approval of the WREB office. Observation includes participating in a full calibration day as well as one clinical day of the exam.

WREB does not guarantee that all designated examiners will be assigned to examine. WREB will create teams in the manner that provides the most equitable balance among the key factors considered in the examination assignment process.

Probationary Period

All examiners are considered to be probationary for the first year that they examine and may be dismissed at any time without cause and at the discretion of WREB. Examiners will be notified if issues arise that will cause WREB to discontinue using their services, such as failure to be prepared, follow WREB criteria, or meet the minimum commitment for attendance at exams.

January 4, 2016

To:
Board Members
Oregon Board of Dentistry
1500 SW 1st Avenue, Suite 770
Portland, OR 97201
971-673-3200

RECEIVED

JAN 08 2016

Oregon Board
of Dentistry

From:
Sara Hill, License #H6085
17275 SW Loma Vista Street
Aloha, OR 97007
sara.hill3@pcc.edu
503.860.7918

Dear Board Members:

I am writing to you requesting approval to become a WREB Examiner. I have been in communication with WREB about becoming a Restorative Examiner since the summer of 2015, and they have requested I submit an application to them. As a dental hygiene educator, they are asking for a letter of approval from the Board of Dentistry as part of my application to be considered for this position.

I have been a part-time clinical instructor in Portland Community College's Dental Hygiene Program since January 2013. Each term I have taught Restorative to the second year dental hygiene students amongst other varying clinics and labs. Currently, I am the lead instructor for Restorative. I have included my current curriculum vitae for your review in consideration of my approval.

I respectfully request the letter to be sent to my address to be included with additional application materials for WREB. Please do not hesitate to contact me if you have any questions or need any additional information.

Thank you for your consideration,



Sara Hill, BS, RDH, EPP

Sara Hill, BS, RDH, EPP

17275 SW Loma Vista St.
Aloha, Oregon 97007

sara.hill3@pcc.edu
503.860.7918

Education:

Bachelor of Science, Dental Hygiene
Eastern Washington University, Washington
Honors Graduate

December 2012

Associate of Applied Sciences, Dental Hygiene
Portland Community College, Oregon
Honors Graduate

June 2011

Instructional Experience:

Fall 2015 – Present

Lead Instructor, Dental Hygiene Restorative
Portland Community College
In accordance with Course Content and Outcome Guidelines, develop course framework including competencies, objectives, patient care, assessments, mock examinations, and development of clinical evaluation forms. Coordinate with instructional team on calibration, weekly agenda, student progress and learning outcomes.

Fall 2015

Clinical Dental Assisting Instructor
Portland Community College
Under direction of the Lead Dental Assisting Instructor, aid Dental Assisting students while learning introductory clinical skills including instrument identification, four-handed technique, suctioning, patient management and amalgam procedures.

Fall 2014 – Present

Continuing Education Instructor, Restorative Functions Endorsement
Portland Community College CLIMB
In collaboration with Lead Dentist, instruct Registered Dental Hygienists and Expanded Functions Dental Assistants on restorative techniques on both dentoforms and patients. Teaching methods include demonstrations, individualized coaching, mock board examination and patient care.

Fall 2014, Fall 2015

**Annual Blood-Borne Pathogens Co-Trainer, Dental Department
Portland Community College**

Collaborate with Co-Trainer to develop a presentation to the Dental Department to meet current OSHA standards for blood-borne pathogen and hazardous materials training as well as meet the requirement for infection control training according to the Oregon Board of Dentistry. Focus primarily on blood-borne pathogens and infection control.

Fall 2014 – Present

**Restorative Coach, Dental Hygiene Restorative
Portland Community College**

In groups of two, individually assess, collaborate and coach students on restorative technique including materials handling, placing, finishing and polishing both amalgam and composite dentofrom restorations on a weekly basis. Provide feedback and individualized recommendations to assist the student in restorative labs and continued skill improvement. Report progress of students and outcome of sessions to Lead Instructor.

