

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on **April 10, 2009** by the
Date prior to or same as filing date

Oregon Medical Board, Licensing Department
Agency and Division

OAR Chapter 847
Administrative Rules Chapter Number

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to become effective **UPON FILING.** Rulemaking Notice was published in the **December 1, 2008** *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULE CAPTION

Expands definition of Unprofessional Misconduct; expands list of behaviors that constitute Sexual Misconduct

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.

ADOPT:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: OAR 847-010-0073

REPEAL:

RENUMBER:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 677.190, 677.265
Stat. Auth. Other Authority

ORS 677.188, 677.190, 677.265, 677.415
Stats. Implemented

RULE SUMMARY

The proposed rule change expands the definition of Unprofessional Conduct, and also expands the list of behaviors that constitute Sexual Misconduct

Authorized Signer **Kathleen Haley, Executive Director** 4/24/09
Printed name Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
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OREGON ADMINISTRATIVE RULES

CHAPTER 847, DIVISION 010 – OREGON MEDICAL BOARD

PUBLIC HEARING – JANUARY 16, 2009

Proposed rule expands the definition of Unprofessional Conduct, and also expands the list of behaviors that constitute Sexual Misconduct.

OAR 847-010-0073

Reporting Incompetent or Impaired Licensees to the Board

~~[(1) ORS 677.415 requires health care facilities and Board licensees to report to the Board of Medical Examiners any official action, incident or event taken against or involving a Board licensee, based on a finding of medical incompetence, unprofessional conduct, or licensee impairment, within ten working days of their occurrence. For the purposes of the statute, the terms medical incompetence, unprofessional conduct, and impaired licensee have the following meanings:]~~

(1) Per ORS 677.415, 677.188, and 677.190 Board licensees and health care facilities must report to the Board as soon as possible, but not later than ten (10) days after official action taken against a Board licensee, to include any of the following:

(a) The licensee must report any arrest, citation or conviction for driving under the influence of intoxicants or reckless driving that is related to the use of an intoxicant;

(b) The licensee must report any arrest or conviction for a felony violation for criminal conduct;

(c) The licensee and health care facility must report any action brought against a licensee by the facility, based upon a finding of medical incompetence, unprofessional conduct or licensee impairment.

(2) For purposes of the statute, reporting to the Board means making a report to the Board's Investigation Unit or the Board's Executive Director or the Board's Medical Director. Making

a report to the Board's Health Professionals Program (HPP) or HPP's Medical Director does not satisfy the duty to report to the Board.

(3) For the purposes of the statute, the terms medical incompetence, unprofessional conduct, and impaired licensee have the following meanings:

(a) Medical Incompetence: A licensee who is medically incompetent is one who is unable to practice medicine with reasonable skill or safety due to lack of knowledge, ability, or impairment.

Evidence of medical incompetence shall include:

(A) Gross or repeated acts of negligence involving patient care.

(B) Failure to achieve a passing score or satisfactory rating on a competency examination or program of evaluation when the examination or evaluation is ordered or directed by a health care facility.

(C) Failure to complete a course or program of remedial education when ordered or directed to do so by a health care facility.

(b) Unprofessional conduct: Unprofessional conduct includes the behavior described in ORS 677.188 (4) and is conduct which is unbecoming to a person licensed by the Oregon Medical Board or detrimental to the best interest of the public and includes:

(A) Any conduct or practice contrary to recognized standards of ethics of the medical, podiatric or acupuncture professions or any conduct which does or might constitute a danger to the public, to include a violation of patient boundaries.

(B) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards.

(C) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies, administration of unnecessary treatment, employment of outmoded, unproved, or unscientific treatments, except as allowed in ORS 677.190 (1)(b), failing to obtain consultations when failing to

do so is not consistent with the standard of care, or otherwise utilizing medical service for diagnosis or treatment which is or may be considered unnecessary or inappropriate.

(D) Committing fraud in the performance of, or the billing for, medical procedures.

(E) Engaging in repeated instances of disruptive behavior in the health care setting that could adversely affect the delivery of health care to patients.

(F) Any conduct related to the practice of medicine that poses a danger to the public health or safety.

~~(E)~~ **(G)** Sexual misconduct: Licensee sexual misconduct is behavior that exploits the licensee-patient relationship in a sexual way. The behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes but is not limited to:

(I) Sexual violation: Licensee-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including but not limited to:

(i) Sexual intercourse

(ii) Genital to genital contact

(iii) Oral to genital contact

(iv) Oral to anal contact

(v) Genital to anal contact

(vi) Kissing in a romantic or sexual manner

(vii) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent

(viii) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present

(ix) Offering to provide practice-related services, such as medications, in exchange for sexual favors

(II) Sexual impropriety: Behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient **or their family or associates, to include:**

(i) Sexually exploitative behavior, to include taking, transmitting, viewing, or in any way using photos or any other image of a patient, their family or associates for the prurient interest of others.

(ii) Intentional viewing in the health care setting of any sexually explicit conduct for prurient interests.

(iii) Having any involvement with child pornography, which is defined as any visual depiction of a minor (a child younger than 18) engaged in sexually explicit conduct.

(c) Licensee Impairment: A licensee who is impaired is a licensee who is unable to practice medicine with reasonable skill or safety due to factors which include, but are not limited to:

(A) The use or abuse of alcohol, drugs, or other substances which impair ability.

(B) Mental or emotional illness.

(C) Physical deterioration or long term illness or injury which adversely affects cognition, motor, or perceptive skills.

~~[(2)]~~ **(4)** For the purposes of the reporting requirements of this rule and ORS 677.415, licensees shall be considered to be impaired if they refuse to undergo an evaluation for mental or physical competence or chemical impairment, or if they resign their privileges to avoid such an evaluation, when the evaluation is ordered or directed by a health care facility or by this Board.

~~[(3)]~~ **(5)** A report made by a board licensee or the Oregon Medical Association or other health professional association, to include the Osteopathic Physicians and Surgeons of Oregon, Inc, or the Oregon Podiatric Medical Association to the Oregon Medical Board under ORS 677.415 shall include the following information:

(a) The name, title, address and telephone number of the person making the report;

(b) The information that appears to show that a licensee is or may be medically incompetent, is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with an impairment.

~~[(4)]~~ **(6)** A report made by a health care facility to the Board under ORS 677.415 (5) and (6) shall include:

(a) The name, title, address and telephone number of the health care facility making the report;

(b) The date of an official action taken against the licensee or the licensee's voluntary action withdrawing from practice, voluntary resignation or voluntary limitation of licensee staff privileges; and

(c) A description of the official action or the licensee's voluntary action, as appropriate to the report, including:

(A) The specific restriction, limitation, suspension, loss or denial of the licensee's medical staff privileges and the effective date or term of the restriction, limitation, suspension, loss or denial; or

(B) The fact that the licensee has voluntarily withdrawn from the practice of medicine or podiatry, voluntarily resigned from the staff of a health care facility or voluntarily limited the licensee's privileges at a health care facility and the effective date of the withdrawal, resignation or limitation.

~~[(5)]~~ **(7)** A report made under ORS 677.415 Section 2 may not include any information that is privileged peer review data, *see* ORS 41.675.

~~[(6)]~~ **(8)** All required reports shall be made in writing.

~~[(7)]~~ **(9)** Any person who reports or provides information to the board under ORS 677.205 and 677.410 to 677.425 and who provides information in good faith shall not be subject to an action for civil damages as a result thereof.