

**OREGON ADMINISTRATIVE RULES
CHAPTER 331
DIVISION 001-030
August 15, 2011 EDITION**



OREGON HEALTH LICENSING AGENCY

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DIVISION 1
AGENCY PROCEDURAL RULES

331-001-0000

Notice of Proposed Rulemaking

- (1) Prior to the adoption, amendment or repeal of any rule, the Oregon Health Licensing Agency shall give notice of its intended action;
 - (a) In the manner established by rule adopted by the agency under ORS 183.341(4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;
 - (b) In the Secretary of State's bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;
 - (c) By delivery of notice to persons on the agency mailing list, at least 28 days before the effective date of the rule, pursuant to ORS 183.335;
 - (d) By delivery of notice to certain legislators, at least 49 days before the effective date of the rule, pursuant to ORS 183.335;
- (2) To the Associated Press and Capitol Building Press Room, and other members of the media who have requested notification;
- (3) To persons, organizations, or publications, where the agency determines that such persons, organizations, or publications, would have an interest in the subject matter of the proposal based on applicability to each agency program, board or council.
- (4) Delivery of notice of an intended action under subsection (1)(a), (c) and (d) of this section shall be in accordance with ORS 183.335(2)(e). Delivery of notice of an intended action under subsection (1)(b), (2) and (3) of this section may be provided by regular U.S. Postal Service mail, electronic mail, facsimile transmission, or other delivery of printed copy.
- (5) A copy of proposed rules and permanently filed rules shall be posted on the agency's Web site, and program mini-sites accessed at <http://www.oregon.gov/OHLA/index.shtml> and http://www.oregon.gov/OHLA/Laws_and_Rules.shtml.
- (6) Persons may obtain a printed copy of rules or related documents upon written request and payment of appropriate fee for copies of agency documents as specified in OAR 331-010-0030.
- (7) The agency may update the mailing list established pursuant to ORS 183.335(8) annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days of the date the agency sends the request, the agency will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, if the person provides a mailing address to which notice may be sent.

Stat. Auth.: ORS 183, 676.605, 676.615
Stats. Implemented: ORS 183, 676.605, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

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331-001-0010

Model Rules of Procedure

Pursuant to ORS 183.341, the Oregon Health Licensing Agency adopts the Model Rules of Procedures as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act as amended and effective January 1, 2008.

Stat. Auth.: ORS 183 & 676.605

Stats. Implemented: ORS 183 & 676.605

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-001-0020

Applicability of Agency Rules

The provisions of OAR 331-001-0000 through 331-030-0030 shall apply in the administration and regulation of all programs administered by the agency except as otherwise specifically provided.

Stat. Auth.: ORS 676.615, OL 2003, Ch. 547

Stats. Implemented: ORS 676.615, OL 2003, Ch. 547

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

DIVISION 10

AGENCY GENERAL ADMINISTRATION RULES

331-010-0000

Definitions

Unless the context requires otherwise, the following definitions shall apply to OAR Chapter 331.

- (1) "Agency" means the Oregon Health Licensing Agency.
- (2) "Authorization" means the official document, i.e. certificate, license, permit or registration, issued by the agency, for any program administered under ORS 676.606, as prima facie evidence of the right to practice in accordance with the laws and rules of the regulatory programs administered by the agency.
- (3) "Director" means, pursuant to ORS 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.
- (4) "Oregon Health Licensing Agency " means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of the Boards, Councils and Programs listed in ORS 676.606.
- (5) "Practitioner" means the individual issued a certificate, license, permit or registration by the agency who has received authorization within their defined field of practice.
- (6) "Program" means the office and staff designated to carry out the daily functions of the Body Piercing Licensing Program as defined in ORS 690.500 to 690.570; or as the context requires, "program" may also be used to refer to the collective boards, councils and programs administered by the agency.
- (7) "Regulatory authority" means a recognized governing body of a city, county, state or country that has been charged with the responsibility for overseeing the administration and regulation of an occupation or profession.

Stat. Auth.: ORS 676.615

Stats. Implemented: ORS 676.606, 676.615

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0010

Fees

- (1) Payments made to the Health Licensing Office should be made for the exact amount of the transaction.
- (2) Transactions conducted with the agency where either the payment or required documentation is incomplete or incorrect may be returned to the payer for correction before being processed by the agency.
- (3) Fees will be applied as directed by the applicant, authorization holder or payer. Fees misapplied may be corrected by written request specifying the certificate, license, permit or registration number(s) affected and the action requested, subject to conditions in OAR 331-010-0020(2).