Summer 2014 - Present

**Dental Hygiene Restorative Coordinator
Portland Community College**

Arrive early and stay late to assist with lab or clinic set-up and break down, working with student Restorative Manager on a rotating basis. Maintain hazardous waste records. Create and maintain organizational system for restorative dental materials used in lab and with patients. Order and receive materials as needed. Create and maintain logs for student check-outs, orders, and Mock Boards; candidate materials, exam forms, and examiner evaluations. Set-up and break down for Mock Board examinations. Track restorative treatment plans for the dental clinic, including new treatment plans, treatment plan modifications, and completed treatment in Restorative Clinic. Evaluate all chart documentation completed during Restorative Clinic.

Spring 2014 – Present

**Radiology Lab Instructor
Portland Community College**

Under direction of Lead Radiology Instructor, instruct students on Radiology Lab processes, use of processors, radiographic techniques on Dexter mannequins, reading and mounting films. Give demonstrations, correct technique, and assess diagnostic quality of films.

- Spring 2014 – Present **Clinical Dental Hygiene Instructor, Second Year Cohort**
Portland Community College
Following the guidance from the Lead Instructor, provide clinical instruction to Second Year students during patient care. Guide students as they begin taking radiographs on patients, learn more advanced instrumentation, and see more complicated medically and periodontally involved patients.
- Winter 2014 – Spring 2015 **Community Rotations Instructor, Second Year Cohort**
Portland Community College
Escort and oversee students providing dental hygiene services while on community rotations at Love Inc. and Boys and Girls Club of Salem as part of their Second Year Dental Hygiene Clinical responsibilities. Ensure students are managing patients and providing services appropriately, and facilitating working as a cohesive part of a dental team while coaching and evaluating their work.
- Fall 2013 – Present **Clinical Dental Hygiene Instructor, First Year Cohort**
Portland Community College
Work with First Year students as they learn basic skills in Dental Hygiene Pre-Clinic, and help them transition their knowledge as they begin to see patients. Focus on managing the dental operatory, ergonomics, infection control, basic instrumentation, chart documentation and patient management.
- Fall 2012 – Summer 2015 **Clinical Dental Hygiene Instructor, Dental Hygiene Restorative**
Portland Community College
Following course design of Lead Instructor, provide instruction on restorative instruments, armamentarium and placement techniques for amalgam and composite materials on anterior and posterior dentoform teeth. Teach high speed and slow speed handpiece use, maintenance as well as finishing and polishing techniques. Work with students on bur selection and manipulation, disposal and replacement. Methods include demonstrations, coaching, observation, evaluation, and feedback. Guide students as they transition to patient care, assisting them with operatory set-up of instruments and armamentarium, procedure steps, self-evaluation, patient management and documentation.
- Fall 2010 – Winter 2011 **Dental Hygiene Tutor, Kaiser Cohort**
Portland Community College
As a Second Year Dental Hygiene Student, tutor Kaiser Cohort First Year Students on First Year Dental Hygiene Theory by providing condensed power point presentations, study handouts and original mock examinations.

Professional Dental Experience:

May 2015 – Present

On-Call Dental Hygienist, Dr. Gregory Alexander
Portland, Oregon

Work on an as-needed basis when permanent hygienists request time off or are sick. Responsibilities include taking digital radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, fluoride treatments, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, and working in collaboration with the dentist, dental assistants and front office staff to meet patient needs.

Mar 2015 – Present

Part Time Dental Hygienist, Dr. Rachel Cole
Portland, Oregon

Responsibilities include taking digital radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, fluoride treatments, sealants, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, scheduling and working in collaboration with the dentist, dental assistants and front office staff to create and follow office protocols and meet patient needs.

Feb 2015 – Present

On-Call Dental Hygienist, Lake Grove Dental
Lake Oswego, Oregon

Work on an as-needed basis when permanent hygienists request time off or are sick. Responsibilities include taking digital radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, diagnodent, fluoride treatments, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, trimming study models, scheduling and working in collaboration with the dentist, dental assistants and front office staff to meet patient needs.

