

**CHAPTER 407**  
**DEPARTMENT OF HUMAN SERVICES, ADMINISTRATIVE SERVICES DIVISION**  
**AND DIRECTOR'S OFFICE**

**DIVISION 45**  
**OFFICE OF INVESTIGATIONS AND TRAINING**

**Review of Substantiated Physical Abuse when Self-Defense is Asserted at State Hospitals  
and Department-Operated Residential Training Homes**

**407-045-0000**

**Purpose**

The purpose of these rules is to outline procedures for employees to have notice and to request a review of a determination when a physical abuse investigation in a state hospital or Department-operated residential training home results in a "substantiated" determination and the person alleged to be responsible for the abuse indicates their conduct was in self-defense. These rules outline a process to provide review, upon request, by the Human Services Abuse Review Committee (HSARC) of the Department of Human Services (Department). The HSARC makes a recommendation to the Director to change or keep the determination made in the investigation by the Office of Investigations and Training (OIT).

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

**407-045-0010**

**Definitions**

- (1) "Director" means Director of Oregon's Department of Human Services or their designee.
- (2) "Department" means the Oregon Department of Human Services.
- (3) "Human Services Abuse Review Committee (HSARC)" means a standing group of individuals appointed by the Director, none of whom were involved in the investigation that resulted in the specific OIT substantiated determination under review, and five of whom will be assigned for each state hospital and the Department-operated training homes.
- (4) "Legal Finding" means a court finding, guilty plea or guilty verdict which identifies that the person inquiring about or requesting a review was responsible for the abuse or any other offense stemming from the employee's conduct which was the subject of the OIT substantiated determination.

- (5) "Notice of OIT Substantiated Determination" means that OIT determined at the conclusion of an investigation of alleged abuse that there is reasonable cause to believe physical abuse occurred; and that there is reasonable cause to believe that a specific person or persons employed by the state hospital or residential training home were responsible for the abuse.
- (6) "Notice of Waived Rights for Review" means a written notice that OIT staff will send to a person requesting a review, when OIT has documentation that a person refused to accept delivery of the notice of OIT substantiated determination or that the person accepted the delivery and did not request a review within 30 calendar days, or when there is a legal determination which indicates that the person accused was responsible for the subject abuse.
- (7) "OIT" means the Office of Investigations and Training of the Department which performed the investigation of alleged abuse at the state hospitals or residential training home.
- (8) "OIT Determination" is a finding that completes an OIT investigation. Determinations are defined in OAR 410-009-0060 as follows:
  - (a) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.
  - (b) "Not Substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.
  - (c) "Inconclusive" means that the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.
  - (d) OIT must make a finding of not substantiated if OIT finds that:
    - (A) The person was acting in self-defense in response to the use or imminent use of physical force.
    - (B) The amount of force used was reasonably necessary to protect the person from violence of assault; and
    - (C) The person used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of response approved by the Department.
- (9) "Department approved behavior response" includes:
  - (a) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior

intervention. The system uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

- (b) "Professional Assault Crisis Training Program" or "Pro-Act" means a program designed to provide employees who work with individuals at state hospitals with a systematic approach to intervention during incidents of potential assault. The program is an approach that stresses intervention principles to enable staff to remain safe and minimize the risk of injury to all.
- (c) Successor system to OIS or Pro-Act.
- (10) "Person requesting review" or "Requestor" means an individual who is identified as the person accused of abuse in an OIT substantiated determination and who requests a review of the determination because the individual believes it was self-defense and not abuse and therefore that the determination is wrong.
- (11) "Request for Review by HSARC" means a written request from a person requesting review. The specific requirements for a request for review are described in OAR 407-045-0070.
- (12) "Residential Training Home" means State-operated comprehensive 24-hour residential programs licensed by the Department of Human Services under ORS 443.400(7) and (8).
- (13) "Self-Defense" means the use of physical force upon another person in self-defense or to defend a third person.
- (14) "State Hospital" means Oregon State Hospital and Blue Mountain Recovery Center (Eastern Oregon Psychiatric Center).