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(4) Fees paid to the agency are not transferable between programs or from person-to-person where the applicant was eligible for service and service was rendered pursuant to application or transaction request submitted to the agency.

(5) Payments received by the agency without indication as to purpose or intent or as an amount of overpayment will first be applied toward any outstanding civil penalty balance or administrative processing fee owed.

(6) Fee schedules are published in the administrative rules for each Board, Council or Program administered by the agency.

(7) Dishonored Check or Electronic Payment. Pursuant to ORS 30.701, whenever a bank check, credit or debit transaction in payment of an obligation due for fees, penalties, copies of records or materials, or other services to the agency, is dishonored by the bank upon which the check is drawn, the applicant or authorization holder will be assessed and must pay an administrative processing fee in the amount of \$25. The agency may take any other disciplinary action against an authorization holder or payer and may seek other legal remedies in pursuing to effect collection of the returned items. If a check is returned for NSF or uncollected funds the agency will attempt to collect payment electronically.

Stat. Auth.: ORS 30.701, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100
Stats. Implemented: ORS 30.701, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0020

Refund of Payments

(1) The Oregon Health Licensing Agency will not refund any payment, which includes fees, penalties or other charges, unless the agency is in error. Information not known by the agency because the authorization holder or payer supplied the incorrect information is not considered an error.

(2) The agency will comply with ORS 291 and 293 and the Oregon Accounting Manual regarding administration of public funds pertaining to assessment of fees, charges and refunding monies.

(3) Application fees will not be refunded. The agency will retain the application fee if an applicant withdraws the application for a certificate, license, permit, or registration before the issuance of the authorization, or fails to complete the application process.

(4) The agency may refund fees paid for a scheduled examination on a case-by-case basis. In making its determination, the agency will consider an applicant's individual set of circumstances when the applicant fails to appear for a scheduled examination.

(5) The agency will not refund fees paid for agency scheduled diversion or infection control standards training if the applicant fails to appear and complete the prescribed training; however, the fees may be applied toward any civil fine imposed for violations of laws or rules.

(6) The agency shall determine, on a case-by-case basis, the individual set of circumstances noted in subsections (4) and (5) of this rule, such as a medical emergency, personal hardship or unforeseen event that impedes the individual from appearing for an agency-scheduled examination or training. The agency may request documentation from the individual to validate the circumstance cited and may refund the fees or reschedule an examination or training as appropriate.

Stat. Auth.: ORS 30.701, 293.445, 676.625
Stats. Implemented: ORS 30.701, 293.445, 676.625
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

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331-010-0030

Fees for Public Records and Publications

(1) All requests for copies of public records pertaining to the Oregon Health Licensing Agency, or any program it administers, shall be submitted in writing, electronic mail, or by completion of an electronic form provided by the agency. Requests are subject to disclosure according to the Public Records Law, ORS 192.410 to 192.505, and rules adopted thereunder.

(2) The agency may charge a fee reasonably calculated to reimburse the agency for costs of providing and conveying copies of public records. Fees shall not exceed the cost of locating, compiling, making available for inspection, preparing copy in paper, audio, computer disk, and delivering public records. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(3) The agency shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed \$25, the agency shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the agency to proceed with making the public records available.

(4) Charges to the general public shall be payable in cash, cashier's check, money order, or credit card. Payment by personal check for copies of official documents is not accepted.

(5) The agency shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the agency uses the services of an outside facility or contractor to photocopy requested records, the agency shall charge the actual costs incurred.

(a) "Page" refers to the number of copies produced. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy will be charged as two single pages.

(6) "Normal and reasonable" staff time is 20 minutes or less per request:

(a) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the agency's staff hourly rate.

(b) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to separate or remove exempt information or to supervise inspection of documents. The agency shall not charge for time spent in determining the application of the provisions of ORS 192.410 to 192.505.

(7) Charges for regular agency publications and media requests, such as computer disks, video cassettes, audio tapes or other types of public record formats, shall be available upon request and a price list shall be published on the agency Web site annually.