Dec 2014 – Mar 2015

Temporary Hygienist, Various Offices
Portland Metro Area, Oregon

Work on an on-call basis to fill in at various dental offices to meet staffing needs. Responsibilities include taking traditional and digital radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, fluoride treatments, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, and working in collaboration with the dentist, dental assistants and front office staff to meet patient needs.

Nov 2011 – Nov 2014

Full Time Dental Hygienist, Dr. Alan Rosenberg
Portland, Oregon

Responsibilities include taking traditional radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, fluoride treatments, sealants, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, taking impressions, sterilization, managing paper chart system, aid dental assistant as needed with answering phones or dental insurance questions, and working in collaboration with the dentist and dental assistant to meet patient needs.

Aug 2011 – Oct 2011

On-Call Dental Hygienist, Zehtab Family Dentistry
Lake Oswego, Oregon

Work on an as-needed basis to meet staffing needs. Responsibilities include taking digital radiographs, periodontal charting, dental prophylaxes, periodontal maintenance, scaling and root planing, diagnodent, intraoral camera, velscope, fluoride treatments, oral hygiene instructions, dispensing appropriate home care aids, documentation, break down and set up of operatory, infection control, reviewing treatment plans, scheduling and working in collaboration with the dentist, dental assistants and front office staff to meet patient needs.

Jun 2010 – Sep 2010

Front Desk, Perio Aesthetics and Implantology
Beaverton, Oregon

Responsibilities include greeting patients, answering phones, scheduling, reviewing treatment plans, billing insurance and correspondence with referring offices.

Jun 2010 – Aug 2010 &
May 2008 – Sep 2009

Front Desk, Zehtab Family Dentistry
Lake Oswego, Oregon

Responsibilities include greeting patients, answering phones, scheduling, reviewing treatment plans, acquiring breakdown of benefits from insurance, submitting pre-treatment estimates, billing insurance, posting payments, and correspondence with referring offices.

Sep 2006 – May 2008

Front Desk, Gentech Dentist
Portland, Oregon

Responsibilities include greeting patients, answering phones, scheduling, reviewing treatment plans, acquiring breakdown of benefits from insurance, submitting pre-treatment estimates, billing insurance, posting payments, making payment plans, creating consent forms, and maintaining a recall system.

Community Dental Service:

- November 2015 **Mission of Mercy, Portland Oregon**
Mission of Mercy is an annual non-profit event held by the Oregon Dental Association at the Oregon Convention Center offering a variety of free dental services to underserved individuals and families at no cost to them. As a hygienist, provided dental debridements, prophylaxes and fluoride treatments.
- November 2013 **Mission of Mercy, Portland Oregon**
Administered local anesthesia after reviewing health history and vitals for patients waiting to receive restorative dental services at no charge.
- May 2011 &
February 2011 **Boys and Girls Club, Salem Oregon**
Salem location has a dental clinic that provides hygiene and restorative services to school age children that demonstrate financial need. As a student under the supervision of an instructor, provided dental prophylaxes, radiographs, sealants and fluoride treatments.
- April 2011 **Medical Teams International, Moroceli Honduras**
As a student, traveled to Honduras with dentists, instructors and classmates to collaborate with Honduran dentists working for Cadena de Amor to provide free dental services to school age children in a rural village. Performed screenings, prophylaxes, fluoride treatments, sealants, and assisted dentists as needed during restorative procedures.
- March 2011 **Veteran's Administration, Portland Oregon**
In the VA Dental Clinic, under supervision of an instructor, provided dental services to Veterans including, prophylaxes, periodontal maintenance, fluoride treatments and home care instructions.
- January 2011 **OHSU Russell Street Clinic, Portland Oregon**
As a student working with OHSU dental students, provided hygiene services to HIV/AIDS patients including prophylaxes, scaling and root planing, periodontal maintenance and fluoride treatments.
- November 2010 **Mission of Mercy, Portland Oregon**
As a student, provide oral hygiene instructions to all patients of the clinic prior to exiting the facility.