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0020**

##### **Department Employee – Application of Departmental Employee Policies**

The Department will refer to Departmental employee policies for additional or different requirements for individuals identified as responsible for substantiated abuse who are employees of the Department.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0030**

## **Providing Notice of an OIT Substantiated Physical Abuse Determination after the Effective Date of these Rules when Self-Defense was Asserted**

When OIT staff determine a person is responsible for substantiated abuse and that person asserted self-defense as an explanation of their conduct, after January 1, 2006, OIT will deliver a notice of substantiated determination along with a copy of the redacted report summary and conclusions to the person identified, in one of the following ways:

- (1) By certified mail, restricted delivery, with a return receipt to the last known address; or
- (2) By hand delivery; hand-delivered notice must be addressed to the individual, the original is to be signed and dated by the individual to whom it is addressed to acknowledge receipt, and signed by the person delivering the notice. OIT staff will place the document with original signature in the case record.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

### **407-045-0040**

#### **Information Included in the Notice of an OIT Physical Abuse Substantiated Determination when Self-Defense was Asserted**

The notice of an OIT substantiated determination when self-defense is asserted will include all of the following.

- (1) The case number assigned to the investigation that resulted in the OIT substantiated determination;
- (2) The full name of the individual who has been identified as responsible for the abuse as it is recorded in the case record;
- (3) A statement that the OIT determination was recorded as substantiated including a description of the abuse identified and a redacted summary and conclusions of the investigation report;
- (4) A statement about the right of the individual to make a request for review of the substantiated determination;
- (5) Instructions for making a request for review;
- (6) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of receipt of the notice of OIT substantiated determination, as documented by the U.S. Postal Service;

- (7) A statement that the HSARC will consider all relevant information including the OIT investigation and determination, and all information provided by the person requesting review in their request for review, and that the HSARC will not: re-interview the alleged victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of abuse; and
- (8) A statement that OIT will send the requestor notification of the Director's decision within 60 calendar days of receiving a written request for review.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0050**

##### **OIT Responsibilities When a Person Inquires About a Review of an OIT Substantiated Physical Abuse Determination when Self-Defense was Asserted**

OIT staff will take the following steps when a person inquires about a review of an OIT substantiated physical abuse determination.

- (1) OIT staff will record the individual's name and address, and a telephone number when available.
- (2) OIT staff will review the records to determine whether:
  - (a) A notice of an OIT substantiated determination was delivered to the person; or
  - (b) Whether the person refused delivery.
- (3) If OIT staff determine that either the notice was delivered as evidenced by the returned receipt, or that the person refused the delivery as evidenced by the returned receipt, the staff may prepare and deliver a notice of waived rights for review.
- (4) If OIT staff determine that the notice was not delivered as evidenced by the returned receipt, the staff will deliver a notice of OIT substantiated determination as outlined in OAR 407-045-0030 and 407-045-0060.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0060**

##### **Making a Request for a Review of an OIT Substantiated Physical Abuse Determination when Self-Defense was Asserted**

- (1) A person who meets the criteria outlined in OAR 407-045-0050 may make a written request for review.
- (2) A person requesting review will use information found on the notice of OIT substantiated determination to prepare a written request for review. The written request for review must be delivered to OIT within 30 calendar days of the receipt of the notice of OIT substantiated determination and must include the following items:
  - (a) Date the request for review is written;
  - (b) Case number (found on the notice of OIT substantiated determination);
  - (c) Full name of the person identified as responsible in the OIT substantiated determination;
  - (d) The reason the person is requesting the review and an explanation of why the person believes the OIT substantiated determination is wrong and they believe it was self-defense;
  - (e) The person's current name (if it has changed from name noted in (c) above);
  - (f) The person's current street address, city, state, zip code and telephone number; and
  - (g) The person's signature.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.7688

#### **407-045-0070**

##### **Determining When Legal Findings Limit or Preclude a Right to Request a Review**

- (1) When a criminal process is pending, a review is not allowed under this rule until it is determined that no further criminal investigation will occur.
- (2) A legal criminal investigation or finding relevant to the substantiated physical abuse determination related to the incident where self-defense was asserted will preclude a person's right to a review.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0080**