(8) The agency may charge individuals actual postage costs for mailing of records. When mailing voluminous records or responding to special requests, the agency shall charge for staff time required to prepare the records for mailing, in addition to actual postage.

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(9) The agency shall charge \$27 per hour, with a \$7.50 minimum, for staff time required to fill public record requests that require electronic reproduction. Charges include time spent locating, downloading, formatting, copying and transferring records to media. Charges for reproduction media are available upon request.

(10) Due to the threat of computer viruses, the agency will not permit individuals to provide diskettes for electronic reproduction of computer records.

Stat. Auth.: ORS 197.410 - 192.505, 676.625

Stats. Implemented: ORS 197.410 - 192.505, 676.625

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0040

Notification Requirements

Notification of a change in any authorization holder's licensing information must be submitted within 30 calendar days of the change to the agency by written notice given in person at the agency office, by regular U.S. Postal Service, facsimile transmission, Web-based interactive data collection or electronic mail. A change in information includes, but is not limited to the following:

(1) Authorization holders:

(a) Name -- first or last. Approved documentation is required, such as marriage certificate, divorce decree, court judgment documents, or other agency approved documentation;

(b) Residential or mailing address;

(c) Area code and telephone number;

(d) Employment status; or

(e) Work location.

(2) Facility license holders:

(a) Facility name or Assumed Business Name as filed with Secretary of State, Corporations Division under 648.007;

(b) Business telephone number, including area code;

(c) General hours of operation;

(d) Address change resulting from city or U.S. Postal Service action; or

(e) Closure or sale of business facility or practice.

(3) Independent contract registration holders:

(a) Facility name, physical address, telephone number and license number;

(b) General hours of operation;

(c) Changing permanent work location;

(d) Performing services at multiple licensed facilities on a permanent or temporary basis;

(e) Ceasing to operate as an independent contractor before expiration of the registration to avoid late renewal payment if reactivation may occur within one year of the expiration date.

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Stat. Auth.: ORS 676.615
Stats. Implemented: ORS 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0050

Authorization Holders; Military Leave

- (1) A practitioner authorized to practice under a program listed in ORS 676.606 is not required to renew the authorization or pay renewal fees while in active military service unless required by the authorization holders branch of the military.
- (2) To be restored to former authorization status the authorization holder must notify the agency in writing within 60 days of being honorably discharged.
- (3) No fees will be due until the following renewal period.
- (4) Requirements for completing continuing education hours during an authorization holder's active duty period shall be evaluated on a case by case basis.

DIVISION 20

AGENCY REGULATORY OPERATIONS RULES

331-020-0000

Contested Case Procedure

(1) Subject to the approval of the Attorney General, an officer or employee of the agency is authorized to appear on behalf of any Board, Council, or Program administered by the agency when the agency proposes to refuse to issue, renew, suspend, revoke, place on probation or impose a civil penalty on any applicant, licensee, registrant or other individual.

(2) The agency representative may not make legal argument on behalf of the agency:

(a) "*Legal argument*" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute, rule, and/or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "*Legal argument*" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

Stat. Auth.: ORS 183, OL 2003, m Ch. 547, Sec. 4
Stats. Implemented: ORS 183, OL 2003, m Ch. 547, Sec. 4
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0010

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

In addition to the requirements stated in OAR 137-003-0000 of the Attorney General's Model Rules of Procedure adopted under 331-001-0010, the notice to parties in contested cases may include a 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 331-020-0020 with the notice.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0020

Hearing Requests and Answers; Consequences of Failure to Answer

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

- (a) An admission or denial of each factual matter alleged in the notice; and
- (b) A short, concise 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 the answer.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0030

Inquiries; Filing a Complaint

(1) An individual may contact the Oregon Health Licensing Agency to inquire on the licensing record, status or employment of a person issued an authorization by the agency, or to comment on any issue concerning an individual regulated by the agency.

(2) Complaints against individuals practicing in one of the professions listed in ORS 676.606, may be filed with the agency. The complaint may be made on forms provided by the agency, which includes the following information:

- (a) The name, address and telephone number of the person making the complaint;
- (b) The name of the person or facility against which the complaint is being made;
- (c) A concise description of the charge against the person or facility listing the date, time and circumstances of the alleged violation; and
- (d) The signature of the person making the complaint.