Licenses, Endorsements & Certifications:

Oregon Dental Hygiene License #H6085
Class I Nitrous Oxide Permit
Expanded Practice Permit

Restorative Functions Endorsement
Local Anesthesia Endorsement
BLS for Healthcare Providers

Software Experience:

Eaglesoft
Daisy
Open Dental
Google Docs

Dentrix
Dental Icon
Microsoft Word, Excel, Powerpoint

References:

Dr. Daniel Blickenstaff, DDS
Private Practice Dentist
Investigator, Oregon Board of Dentistry
Part-Time Clinic Dentist, Portland Community College
Continuing Education Instructor, Portland Community College CLIMB
daniel.blickenstaff@pcc.edu
503-860-1894

Cara Kao-Young, BS, RDH, EPP
Dental Hygiene Faculty, Portland Community College
ckaoyoun@pcc.edu
971-207-6558

Jill Lomax, CDA, COA, EFDA, EdM
Dental Assisting Faculty, Portland Community College
jillian.lomax@pcc.edu
503-984-2630

Monica Monsanto, PG Dip DS, BSDH, RDH
Private Practice Hygienist
Clinical Educator, Dentsply International
monica.monsanto@mac.com
503-901-0397

LICENSE RATIFICATION

16. RATIFICATION OF LICENSES

As authorized by the Board, licenses to practice dentistry and dental hygiene were issued to applicants who fulfilled all routine licensure requirements. It is recommended the Board ratify issuance of the following licenses. Complete application files will be available for review during the Board meeting.

DENTAL HYGIENISTS

H7130	SARAI MALUHIA FARR, R.D.H.	12/10/2015
H7131	JENNIFER R GRUZENSKY, R.D.H.	12/10/2015
H7132	HALEY MARIE BEVER, R.D.H.	12/17/2015
H7133	ANDRES GARCIA, R.D.H.	12/17/2015
H7134	MINDY S MEDINA, R.D.H.	12/24/2015
H7135	HEIDI CLAIRE LYNN DESMARAIS, R.D.H.	1/11/2016
H7136	BRANDI ROSE TARABOCHIA, R.D.H.	1/13/2016
H7137	SARAH MARIE SIELER, R.D.H.	1/13/2016
H7138	PATRICK S PORTER, R.D.H.	1/13/2016
H7139	TASHINA MARIE STOFFEL, R.D.H.	1/20/2016
H7140	AMANDA P KHAMPHILAVONG, R.D.H.	1/27/2016
H7141	DESIREE STARR FOWLER, R.D.H.	1/27/2016
H7142	OKSANA S SVIRZHEVSKIY, R.D.H.	1/27/2016
H7143	NICOLE M ULRICH, R.D.H.	2/3/2016

DENTISTS

D10384	SANDA M MOLDOVAN, D.D.S.	12/10/2015
D10385	STEPHEN ERIC STANLEY, D.M.D.	12/10/2015
D10386	JEFFREY ALLEN PACE, D.M.D.	12/10/2015
D10387	MICHAEL W YOUNG, D.D.S.	12/10/2015
D10388	RACHEL ELIZABETH WHITE, D.D.S.	12/24/2015
D10389	BRETT MUNRO STRONG, D.D.S.	1/20/2016
D10390	YUCHEN HU, D.M.D.	1/20/2016
D10391	VANESSA R AXELSEN, D.D.S.	1/21/2016
D10392	GLENN THOMAS ASHWORTH, D.D.S.	1/27/2016
D10393	BRIAN NGUYEN, D.M.D.	1/29/2016
D10394	DANIEL J LUNDQUIST, D.D.S.	2/3/2016
D10395	PATTON M MINKIN, D.D.S.	2/3/2016

**LICENSE, PERMIT
&
CERTIFICATION**

Nothing to report under this tab

STRATEGIC PLANNING SESSION

Sue Dicile Group

SERVICES AND MISSION

Sue Dicile Group is a professional firm that provides planning, board and organization development, public involvement, and issue resolution services. For over 30 years we have assisted clients to establish vibrant and effective organizations and sound collaborative decision-making. Our professional mission is to facilitate positive change in organizations and communities.

