

**BOARD OF MEDICAL IMAGING**

**DIVISION 30**

**COMPLIANCE AND DISCIPLINE**

**337-030-0002**

**Unprofessional Conduct**

Unprofessional Conduct includes but is not limited to the following:

- (1) Engaging in the practice of medical imaging technology while under the influence of intoxicating liquor, controlled substance, or any other drugs which impair consciousness, judgment, or behavior to the extent that normal physical or mental faculties are impaired. For purposes of this definition, a person is "under the influence" of intoxicating liquor if either the person has 0.08 or more of alcohol in the blood as shown by a chemical analysis of breath or blood or other evidence establishes that the person's normal physical or mental faculties are impaired after having consumed intoxicating liquor; or
- (2) Making or filing false reports or records in the practice of medical imaging technology, impeding or obstructing the proper making and filing of reports or records, or willfully failing to file the proper report or record; or
- (3) Disclosure of information in violation of state and federal law; or
- (4) Discrimination in the practice of medical imaging against any person on account of sex, race, religion, creed, color, or national origin; or
- (5) Repeatedly failing to abide by city, state, and federal regulations or laws pertaining to the practice of radiologic technology; or
- (6) Engaging in sexual harassment in the practice of medical imaging. "Sexual Harassment" is defined as deliberate or repeated comments or gestures of a sexual nature or touching of the sexual or other intimate parts of a person when the recipient states expressly or it can be reasonably inferred, that the comment, gesture or touching is unwanted by the recipient;
- (7) Failing to respond to inquiries by the Board;
- (8) Failing to cooperate in investigations conducted by the Board or a Temporary Peer Review Committee;
- (9) Failing to provide competent care to a patient. Competent care requires the technical knowledge, skill, thoroughness, and preparation reasonably necessary for the care;
- (10) Violation of ORS 688.405 to 688.605 or any rule of the Board;

(11) Failure to timely pay any civil penalty imposed by the Board;

(12) Violation of any order of the Board.

Stat. Auth: ORS 688.555(1)

Stats. Implemented: ORS 688.525(1)(b)

Hist.: BRT 1-2010, f. & cert. ef. 6-15-10

### **337-030-0005**

#### **Enforcement, Investigations and Inspections**

(1) Investigations

(a) Licensees must report violations of ORS 688.405 through 688.605 and OAR 337.

(b) Disciplinary issues concerning administrative matters (e.g., lapsed license, false information, etc.)

(c) Disciplinary issues concerning scope of practice and standards of practice

(2) OBMI may form temporary peer review committees (TPRC's) in the relevant modality or subspecialty to advise the board of appropriate action.

(3) TPRC's will consider disciplinary issues concerning scope of practice and standards of practice.

(4) Selection and appointment of TPRC's by OBMI

(a) Composition

(A) Two licensees holding similar credentials

(B) One physician experienced in applicable medical specialty and imaging modality

(C) One public OBMI member

(b) Authority TPRC's will make recommendations to the OBMI

(c) Responsibilities

(A) Review relevant medical information resulting from investigation

(B) If necessary, request additional information be provided

(d) OBMI to make final determination

(e) Privacy, Confidentiality, Discoverability of information from investigation, Temporary Peer Review Committee, or OBMI meetings Committee members must maintain confidentiality as provided by ORS 676.175

(f) Licensee compliance with investigation — Inspections. In addition to those requirements set out in ORS 688.595, licenses and permits shall be on file in the department in which the licensee or permit holder works

and shall be made available for inspection by the Radiation Protection Services (RPS), Department of Human Services, State of Oregon.

Stat. Auth.: ORS 688

Stats. Implemented:

Hist.: BRT 1-2010, f. & cert. ef. 6-15-10

### **337-030-0010**

#### **Imposition of Civil Penalties**

- (1) When a civil penalty is imposed it does not preclude the imposition of any other disciplinary sanction against the licensee or permittee.
- (2) The civil penalty shall be payable to the Board by cash, cashiers check, or money order.
- (3) Civil penalties shall be imposed per violation according to the following schedule in the absence of a finding of aggravating or mitigating circumstances:
  - (a) Practicing medical imaging without a current Oregon license or permit due to nonpayment of fees:
    - (A) Date license becomes void to six months, \$100;
    - (B) Six months to twelve months, \$200;
    - (C) One year to two years, \$500;
    - (D) Two years and up, \$1,000.
  - (b) Practicing medical imaging without a current Oregon license or permit, not related to nonpayment of fee - \$1,000;
  - (c) Unprofessional conduct by a licensee or permittee - \$1,000;
  - (d) Violation of ORS 688.405 to 688.605 or any rule of the Board of Medical Imaging unless otherwise provided in this schedule, \$1,000;
  - (e) Gross negligence in the practice of medical imaging, \$1,000;
  - (f) Employing an individual to practice medical imaging when the individual does not have a current, valid Oregon license or permit, \$1,000;
  - (g) Making a false statement to the Board, \$500;
  - (h) Practicing medical imaging outside the scope for which the license or permit is issued, \$500;
  - (i) Obtaining or attempting to obtain a license or permit or a renewal of a license or permit by false representation, \$500;
  - (j) Purporting to be a licensee or permittee when the person does not hold a valid license or permit, \$1,000;

(k) Practice medical imaging under a false or assumed name, \$500;

(l) Conviction of a crime where such crime bears a demonstrable relationship to the practice of medical imaging, \$1,000;

(m) Has undertaken to act as a medical imaging licensee independently of the supervision of a practitioner licensed by the State of Oregon to practice one of the healing arts, \$1,000.

(n) Employing or allowing an individual to practice medical imaging outside the scope of the license or LXMO permit, \$1,000;

(4) The Board must report to the appropriate credentialing organizations all Board disciplinary actions and all cases where the Board issues a conditional license.

Stat. Auth.: ORS 688.555(1)

Stats. Implemented: ORS 688.605(4)

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### **337-030-0015**

#### **Aggravation and Mitigation**

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose:

(1) Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

(2) Factors which may be considered as aggravating factors include:

(a) Prior disciplinary offenses;

(b) A pattern of misconduct;

(c) Multiple offenses;

(d) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(e) Submission of false evidence, false statement, or other deceptive practices during the disciplinary process;

(f) Refusal to acknowledge wrongful nature of conduct.

(3) Factors which may be considered mitigating factors include:

(a) Absence of a prior disciplinary record;

(b) Timely good faith effort to make restitution or to rectify consequences of misconduct;

(c) Full and free disclosure to disciplinary board or cooperative attitude toward proceeding;

(d) Physical or mental disability or impairment;

(e) Interim rehabilitation;

(f) Imposition of other penalties or sanctions.

Stat. Auth.: ORS 183.310(7) & 688.555(1)

Stats. Implemented:

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### **337-030-0020**

#### **Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases**

In addition to the notice requirements under the Attorney General's Model Rules of Procedure adopted under OAR 337-001-0005, the notice to parties in contested cases may include the statement that an answer to the assertions or charges will be required, and if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 337-010-0075 with the notice.

Stat. Auth.: ORS 688

Stats. Implemented:

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### **337-030-0025**

#### **Hearing Request and Answers: Consequences of Failure to Answer**

(1) A hearing request, and answer when required, shall be made in writing to the Board by the party or his attorney and an answer shall include the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(d) Evidence shall not be taken on any issue not raised in the notice and answer.

Stat. Auth.: ORS 688

Stats. Implemented:

Hist.: BRT 1-2010, f. & cert. ef. 6-15-10

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