

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Medical Board, Licensing Department	OAR Chapter 847	
Agency and Division	Administrative Rules Chapter Number	
Malar Ratnathicam	1500 SW 1st Ave., #620, Portland, OR 97201	971-673-2713
Rules Coordinator	Address	Telephone

RULE CAPTION

[Amend reporting rule per HB 2059 \(2009\)](#)

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: [OAR 847-010-0073](#)

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: [ORS 677.265, House Bill 2059 \(2009\)](#)

Other Auth.:

Stats. Implemented: [ORS 677.190, 677.265, House Bill 2059 \(2009\)](#)

RULE SUMMARY

[The proposed rule amendments are in response to House Bill 2059 \(2009\). Amendments require report to Board by licensee of any arrest for a felony crime or any conviction for a misdemeanor or felony and report to other health care licensing boards if licensee believes another state licensed health care professional has engaged in prohibited or unprofessional conduct and is not otherwise protected by state or federal laws relating to confidentiality or protection of health care information prohibiting disclosure.](#)

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

[12/28/09](#)

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Kathleen Haley, Executive Director	10/20/09
Signature	Date
	Printed name

*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Medical Board, Licensing Department

OAR Chapter 847

Agency and Division

Administrative Rules Chapter Number

Amend reporting rule per HB 2059 (2009)

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: **OAR 847, Division 010, the proposed rule amendments are in response to House Bill 2059 (2009). Amendments require report to Board by licensee of any arrest for a felony crime or any conviction for a misdemeanor or felony and report to other health care licensing boards if licensee believes another state licensed health care professional has engaged in prohibited or unprofessional conduct and is not otherwise protected by state or federal laws relating to confidentiality or protection of health care information prohibiting disclosure.**

Statutory Authority: **ORS 677.265, House Bill 2059 (2009)**

Other Authority:

Stats. Implemented: **ORS 677.190, 677.265, House Bill 2059 (2009)**

Need for the Rule(s): **The proposed rule amendments are needed to make the Board's rules consistent with House Bill 2059 (2009).**

Documents Relied Upon, and where they are available: **OAR Chapter 847, and ORS 677, Medical Practice Act; available at Board office or at http://arcweb.sos.state.or.us/rules/OARS_800/OAR_847/847_tofc.html and <http://www.leg.state.or.us/ors/677.html>. House Bill 2059 (2009) available at Board office or at <http://www.leg.state.or.us/09reg/measpdf/hb2000.dir/hb2059.en.pdf>.**

Fiscal and Economic Impact: **There is minimal anticipated fiscal impact of the proposed rule amendments.**

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): **Other health care boards who receive reports on their licensees will be required to keep record of such per established statutes and rules.**
2. Cost of compliance effect on small business (ORS 183.336): **Licensees, who may represent small businesses such as health care clinics, should incur minimal to no costs associated with the reports required by the rule amendments.**
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: **There are hundreds of medical and health care clinics.**
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: **The rule amendments do not require recordkeeping by the licensee.**
 - c. Equipment, supplies, labor and increased administration required for compliance: **None anticipated for small businesses.**

How were small businesses involved in the development of this rule? **Members of the Administrative Affairs Committee who were consulted in the development of the rule represent small businesses.**

Administrative Rule Advisory Committee consulted?: **Yes, the Administrative Affairs Committee on September 9, 2009. The rules were reviewed by the Board at its quarterly meeting on October 9, 2009.**

	Kathleen Haley, Executive Director	10/20/09
Signature	Printed name	Date

OREGON ADMINISTRATIVE RULES
CHAPTER 847, DIVISION 010 – OREGON MEDICAL BOARD
PROPOSED RULES CHANGES
FIRST REVIEW – OCTOBER 2009

Proposed changes are in response to HB 2059 (2009).

OAR 847-010-0073

Reporting Incompetent or Impaired Licensees to the Board

(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;]~~

(b) The licensee must report any arrest for a felony crime or any conviction for a misdemeanor or felony.

(c) If the licensee has reasonable cause to believe that another state licensed health care professional has engaged in prohibited or unprofessional conduct and is not protected by state or federal laws relating to confidentiality or protection of health care information prohibiting disclosure, licensee shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct.

~~[(e)]~~ **(d)** 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 Board of Medical Examiners 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.

(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.

(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.

(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 Board of Medical Examiners 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.

(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.

(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.

(8) All required reports shall be made in writing.

(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.