We provide an integrated offering of client-specific professional services in the areas of:

- Strategic, and Operational Planning
- Board Development
- Issue Resolution
- Organization Development
- Team-Building
- Public Participation
- Needs Assessment
- Facilitation
- Communication Styles & Skills
- Collaborative Decision-Making

We provide comprehensive management and facilitation of complex planning, organization development, and issue resolution projects in the private, public, and non-profit sectors. The benefits we contribute include:

- Extensive ***process design experience***, from project start-up through implementation and final documentation.
- State-of-the-art ***group facilitation skills***.
- ***An ethical framework that fosters trust and collaboration among diverse parties.***
- ***Experienced project support associates*** that can offer full-service professional and administrative support for large-scale planning and organization development projects.

WORKSHOPS

High-Stakes Facilitation: An advanced skill-set training for facilitators who work in high stakes and high conflicts arenas.

Design and Facilitation of Collaborative Process: A workshop exploring the Discovery, Design, Delivery and Documentation phases of facilitation, with a focus on 12 key indicators of good collaborative process.

Collaboration & Closure - Group Decision-Making in Record Time: A program of practical skills, practices and protocols to enable teams, boards, and task groups to conduct fair, timely and effective group decisions.

Characteristics of Highly Effective Boards of Directors: A program and survey that enables members to assess board practices and evaluate effectiveness based on 10 key dimensions.

Leadership and Communication Styles Workshops using the Kiersey Bates and Situational Leadership models.

High Performance Team Assessment and Skill-Building: An assessment model that enables teams to evaluate their own performance based on ten key indicators, and develop tools and agreements for taking the team to the next performance level.

Customer Service in the Public Sphere: An interactive practicum for public sector staffpeople whose citizen-facing jobs require positive interaction, engagement and problem-solving within the boundaries of laws, regulations and mandates. The workshop applies techniques from conflict resolution and retail disciplines with the objective of creating citizen satisfaction with the process and interaction, even if their desired outcome could not be achieved. The practicum is rich in tools and scripts for facilitating through conflict and for meeting service expectations.

The Work Re-Design Challenge: The Challenge uses the LEAN model of organization improvement to provide workgroups of any size – teams, departments, companies – with a unique scenario and framework in which to re-think assumptions about existing business processes and quickly design new options that support business and customer needs.

Principal Consultant: Sue Dicile

Sue Dicile is the principal consultant with Sue Dicile Group. The focus of her practice is the design, facilitation, and project management of collaborative planning, organization development and issue resolution processes. Her professional mission is to facilitate positive change in communities and organizations.

In 1980 Sue was recruited by the State of Oregon community college system to participate in a nationally recognized business development team. In private practice since 1984, Sue has worked extensively with industry, community-based and non-profit organizations, and government agencies in the areas of planning, organization development, leadership and governance development, and issue resolution. She is widely recognized for her excellent facilitation and conflict mediation skills based on 20 years of group process experience. She is often called upon by agencies and stakeholders to facilitate some of the most complex and controversial issues in the Northwest region and nationally.

Sue is the author of several innovative training and professional skills development programs, including co-authorship of a program for experienced facilitators that features advanced tools and techniques for high-conflict situations; and a workshop featuring practical skills to assist teams, boards, and task groups to conduct fair, timely and effective group decisions.