Stat. Auth.: ORS 183, 676.605, 676.606
Stats. Implemented: ORS 183, 676.605, 676.606
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0040

Complaint Processing and Investigation

Pursuant to ORS 676.608, complaints filed with the Oregon Health Licensing Agency will be handled as follows:

- (1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.
- (2) The agency investigator(s):
 - (a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;
 - (b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular program;
 - (c) Will make recommendations for agency action.
- (3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with ORS 676.608.
- (4) As used in ORS 676.608(8), to "appear before the agency" includes: an investigative interview conducted under oath, under subpoena or otherwise compelled; an interview or hearing before a board, council, or subcommittee of a board or council; any depositions authorized by the agency; pre-hearing conferences; and contested case hearings. It does not include interrogatories, written admissions, other written communications, or voluntary communications.

Stat. Auth.: ORS 183, 676.605, 676.608, 676.615
Stats. Implemented: ORS 183, 676.605, 676.608, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0050

Response to Inquiry

Any person subject to a complaint involving conduct or service performed or provided may be required by the agency to respond. The person must respond to the agency within 20 calendar days from the date of the request, in the form and manner requested by the agency.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0060

Civil Penalty Considerations

- (1) Pursuant to ORS 676.992, any person who violates any provision of law or rules of a regulated profession administered by the Oregon Health Licensing Agency and listed in ORS 676.606, may incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$5,000 for each violation.

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(2) In establishing the amount of the penalty for each violation, the agency will consider and evaluate each case on an individual basis. The agency will consider, but not be limited to factors listed in ORS 676.992, in determining the amount of the penalty.

Stat. Auth.: ORS 676.615, 676.992
Stats. Implemented: ORS 676.615, 676.992
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0070

Discipline

(1) The Oregon Health Licensing Agency may discipline authorization holders for violations of laws and rules, in accordance with ORS 676.612 and 676.992.

(2) Failure to cooperate with the agency or its agent is unprofessional conduct and is subject to disciplinary sanctions, which may include suspension or revocation and refuse to issue or renew or place on probation and assessment of civil penalties. Failure to cooperate with the agency or its agent includes, but is not limited to, the following:

(a) Failing to provide information within the specified time allotted and as requested by the agency;

(b) Failing to temporarily surrender custody of original client records to the agency upon request, which includes treatment charts, models, health histories, billing documents, correspondence and memoranda;

(c) Interference, use of threats or harassment which delays or obstructs any person in providing evidence in any investigation, contested case, or other legal action instituted by the agency;

(d) Interference, use of threats or harassment which delays or obstructs the agency in carrying out its functions under individual programs administered and regulated by the agency as listed in ORS 676.606 and rules adopted thereunder; or

(e) Deceiving or attempting to deceive the agency regarding any matter under investigation including altering or destroying any records.

(3) The agency, at its discretion, may require supplemental training in an appropriate area of study as determined by the agency, board or council, as a disciplinary sanction. Supplemental training may be in addition to assessment of a monetary penalty or the agency, board or council may waive or reduce a penalty, in cases requiring supplemental training.

(4) As used in ORS 676.612(2)(j) incompetence means engaging in conduct which evidences a lack of ability or fitness to perform the holder's professional functions.

(5) As used in ORS 676.612(2)(j) negligence means engaging in conduct detrimental to the client.

Stat. Auth.: ORS 676.607, 676.612, 676.992
Stats. Implemented: ORS 676.607, 676.612, 676.992
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0080

Sanctions

(1) CHILD SUPPORT IN ARREARS: In accordance with ORS 25.750 to 25.783, the Oregon Health Licensing Agency will provide the Support Enforcement Division of the Department of Justice with authorization information which may be electronically cross-matched with Support Enforcement

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Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b), and/or (c).

(2) The agency will suspend the authorization, if the Support Enforcement Division or the district attorney identifies the authorization holder as being in arrears with respect to any judgment or order requiring the payment of child support and that the case is being enforced under the provisions of ORS 25.080.

(3) Pursuant to ORS 25.750 to 25.785, the agency will notify the authorization holder of the suspension status and refer the person to the Support Enforcement Division or the district attorney for resolution.

(4) Upon notification by the Support Enforcement Division or district attorney and receipt of a release notice that the conditions resulting in the suspension no longer exist, the agency will reinstate the authorization upon compliance with all qualifications for renewal or reactivation.

