

**TO:** ALL INTERESTED PARTIES

**FROM:** HOLLY MERCER  
EXECUTIVE DIRECTOR

**DATE:** October 22, 2009

**SUBJECT: ADMINISTRATIVE RULEMAKING HEARING REGARDING THE ADOPTION OF THE AMENDMENTS TO ADMINISTRATIVE RULES OAR 851-063-0090, (RULES THAT WILL CLARIFY CONDUCT UNBECOMING FOR NURSING ASSISTANTS AND MEDICATION AIDES RELATED TO DISCLOSING THE CONTENTS OF THE NURSING ASSISTANT OR MEDICATION AIDE STATE CERTIFICATION EXAMINATION).**

**On Thursday, November 19, 2009 at 9:00 a.m.**, the Oregon State Board of Nursing will hold a hearing regarding the adoption of amendments to administrative rules OAR 851-063-0035 (rules that will clarify conduct unbecoming for nursing assistants and medication aides related to disclosing the contents of nursing assistant or medication aide state certification examination). This hearing will be held in the conference room of the Oregon State Board of Nursing, 17938 S.W. Upper Boones Ferry Road, Portland, Oregon.

Attached is a copy of the Notice of Proposed Rulemaking for this hearing. The Board is authorized by ORS 678.440 and 678.442 to establish and amend such rules.

If you are unable to attend the hearing, you may submit your comments to me in writing by November 17, 2009 and I will see that they are incorporated into the testimony received at the hearing and considered by the Board at their November 19, 2009 meeting.

The Board looks forward to receiving your input.



Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon State Board of Nursing  
Agency and Division

851  
Administrative Rules Chapter Number

**In the Matter of:** OAR 851-063-0090

Rule Changes Clarify Conduct Unbecoming for Nursing Assistants and Medication Aides.

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

**Statutory Authority:** ORS 678.440, 442

**Other Authority:**

**Stats. Implemented:** ORS 678.440, 442, 444

**Need for the Rule(s):** The Division 63 rule language related to conduct unbecoming for disclosing the contents of the nursing assistant or medication aide state certification examination lacked clarity.

**Documents Relied Upon, and where they are available:**

- ◆ Division 63, Nurse Practice Act

**Fiscal and Economic Impact, including Statement of Cost of Compliance:**

There is no anticipated fiscal or economic impact through this action.

**How were small businesses involved in the development of this rule?** – Not applicable.

**Administrative Rule Advisory Committee consulted?:** No.

**If not, why?:** An e-mail was sent to a CNA stakeholder group that includes Oregon Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistants working in a wide variety of practice settings.

\_\_\_\_\_  
Authorized Signer

KC Cotton  
Printed name

\_\_\_\_\_  
Date

# ***DRAFT***

**Bolded and underlined material is proposed to be added.**  
~~[Bracketed and strikethrough material is proposed to be deleted.]~~

**To submit comments concerning these draft rules, e-mail comments to: Debra Buck, NA Program Consultant, at [debra.buck@state.or.us](mailto:debra.buck@state.or.us)**

## **DIVISION 63**

# **Standards and Authorized Duties for Certified Nursing Assistants and Certified Medication Aides**

### **Conduct Unbecoming a Nursing Assistant 851-063-0090**

A CNA, regardless of job location, responsibilities, or use of the title "CNA," who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes but is not limited to:

- (1) Conduct related to the client's safety and integrity:
  - (a) Leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;
  - (b) Failing to report to proper authorities information regarding incompetent, unethical or illegal practice of any health care provider;
  - (c) Failing to respect client rights and dignity regardless of social or economic status, personal attributes or nature of health problems or disability;
  - (d) Failing to report actual or suspected incidents of client abuse; or
  - (e) Engaging in sexual misconduct related to the client or to the workplace.
- (2) Conduct related to other federal or state statutes/rule violations:
  - (a) Knowingly aiding, abetting or assisting an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of health care providers;
  - (b) Violating the rights of privacy, confidentiality of information or knowledge concerning the client, unless required by law to disclose such information;
  - (c) Discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin or disability;
  - (d) Abusing a client. The definition of abuse includes but is not limited to intentionally causing physical harm or discomfort, striking a client, intimidating, threatening or harassing a client;
  - (e) Neglecting a client. The definition of neglect includes but is not limited to unreasonably allowing a client to be in physical discomfort or be injured;
  - (f) Engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client such as using derogatory names or gestures or profane language;
  - (g) Using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;
  - (h) Possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; or
  - (i) Removing or attempting to remove drugs, supplies, property or money from the workplace without authorization.
- (3) Conduct related to communication:

