

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on July 30, 2010 by the
Date prior to or same as filing date

<u>Oregon Board of Dentistry</u>	<u>Chapter 818</u>
Agency and Division	Administrative Rules Chapter Number
<u>Sharon Ingram</u>	<u>1600 SW 4th Avenue, Suite 770, Portland, OR 97201</u>
Rules Coordinator	Address
	<u>(971) 673-3200</u>
	Telephone

to become effective August 6, 2010 through February 1, 2011 .
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Adopts Oregon Board of Dentistry Administrative Rules regarding Health Professionals' Services Program.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT: 818-013-0001, 818-013-0005, 818-013-0010, 818-013-0015, 818-013-0020, 818-013-0025, 818-013-0030, & 818-013-0035

AMEND:

SUSPEND:

Stat. Auth.: ORS 676, 679 & 680

Other Auth.: HB 2345 (Chapter 697, 2009 Oregon Laws)

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)

RULE SUMMARY

The Board of Dentistry is adopting OAR Division 13 Health Professionals' Services Program, as a result of the passage of HB 2345 by the Oregon Legislature, which became effective July 1, 2010.

<u>/s/ Patrick D. Braatz</u>	<u>Patrick D. Braatz</u>	<u>August 4, 2010</u>
Authorized Signer	Printed name	Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Board of Dentistry

Chapter 818

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Rulemaking – Health Professionals’ Services Program

Rule Caption: Adopts Oregon Board of Dentistry Administrative Rules regarding Health Professionals’ Services Program.

Statutory Authority: ORS 676, 679 & 680

Other Authority: HB 2345 (Chapter 697, 2009 Oregon Laws)

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

Need for the Temporary Rule(s):

The adoption of Division 13 Health Professionals’ Services Program is necessary for the Oregon Board of Dentistry to participate in such a program, as the passage of HB 2345 eliminated the authority for the Oregon Board of Dentistry having independent confidential diversion monitoring programs effective July 1, 2010.

Documents Relied Upon, and where they are available: HB 2345 (Chapter 697, 2009 Laws)

Justification of Temporary Rule(s):

The passage of HB 2345 eliminated the authority of Health Professional Regulatory Boards, like the Oregon Board of Dentistry, from having any confidential diversion monitoring programs that are not a part of a statewide program effective July 1, 2010. The Oregon Board of Dentistry currently has licensees that were in a program and were transferred to the statewide Health Professionals’ Services Program on July 1, 2010 and the Oregon Board of Dentistry did not have specific administrative rules regarding participation in such a program. These Temporary Rules will allow for those licensees to participate in this new statewide program and continuing the Oregon Board of Dentistry’s Mission of continued protection of the citizens of Oregon.

/s/ Patrick D. Braatz

Patrick D. Braatz

August 4, 2010

Authorized Signer

Printed name

Date

Division 13
Health Professionals' Services Program

818-013-0001

Definitions

For the purpose of this section, the following definitions apply:

(1) "Confidential" means that, to the highest degree possible, the identities of the licensees investigated for alleged addiction to, dependence upon, or abuse of alcohol, drugs, and mind altering substances, or mental health disorders, and who have a diagnosed substance abuse disorder or mental health disorder, will be kept confidential by the Board and not be a matter of public record.

(2) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the evaluation and any examinations, tests, or consultations suggested by the evaluation, and is the medically appropriate reason for services.

(3) "Direct Observe" means that a collection taker is in the restroom with donor and observes the providing of the sample throughout the entire process.

(4) "Diversion Coordinator" means the individual(s) authorized by the Board and the Executive Director to know the identities of the licensees who are candidates for or who are enrolled in HPSP.

(5) "Division" means the Oregon Department of Human Services, Addictions and Mental Health Division.

(6) "DSM" means the *Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association.

(7) "Evaluation" means the process a Board approved, independent evaluator uses to diagnose the licensee's symptoms and to recommend treatment options for the licensee.

(8) "Health Professionals' Services Program" (HPSP) means the consolidated, statewide health professionals program for licensees diagnosed with a substance use disorder, a mental health disorder, or both types of disorders, as established by ORS 676.190.

(9) "Independent evaluator" means a Board approved individual or entity qualified to evaluate, diagnose, and recommend treatment regimens for substance abuse disorders, mental health disorders, or co-occurring disorders.

(10) "Mental health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. "Mental health disorder" includes gambling disorders.

(11) "Monitoring agreement" means an individualized agreement between a licensee and the HPSP vendor that meets the requirements for a diversion agreement set by ORS 676.190.

(12) "Monitoring Entity" means an independent third-party that monitors licensees' program enrollment statuses and monitoring agreement compliance.

(13) "Non-disciplinary" means the Board will not take disciplinary action or enter disciplinary orders against a licensee who agrees to enter into the HPSP and remains compliant with that program.

(14) "Non-identifying" means a system where the licensee is referred to by number rather than name and the licensee's identity remains confidential to the Board.

(15) “Program” means the process whereby allegations of addiction to, dependence upon, or abuse of alcohol, drugs, or mind altering substances or mental health disorders are investigated, evaluated, and reported to the Board for action.

(16) “Self-referred licensee” means a licensee who seeks to participate in the HPSP program without referral from the Board.

(17) “Substance Use Disorders” means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc., as defined in DSM criteria.

(18) “Substantial non-compliance” means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee’s ability or willingness to participate in the program. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(19) “Successful completion” means the licensee has complied with the licensee’s monitoring agreement to the satisfaction of the Board.