(5) **DEFAULT TAX FILING OR PAYMENT:** In accordance with ORS 305.385, upon request the agency will provide the Department of Revenue with authorization information to determine if the holder has neglected or refused to file any return or to pay any tax without filing a petition with the department as stated in ORS 305.385(4)(a).

(6) The agency will propose to take action against an authorization holder identified by the Department of Revenue. If the agency proposes to refuse to issue, renew or suspend an authorization, opportunity for hearing will be accorded as provided in ORS 183.413 to 183.470 for contested cases.

(7) Upon notification by the department and receipt of a notice of release issued by the department that the authorization holder is in good standing with respect to any returns due and taxes payable to the department as of the date of the notice of release, the agency will renew, reactivate or release from suspension the authorization upon compliance with any qualifications for renewal or reactivation.

Stat. Auth.: ORS 25.080, 25.750 - 25.785, 183.310 - 183.470, 305.385, 348.393 - 348.399, 676.606, 676.612, 676.615

Stats. Implemented: ORS 25.080, 25.750 - 25.783, 183.310 - 183.470, 305.385, 348.393 - 348.399, 676.612 Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; Renumbered from 331-030-0030, HLA 1-2009, f. & cert. ef. 6-1-09

DIVISION 30

CERTIFICATION, LICENSURE AND REGISTRATION REQUIREMENTS

331-030-0000

Application Requirements

(1) An applicant who has been the subject of any disciplinary action, including the imposition of a civil or criminal penalty, is not considered qualified for an Oregon authorization to practice until the Oregon Health Licensing Agency determines the scope, applicability and finality of the disciplinary action as it relates to the applicant's fitness to be issued an authorization to practice or use a professional title under a program listed in ORS 676.606. The disciplinary record may include, but not be limited to, actions imposed from the following:

- (a) An Oregon health professional regulatory board as defined in ORS 676.160;
- (b) A regulatory authority in Oregon or another state;
- (c) A regulatory authority in another country or territory.

(2) Pursuant to ORS 181.534, 676.612 and OAR 331-030-005, the agency may require an applicant to complete a fingerprint check through the Oregon Department of Oregon State Police. The agency may also conduct a criminal background check of convictions to determine whether the applicant has been convicted of a crime that may affect the applicant's fitness to practice in accordance with ORS 670.280.

(3) Material misrepresentation or material errors of fact on an application for or renewal of an authorization are grounds for disqualification of examination, refusal to issue or revocation of the authorization. Refer to ORS 676.612.

(4) Application for an authorization issued for any program administered by the agency under ORS 676.606 shall be made on forms prescribed and furnished by the agency.

(5) To be accepted and processed, an application must contain:

- (a) Applicant's current name, address and telephone number;
- (b) Applicant's date of birth;
- (c) Applicant's signature and date of application;
- (d) Applicant's Social Security or Individual Taxpayer Identification number.
- (e) Applicant's ethnicity (optional);
- (f) Applicant's gender (optional);
- (g) Disclosure of any active or inactive disciplinary action, voluntary resignation of a certificate, license, permit or registration or sanction related to authorization imposed upon the applicant by any state or country regulatory authority;
- (h) Disclosure of any active or inactive certificate, license, permit or registration issued by Oregon or another state;
- (i) Payment for the exact amount of required fees; and

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(j) All additional information required by the particular Board, Council or Program for which application is made.

(6) Applicants must list their Social Security or Individual Taxpayer Identification number on a form prescribed by the agency at the time of initial application and renewal for certification, licensure, permit or registration. The authority for this requirement is ORS 25.785, 305.385, 42 USC Sec. 405(c)(2)(C)(i), and 42 USC Sec. 666(a)(13).

(7) Failure to provide the Social Security or Individual Taxpayer Identification number will be a basis to refuse to accept the application or to issue an authorization. This information will be used for child support enforcement and tax administration purposes, unless the applicant authorizes other uses of the number. The authority for this requirement is ORS 25.785, 305.385, 42 USC § 405(c)(2)(C)(i), and 42 USC Sec. 666(a)(13).