# ***DRAFT***

**Bolded and underlined material is proposed to be added.**  
~~[Bracketed and strikethrough material is proposed to be deleted.]~~

- (a) Inaccurate recordkeeping in client or agency records;
  - (b) Incomplete recordkeeping regarding client care; including but not limited to failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;
  - (c) Falsifying a client or agency record; including but not limited to filling in someone else's omissions, signing someone else's name, recording care not given, fabricating data/values;
  - (d) Altering a client or agency record; including but not limited to changing words/letters/numbers from the original document to mislead the reader of the record, adding to the record after the original time/date without indicating a late entry;
  - (e) Destroying a client or agency record;
  - (f) Failing to maintain client records in a timely manner which accurately reflects management of client care, including failure to make a late entry within a reasonable time period; or
  - (g) Failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.
- (4) Conduct related to the client's family:
- (a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin;
  - (b) Using the CNA client relationship to exploit the family for the CNA's personal gain or for any other reason;
  - (c) Stealing money, property, services or supplies from the family; or
  - (d) Soliciting or borrowing money, materials or property from the family.
- (5) Conduct related to co-workers: violent, abusive, threatening, harassing or intimidating behavior towards a co-worker which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.
- (6) Conduct related to achieving and maintaining clinical competency:
- (a) Failing to competently perform the duties of a nursing assistant;
  - (b) Performing acts beyond the authorized duties for which the individual is certified; or
  - (c) Assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency has not been established or maintained.
- (7) Conduct related to impaired function:
- (a) Using intoxicants, prescription, over the counter or controlled drugs to an extent or in a manner injurious to the nursing assistant or others or to the extent that such use impairs the ability to conduct safely the duties of a nursing assistant; or
  - (b) Having a physical or mental condition that makes the nursing assistant unable to perform safely the duties of a nursing assistant.
- (8) Conduct related to certificate violations:
- (a) Providing, selling, applying for or attempting to procure a certificate by willful fraud or misrepresentation;
  - (b) Functioning as a medication assistant without current certification as a medication assistant;
  - (c) Altering a certificate of completion of training and/or nursing assistant certification issued by the Board;
  - (d) Disclosing contents of the ~~[nursing—assistant]~~ competency examination **or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;**
  - (e) Allowing another person to use one's nursing assistant certificate for any purpose;
  - (f) Using another's nursing assistant certificate for any purpose; or
  - (g) Representing oneself as a CNA without current, valid CNA certification.

# ***DRAFT***

**Bolded and underlined material is proposed to be added.**  
~~[Bracketed and strikethrough material is proposed to be deleted.]~~

- (9) Conduct related to the certificate holder's relationship with the Board:
- (a) Failing to cooperate with the Board during the course of an investigation. The duty to cooperate does not include waiver of confidentiality privileges, except if a client is harmed. This waiver of confidentiality privileges does not apply to client-attorney privilege.
  - (b) Failing to answer truthfully and completely any question asked by the Board on an application for initial certification, renewal of certification or recertification;
  - (c) Failing to provide the Board with any documents requested by the Board; or
  - (d) Violating the terms and conditions of a Board order.

**Stat. Auth: ORS 678.442**

**Stats. Implemented: ORS 678.442**

## **Conduct Unbecoming a Certified Medication Aide**

### **851-063-0100**

Certified Medication Aides are subject to discipline as CNAs as described in these rules. In addition, CMAs are subject to discipline for conduct unbecoming a medication aide. Conduct unbecoming a medication aide includes but is not limited to:

- (1) Failing to administer medications as ordered by a health care professional authorized to independently diagnose and treat;
- (2) Failing to document medications as administered, medications withheld or refused and the reason a medication was withheld or refused.
- (3) Altering/falsifying medication administration record;
- (4) Altering/falsifying CNA or CMA certificate;
- (5) Diverting drugs for use by self or others;
- (6) Accepting a verbal order or telephone order for medication from a licensed health care professional who is authorized to independently diagnose and treat, except as allowed in authorized duties;
- (7) Performing acts beyond the authorized duties for which the individual is certified;
- (8) Working as a CMA without CMA Certification;
- (9) Performing client care tasks other than authorized in these rules;
- (10) Representing oneself as a CMA without current CMA certification; or
- (11) Failing to conform to the standards and authorized duties in these rules.

**Stat. Auth: ORS 678.442**

**Stats. Implemented: ORS 678.442**