Organizations that have utilized her planning and problem-solving services and featured her workshops and facilitated worksessions include:

- The Offices of the Governors of Oregon, Colorado, and Hawaii
- Washington State Department of Ecology
- US Fish and Wildlife Service
- US Department of Justice
- The Oregon Lottery
- Manhattan Neighborhood Network
- The Benton Foundation
- Nike
- Tektronix
- Hewlett-Packard
- Northwest Natural Gas
- Jantzen, Inc.
- PacifiCorp
- Lightspeed Networks
- Johnstone Supply
- Western Electric Coordinating Council (WECC)
- Cities of Portland, Corvallis, Gresham, Wilsonville, Salem, McMinnville and Bend (OR); Richland, WA; Tucson, AZ; San Francisco and Sacramento (CA), and the Borough of Brooklyn (NY)
- Public power utilities and related service providers throughout the Northwest

Sue's professional and volunteer experience in the field of public interest telecommunications has led to leadership positions at local, state, and national levels. She served as project manager for the Oregon Telecommunications Forum Council on behalf of the Office of the Governor. She served for six years as the Board and Leadership Development Committee Chair on the national Board of Directors of the Alliance for Community Media. She currently serves as the Portland representative (and immediate past chair) to the Mt. Hood Cable Regulatory Commission where she oversees franchise compliance and the allocation of over six million dollars in technology grants annually to community-based organizations in the MHCRC franchise area.

Sue has been a featured columnist with The Daily Journal of Commerce, focusing primarily on planning and organizational development issues. She has taught professional development courses as an adjunct faculty member, at Portland State University and Mt Hood Community College. She is a member of the National Coalition for Dialog and Deliberations (NCDD), the Alliance for Community Media (ACM), and the National Association of Telecommunications Officers and Advisors (NATOA).

Sample Relevant Experience

STRATEGIC PLANNING: PUBLIC AND PUBLICLY/MEMBER-OWNED SECTORS

Research, process design and facilitation of strategic planning, board development, operational planning and team-building for the Boards of Directors, City Councils, and their staff members and stakeholders.

- The Oregon Board of Pharmacy
- The Coalition of Local Health Officials / Oregon
- Portland Community College
- City of McMinnville, Oregon
- City of Monmouth, Oregon
- City of Gresham, Oregon
- City of Glenwood Springs, Colorado
- City of Eugene, Oregon
- Oregon Forest Resources Institute
- The Oregon Lottery
- NorthWest Public Power Association (NWPPA)
- Western Electric Coordinating Council (WECC)
- Public Power Council
- NW Energy Efficiency Alliance (NEEA)
- Ruralite Services Inc.
- PNGC Power
- Consumer-owned utilities throughout and beyond the Northwest (listed below):

Oregon:

*Blachly-Lane Electric Cooperative,
Coos-Curry Electric Cooperative,
Umatilla Electric Cooperative,
Douglas Electric Cooperative,
Oregon Trail Electric Cooperative,
Wasco Electric Cooperative,
Blachly Lane Electric Cooperative,
Tillamook PUD,
OR Rural Electric Co-op Assoc.*

Alaska:

Alaska Villages Electric Co-op.

Washington:

*Benton PUD,
Benton REA,
Columbia REA
Tanner Electric Cooperative,
Grant County PUD,
Franklin PUD,
Skamania County PUD.*

Montana:

*Flathead Electric Cooperative,
Beartooth Electric Cooperative,
Glacier Electric Cooperative.*

Colorado:

Delta-Montrose REA.

Idaho:

*Fall River Electric Cooperative,
Clearwater Power Company,
Kootenai Electric Cooperative;
Northern Lights Inc.*

Nevada:

Wells Rural Electric Co-operative.

Wyoming:

Lower Valley Energy.

Hawaii:

Kaua'i Island Utility Cooperative.

Indiana

Clark County REA

PROFESSIONAL REFERENCES

Ms. Karen MacLean

*Administrative Director
Oregon Board of Pharmacy
Karen.S.MacLean@obop.net
971-673-0005*

Ms. Morgan Cowling

*Executive Director
Coalition of Local Health Officials
oregonclho@gmail.com
503-329-6923*

Mr. Dave Hagen

*CEO Clearwater Power
Board Chair, PNGC Power
dhagen@ClearwaterPower.com
208-798-5201*