(8) Upon request by the agency an applicant must provide two forms of acceptable original identification issued by a federal, state or local government agency of the United States. The agency will consider other forms of identification if the procedures used in issuing the identification are sufficient to prove the applicant's identity and the identification contains security features that are sufficient to prevent alteration or counterfeiting. Acceptable identification includes, but is not limited to:

(a) An original or certified copy of birth certificate issued by a U.S. Territorial government or the government of a state or political subdivision of a state of the United States. OHLA will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) United States passport, not expired more than five years.

(c) United States passport card, not expired more than five years.

(d) U.S. Territory passport not expired more than five years.

(e) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation if OHLA determines:

(A) The procedures used in issuing the card are sufficient to prove the applicant's identity; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(f) Certificate of Citizenship (N560 and N561).

(g) Certificate of Naturalization (N550, N570 and N578).

(h) U.S. Citizen Identification Card (I-197 and I-179).

(i) U.S. Military documents including:

(A) Military or Armed Forces ID card;

(B) Military Common Access Card; or

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1).

(j) Resident Alien card

(k) Permanent Resident card (I-551).

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- (l) Out-of-state, District of Columbia, U.S. Territorial government or, instruction permit or identification card, that contains the applicant's photograph, not expired more than one year unless hole-punched or marked "Not Valid as ID."
- (m) Valid Oregon driver license, temporary driver license, instruction permit, or identification card. For the purposes of this subsection, OHLA will not accept a driver license that was issued without a photograph.
- (n) Oregon Concealed Weapon Permit/Concealed Handgun License, not expired more than one year.
- (o) Social Security card or other documentation issued by the Social Security Administration.
- (9) OHLA will not accept a document as proof of identity and date of birth if OHLA has reason to believe the document is not valid. The agency may request an applicant present additional documentary proof of identity if the document presented does not establish the applicant's identity to the satisfaction of OHLA.
- (10) At least one form of identification provided from the approved list in subsection (8) of this rule must be photographic.

[Publications: Forms referenced are available from the agency.]

Stat. Auth.: ORS 25.785, 305.385, 42 USC Sec. 405(C)(2)(C)(i), and 42 USC Sec. 666(a)(13), 670.280, 676.605 & 676.615
Stats. Implemented: ORS 25.785, 305.385, 42 USC Sec. 405(C)(2)(C)(i), 42 USC Sec. 666(a)(13), 670.280, 676.605 & 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 12-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0004

Fingerprinting, State and Nationwide Criminal Background Checks, Fitness Determinations

(1) The Oregon Health Licensing Agency may conduct and require completion of a fingerprint and criminal background check to determine fitness of individuals applying for an authorization issued or renewed by the agency. These will be provided on prescribed forms provided by the agency. At the discretion of the agency, background checks may be conducted for any of the programs administered by the agency pursuant to ORS 676.606.

(2) Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the agency. The agency will forward fingerprints to the Department of Oregon State Police for checks against state and national data sources. Any original fingerprint cards will subsequently be destroyed by the department.

NOTE: An applicant must pay the department any fees assessed for conducting the fingerprint service. An applicant must arrange for the report of the fingerprint check to be mailed directly to the Oregon Health Licensing Agency, Regulatory Operations Division.

(3) These rules are to be applied when evaluating the criminal history of all licensees and applicants listed in paragraph (1) of this section, and conducting fitness determinations based upon such history. The fact that the applicant has cleared the criminal history check does not guarantee the granting of an authorization.

(4) Except as otherwise provided in section (1), in making the fitness determination the agency shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

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(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's right to practice in any present or proposed position, services, and employment, that is authorized upon the issuance or renewal of the certificate, license, permit or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, certificate, license, permit or registration. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime:

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(5) The agency may require fingerprints of any authorization holders or applicant listed in paragraph (1) of this section, who is the subject of a complaint or investigation, under authority of ORS 676.612(3)(c), for the purpose of requesting a state or nationwide criminal records background check.

(6) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) Additional information required. In order to conduct the Oregon and national criminal history check and fitness determination, the agency may require additional information from the authorization holder or applicant as necessary. Information requested may include but is not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) All Oregon and national criminal history checks, confidentiality, and dissemination of information received, shall be in accordance to and as applicable with ORS 181.534 through 181.560 and OAR 257, division 10.