(20) “Toxicology testing” means urine testing or alternative chemical monitoring including, but not limited to blood, saliva, or breath as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

(21) “Treatment” means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(22) “Vendor” means the entity that has contracted with the Division to conduct the program.

(23) “Voluntary” means that the Board cannot compel a licensee to enter the HPSP.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0005

Participation in Health Professionals’ Services Program

(1) Effective July 1, 2010, the Board participates in the Health Professionals’ Services Program (HPSP).

(a) The Board establishes procedures to process cases of licensees preparatory to transfer to HPSP.

(b) The procedures will be confidential, non-disciplinary, and voluntary.

(c) The Executive Director will have overall management responsibilities for the procedures. The Executive Director will designate Board staff to serve as Diversion Coordinator(s) who will manage and conduct investigations and report to the Board.

(d) The Diversion Coordinator(s) will investigate information related to addiction to, dependence upon, or abuse of alcohol, drugs, or mind altering substances or mental health disorders, by licensees and provide licensees with resources for evaluations, if appropriate.

(2) Only licensees of the Board who meet the referral criteria may be referred by the Board to the HPSP.

(a) The Board may refer a licensee to the HPSP in lieu of public discipline.

(b) In the event a licensee declines to submit to an evaluation or declines referral to HPSP, the Diversion Coordinator(s) will present the matter to the Board for decision and the Board's action may jeopardize the confidential nature of licensee's status as a candidate for, or enrollment in, HPSP.

(3) Licensees may self-refer to HPSP without Board approval as permitted by ORS 676.190(5).

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0010

Procedures for Board Referrals

(1) When the Board receives information involving a licensee who may have a substance related disorder, mental disorder, or both types of disorders, the Board staff will investigate and complete a non-identifying confidential report to be presented at a Board meeting.

(2) The Board will consider all relevant factors before determining whether to refer a licensee to the HPSP, including but not limited to licensee's disciplinary history; the severity and duration of the licensee's impairment; the extent to which licensee's practice can be limited or managed to eliminate danger to the public; and the likelihood that licensee's impairment can be managed with treatment.

(3) If a licensee meets referral criteria and the Board approves entry into the HPSP, the Board will provide a written referral to HPSP.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0015

Referral of Licensees to the HPSP

(1) A Board referral to HPSP will include, at a minimum:

(a) Copies of documents from a Board approved independent evaluator which provide a diagnosis of a substance related disorder or a mental health disorder or both disorders, and provide treatment options;

(b) A written statement from the Board as to whether the licensee's impairment presents, or presented, a danger to the public;

(c) A written statement from the licensee agreeing to enter the HPSP in lieu of discipline and agreeing to abide by all of the terms and conditions established by the vendor;

(d) A written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the Board within three (3) business days after the licensee is arrested or convicted; and

(e) A letter of instruction to the vendor detailing the additional agreement provisions required by the Board.

(2) For referral to HPSP, the licensee shall:

(a) Sign an Agreement to Enter the Health Professionals' Services Program.

(b) Provide written authorization allowing for the release of documents by the Board to the HPSP vendor, and permit the verbal exchange of information between the Board and the HPSP vendor.

(c) Within one (1) business day of the effective date of the Agreement to Enter the Health Professionals' Services Program, licensee will make contact with the HPSP vendor to initiate procedures to enter HPSP.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0020

Additional Required Provisions

(1) Prior to referral to HPSP, the licensee shall agree, by written statement, to waive any privilege with respect to any physical, psychiatric, psychological, or substance use treatment, in favor of the Board; and to execute waivers or releases with any and all health care providers to permit exchange of information between the health care providers and the Board.

(2) Monitoring agreement will be for a minimum of five (5) years, or as determined by the Board.

(3) Urinalysis testing shall be directly observed.

(4) Licensee shall assure that at all times the Board has the most current information regarding licensee's address and telephone numbers for both residences and employments.

(5) Licensee will be responsible for all costs for treatment including, but not limited to, evaluations, residential treatment, after care regimens, group therapy programs, counseling, and toxicology testing. Failure to meet those financial obligations may constitute substantial non-compliance.

(6) As warranted, the Board shall add any additional agreement provisions and will convey those to the vendor by letter of instruction.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0025

Approval of Independent Evaluators

(1) To be approved by the Board as an independent evaluator, an evaluator must be:

(a) Licensed as required by the jurisdiction in which the evaluator works; and

(b) Able to provide a comprehensive assessment of and written report describing a licensee's diagnosis, degree of impairment, and treatment options.

(2) The Board will not accept an independent evaluator in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board will maintain a list of approved independent evaluators on the Board's Web site at www.oregon.gov/Dentistry.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0030

Approval of Treatment Providers

(1) To be approved by the Board as a treatment provider, a provider must be:

(a) Licensed as required by the jurisdiction in which the provider works; and

(b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, and treatment options proposed by the independent evaluator.

(2) The Board will not accept a provider as a treatment provider in a particular case if, in the Board's judgment, the treatment provider's judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board will maintain a list of approved treatment providers on the Board's Web site at www.oregon.gov/Dentistry.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)

818-013-0035

Non-Compliance Action

The Board, upon being notified of a licensee's substantial non-compliance, will investigate and determine the appropriate sanction which may include, but is not limited to, a limitation of licensee's practice and any other sanction, up to and including termination from HPSP and formal discipline. In the event the HPSP vendor or the monitoring entity reports a matter of non-compliance to the Diversion Coordinator(s), the matter, following an investigation, will be brought to the Board for decision and the Board's action may jeopardize the confidential nature of licensee's enrollment in HPSP.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140 (e)