## **OIT Responsibilities Related to Notice and Review**

- (1) If an individual asks to review the investigation report, ORS 179.505 (public record law), the Health Insurance Portability and Accountability Act (HIPAA) and OAR 410-009-0130, will govern inspection and copying.
- (2) OIT staff will maintain records to demonstrate the following, when applicable:
  - (a) Whether OIT delivered a notice of OIT substantiated physical abuse determination when self-defense asserted;
  - (b) Whether or not the notice of OIT substantiated determination was received by the addressee, as evidenced by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;
  - (c) Date a request for review was received; and
  - (d) When a review was made, whether the notice of the HSARC's decision was received by the person accused or not, as evidenced by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service.
- (3) The OIT Director or designee will maintain a comprehensive record of the reviews held of OIT substantiated physical abuse determinations when self-defense was asserted. The record will include but is not limited to the date, case number, HSARC's recommendation and the Director's decision.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

### **407-045-0090**

#### **HSARC Review of OIT Substantiated Physical Abuse Determinations when Self-Defense was Asserted**

- (1) The HSARC must conduct a review within 30 calendar days of OIT's receipt of a request for review of an OIT substantiated physical abuse determination where self-defense was asserted.
- (2) If the request for review has been retained as per OAR 407-045-0070 and a criminal finding was not made that would preclude a review, the review must occur within 30 calendar days of OIT's receipt of documentation of the legal proceeding's outcome.
- (3) The HSARC will operate as follows:

- (a) The HSARC will consider all relevant information including the OIT investigation report and determination, and information provided by the person requesting review. The HSARC will not: re-interview the alleged victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of abuse.
- (b) The HSARC will have the authority to recommend changing or maintaining an OIT determination based upon their review;
- (c) When reviewing an OIT substantiated physical abuse determination, the HSARC will determine whether there is or is not reasonable cause to believe that abuse occurred and will make a recommendation that the allegation is not substantiated if:
  - (A) The person was acting in self-defense in response to the use or imminent use of physical force;
  - (B) The amount of force used was reasonably necessary to protect the person from violence of assault; and
  - (C) The person used the least restrictive procedures necessary under the circumstances in accordance with an approved behavior management plan or other method of Department approved response by rule.
- (d) The HSARC will make their recommendation to the Director of whether the OIT determination should be retained or changed by majority vote of the participating committee members.
- (e) The HSARC shall prepare and deliver their written recommendation to the Director within 15 calendar days after conclusion of their review.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0100**

#### **Providing the HSARC's Recommendation to the Director**

The HSARC's recommendation will include the following items:

- (1) Whether there is or is not reasonable cause to believe the person requesting the review was responsible for the abuse;
- (2) The recommendation of the HSARC about whether the OIT substantiated physical abuse determination should be retained or changed to not substantiated; and

- (3) A summary of the information upon which the recommendation was based.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768

#### **407-045-0110**

##### **Director's Responsibilities Related to Decision and Notice**

- (1) After receipt of the HSARC recommendation, the Director must make a decision and send written notification of their final decision to OIT within 15 calendar days of their determination.
- (2) The decision of the Director is the final agency action.
- (3) The Director will deliver a copy of the decision to OIT, and the OIT Director or designee will place the request for review, and a copy of the HSARC's recommendation and Director's decision into the case file. No change will be made in the existing written case record.
- (4) OIT will send the Director's decision by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 15 calendar days of the Director's final decision.
- (5) OIT staff will notify the state hospital and residential training program operated by the Department of the decision within 15 calendar days of the Director's decision.
- (6) OIT will notify anyone else who received the initial substantiated determination of the Director's decision when there is a change in the determination.

Stat. Auth: ORS 179.040, ORS 409.010 and ORS 409.050

Stats. Implemented: ORS 179.390, ORS 426.385, ORS 427.031, ORS 430.210 and ORS 430.735 through ORS 430.768