(9) The agency will permit the individual for whom a fingerprint-based criminal records check was conducted, to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) The agency shall determine whether an individual is fit to be granted, hold or renew an authorization, listed in paragraph (1) of this section, based on the criminal records background check, or any false statements made by the individual regarding criminal history of the individual, or any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as a part of an investigation. If an individual is determined to be unfit, then the individual may not be granted an authorization. The agency may make fitness determinations conditional upon applicant's acceptance of probation, conditions, or limitations, or other restrictions placed upon the authorization.

(11) The agency may also consider any arrests and court records that may be indicative of a person's inability to perform as an authorization holder with care and safety to the public.

(12) If the agency determines an applicant or authorization holder is unfit, the individual is entitled to a contested case process pursuant to ORS 183. Challenges to the accuracy or completeness of

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information provided by the Oregon State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(13) If the applicant discontinues the application process or fails to cooperate with the criminal history background check the agency considers the application incomplete.

Stat. Auth.: ORS 25.785, 305.385, 42 USC Sec. 405(C)(2)(C)(i), 42 USC Sec. 666(a)(13), 670.280, 676.605 & 676.615
Stats. Implemented: ORS 25.785, 305.385, 42 USC Sec. 405(C)(2)(C)(i), 42 USC Sec. 666(a)(13), 670.280, 676.605 & 676.615
Hist.: HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0010

Procedure for Issuing and Renewing Certificates, Licenses and Registrations

(1) Subject to ORS 676.612, authorizations issued by the Oregon Health Licensing Agency will be issued to qualified applicants after conducting fitness determinations and upon compliance with all requirements established by rules adopted by the agency.

(2) With the exception of temporary or demonstration permits, all authorizations will expire on the last day of the month, two years from the date the authorization was issued.

(3) The authorization will state the holder's name, address, authorization number, expiration date and bear the signature of the holder. The authorization will be mailed to the place of residence or mailing address recorded on the application and may be substantiated through acceptable identification listed in OAR 331-030-0000.

(4) The agency may mail notice of expiration to the authorization holder, sending the notice to the last known address on file. The authorization holder is responsible for submitting a timely application for renewal whether or not a renewal form was mailed by the agency.

(5) Application for renewal shall be made in advance of the expiration date, and shall be submitted together with the required fee(s) and documentation, as the individual program stipulates for renewal. Payment must be postmarked or received by the agency during regular business hours on or before the expiration date. An authorization may be renewed using the agency's online renewal system accessed at <http://www.oregon.gov/OHLA/onlinerenewals.shtml>.

(6) An application for renewal and payment received by the agency or postmarked after the expiration date may be assessed delinquent renewal fee(s) according to requirements stipulated in each individual program's rules for certificate, license or registration renewal.

(7) Notwithstanding subsection (1) of this rule, the agency may vary the renewal date of an authorization by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

Stat. Auth.: ORS 676.605 & 676.615
Stats. Implemented: ORS 676.605 & 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 12-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0020

Authorization; Duplicates

(1) An individual shall not display a sign or in any way advertise or purport to be an authorization holder or to be engaged in practice, or use a professional title, without first obtaining an authorization in the manner required according to statute and rules of a program administered by the Oregon Health Licensing Agency under ORS 676.606.

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- (2) The agency shall issue only one original authorization.
- (3) The possession or posting of more than one of the same current authorization (original or replacement) is prohibited.
- (4) All authorization holders must have immediate access to photographic identification as listed in OAR 331-030-0000 whenever performing services or open for business. Authorization holders must provide agency representatives with the appropriate identification immediately upon request.
- (5) If for any reason a person is mistakenly issued a document that contains a material error and superseded by a corrected document, the agency has the authority to demand surrender of the incorrect authorization document issued by the agency. The individual must surrender the document requested within the time determined by the agency.
- (6) The agency may issue a replacement authorization document, if:
 - (a) A written request for a replacement is submitted to the agency which contains the authorization holder's name, authorization number, address, telephone number, employment information, and a statement attesting that the original authorization has been lost, stolen or destroyed;
 - (b) The authorization is valid, current and not expired, suspended or revoked;
 - (c) Payment of the replacement fee accompanies the request;
 - (d) The authorization holder is not subject to any outstanding civil penalties or other disciplinary action.

Stat. Auth.: ORS 675.410, 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805 & 700.020
Stats. Implemented: ORS 675.410, 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805 & 700.020
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0025

Emergency Response

Practice in Oregon by out-of-state authorization holders in the event of an emergency:

- (1) In the event of a disaster or emergency declared by the Governor of Oregon, the Oregon Health Licensing Agency shall allow authorization holders who are licensed in another state, performing services in a field of professional practice regulated by the agency under ORS 676.606, to practice in Oregon under special provisions during the period of the declared disaster or emergency, subject to such limitations and conditions as the Governor may prescribe.
- (2) The out-of-state authorization holder must submit the following information to the agency:
 - (a) Verification of a permanent, current, and unrestricted authorization to practice in another state which is not the subject of a pending investigation or disciplinary action by a state board, or another state or federal agency; and
 - (b) Current federal or state photo identification, i.e., driver license or passport.
- (3) The authorization holder shall provide the agency documentation demonstrating a request to provide services by an agency recognized public health organization, Emergency Medical Service (EMS) agency, county, state or federal entity, or has otherwise made arrangements to provide services within the practitioner's scope of professional practice in Oregon as the result of the declaration of a disaster or emergency.

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(4) The authorization holder may not practice in Oregon under the special disaster or emergency provisions beyond the termination date of the declared disaster or emergency as prescribed by the Governor. Practice in Oregon beyond the termination date of the declared disaster or emergency requires licensure through the Oregon Health Licensing Agency.

Stat. Auth.: ORS 676.606, 676.612 & 676.615
Stats. Implemented: ORS 676.606, 676.612 & 676.615
Hist.: HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0030 [Renumbered to **331-020-0080**]

331-030-0040

Affidavit of Licensure

(1) "Affidavit of Licensure" means an original document or other approved means of verifying an authorization to practice (certification, licensure or registration) status and history, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. Affidavit of Licensure may be requested from other regulatory authorities or from the Oregon Health Licensing Agency:

(2) For the purpose of this rule regulatory authority means:

(a) An Oregon health professional regulatory board as defined in ORS 676.160

(b) A regulatory authority in Oregon or another state;

(c) A regulatory authority in another country or territory.

Outgoing Affidavit of Licensure

(3) An applicant may request an affidavit of licensure be sent from the Oregon Health Licensing Agency for programs listed under ORS 676.606 to another regulatory authority or individual designated on the application. The following must be submitted to the agency:

(a) An application on a form prescribed by the agency;

(b) Two forms of identification listed in OAR 331-030-0000 (8); at least one must be photographic;

(c) Photocopies of identification listed in subsection (b) of this section must be submitted with the application if request is made through the mail; the photocopy must be legible; and

(d) The agency may require that an applicant present additional proof of identity pursuant to OAR 331-030-0000 (9).

Incoming Affidavit of Licensure

(4) An applicant applying for an authorization from a program listed under ORS 676.606 must arrange for the originating regulatory authority to forward directly to the agency a current and original "Affidavit of Licensure" signed by an authorized representative of the regulatory authority and affixed with an official seal or stamp to the affidavit of licensure. The applicant is responsible for payment of any fee the originating regulatory authority may assess for producing the affidavit of licensure.

(5) The agency may verify an applicant's authorization to practice and determine an applicant's qualifications and fitness to practice in a program administered under ORS 676.606 by the following:

(a) An affidavit of licensure may be obtained by accessing the regulatory authority's Web site by using an online verification system. The agency may assess a fee for obtaining affidavit of licensure.

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(b) An affidavit of licensure may be electronically transmitted to the agency from the regulatory authority. The applicant is responsible for payment of any fee the originating regulatory authority may assess for producing the affidavit of licensure.

(c) An affidavit of licensure document hand delivered or mailed by the applicant and not mailed directly or transmitted through an approved means to the agency from the regulatory authority will invalidate qualification for authorization to practice, scheduling, and examination.

NOTE: The Affidavit of Licensure may be referred to as a "Verification of Licensure", "License Verification", "Certification of Licensure" or "License Certification" by other regulatory authorities. These terms have the same purpose in disclosing an applicant's licensing status and history.

Stat. Auth.: ORS 676.606, 676.612 & 676.615

Stats. Implemented: ORS 676.606, 676.612 & 676.615

Hist.: HLA 1-2009, f. & cert. ef. 6-1-09; HLA 5-2010(Temp), f. 7-23-10, cert. ef 7-26-10 thru 1-15-11

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