

Division 70

Health Professionals' Services Program

851-070-0000

Purpose, Intent and Scope

The Board believes that licensees who develop substance use disorders, mental health disorders, or both disorders can, with appropriate treatment, be assisted with recovery and return to the practice of nursing. It is the intent of the Board that a licensee with a substance use disorder, a mental health disorder or both types of disorders may have the opportunity to enter the Health Professionals' Services Program (HPSP). Participation in the Health Professionals' Services Program does not shield the licensee from disciplinary action.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0005

Definitions

The following definitions apply to OAR chapter 851, division 070, except as otherwise stated in the definition:

- (1) "Abstinence" means the avoidance of all intoxicating substances, including but not limited to prescription or over-the-counter drugs with a potential for abuse or dependence;
- (2) "Assessment or evaluation" means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.
- (3) "Board" means the Oregon State Board of Nursing.
- (4) "Business day" means Monday through Friday, except legal holidays as defined in ORS 187.010 (or ORS 187.020).
- (5) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate reason for services.
- (6) "Division" means the Department of Human Services, Addictions and Mental Health Division.
- (7) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, commonly referred to as DSM-IV-TR published by the American Psychiatric Association.
- (8) "Federal regulations" means:
 - (a) As used in ORS 676.190(1)(f)(D), a "positive toxicology test result as determined by federal regulations pertaining to drug testing" means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance.
 - (b) As used in ORS 676.190(4)(i), requiring a "licensee to submit to random drug or alcohol testing in accordance with federal regulations" means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees' unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each

time selections are made, as described in 40 CFR § 199.105(c)(5) (2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 40 CFR § 199.105(c)(7) (2009).

- (9) "Fitness to practice evaluation" means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee's health practice.
- (10) "Final enrollment" means a self-referred licensee has provided all documentation required by OAR 851-070-0040 and has met all eligibility requirements to participate in the HPSP.
- (11) "Independent third-party evaluator" means an individual who is approved by a licensee's Board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders or co-occurring disorders.
- (12) "Individual service record" means the official permanent HPSP documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the HPSP to demonstrate compliance with these rules.
- (13) "Licensee" means a licensed practical nurse, registered nurse, or advanced practice registered nurse who is licensed or certified by the Oregon State Board of Nursing.
- (14) "Mental health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. "Mental health disorder" includes gambling disorders.
- (15) "Monitoring agreement" means an individualized agreement between a licensee and the vendor that meets the requirements for a diversion agreement set by ORS 676.190.
- (16) "Monitoring Entity" means an independent third-party that monitors licensees' HPSP enrollment status and monitoring agreement compliance.
- (17) "Non-treatment compliance monitoring" means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee's compliance with the monitoring agreement.
- (18) "Nurse Monitoring Program" (NMP) refers to the alternative to the Board of Nursing's discipline program prior to July 1, 2010.
- (19) "Self-referred licensee" means a licensee who seeks to participate in the program without a referral from the board.
- (20) "Peer" means another licensee currently enrolled in the program.
- (21) "Provisional enrollment" means temporary enrollment, pending verification that a self-referred licensee meets all HPSP eligibility criteria.
- (22) "Substance use disorder" means a disorder related to the taking of a drug of abuse (including alcohol); to the side effects of a medication; and to a toxin exposure, including: substance use disorders (substance dependence and substance abuse) and substance-induced disorders (including but not limited to substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorders and mood disorders), as defined in DSM criteria.
- (23) "Substantial non-compliance" means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee's ability or willingness to participate in the HPSP. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.
- (24) "Successful completion" means that for the period of service deemed necessary by the vendor or by the licensee's Board by rule, the licensee has complied with the licensee's monitoring agreement to the satisfaction of the HPSP.

- (25) "Toxicology testing" means urine testing or alternative chemical monitoring including blood, saliva, breath or hair as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.
- (26) "Treatment" means the planned, specific, individualized health and behavioral health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.
- (27) "Vendor" means the entity that has contracted with the Division to conduct the HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0010

Participation in Health Professionals' Services Program

Effective July 1, 2010, the Board shall participate in the Health Professionals' Services Program and may refer eligible nurses to the HPSP in lieu of or in addition to public discipline. Only licensed practical nurses, registered nurses, and advanced practice registered nurses who meet the eligibility criteria may be referred by the Board to the Health Professionals' Services Program.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0020

Eligibility in Health Professionals Services Program

- (1) Licensee must be evaluated by an independent, third-party evaluator approved by the Board. The evaluation must include a diagnosis of a substance use disorder, mental health disorder, or both types of disorders with the appropriate diagnostic code from the DSM, and treatment options.
- (2) Licensee must provide a written statement agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the Board.
- (3) Licensee must enter into the "HPSP Monitoring Agreement."
- (4) Licensees who have successfully graduated from either the NMP or HPSP programs and who have had a relapse may be permitted a maximum of one additional admittance into the HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0030

Procedure for Board Referrals

- (1) When a complaint is received involving a licensee who may have a substance use disorder, a mental disorder, or both types of disorders, the Board staff will investigate and complete a report to be presented at a Board meeting.
- (2) The Board will review the report and determine if the licensee meets the eligibility criteria for the HPSP.
- (3) If licensee meets eligibility criteria and the board approves entry into the HPSP, the Board will provide a written referral. The referral must include:

- (a) A copy of the report from the independent, third-party evaluator who diagnosed the Licensee;
 - (b) The treatment options developed by the independent third-party evaluator;
 - (c) A statement that the Board has investigated the licensee's professional practice and conduct, and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;
 - (d) A description of any restrictions recommended or imposed by the Board on the licensee's professional practice; including those specific to prescribing and dispensing medications (for licensees with prescriptive authority).
 - (e) A written statement from the licensee agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the vendor; and
 - (f) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.
- (4) A Board-referred licensee is enrolled in the program effective on the date the licensee signs the consents and the monitoring agreement required by ORS 676.190.
- (5) Upon enrollment into the program, the vendor (or monitoring entity) will notify the Board and the Board will dismiss without prejudice the pending complaint at the next Board meeting.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0040

Procedure for Self-Referred Licensees

- (1) Self-referred licensees may participate in the HPSP as permitted by ORS 676.190(5). Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:
- (a) Sign a written consent allowing disclosure and exchange of information between the vendor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers, including other health care providers;
 - (b) Sign a written consent allowing disclosure and exchange of information between the vendor, the Board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement as defined in OAR 851-070-0090. The purpose of the disclosure is to permit the vendor and the monitoring entity to notify the Board if the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;
 - (c) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her Board; and
 - (d) Agree to and sign a monitoring agreement.
- (2) Upon provisional enrollment, the vendor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section one of this rule.
- (3) Final Enrollment: To move from provisional enrollment to final enrollment in the program, a self-referred licensee must:
- (a) Obtain at the licensee's own expense and provide to the vendor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

- (b) Agree to cooperate with the vendor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and
- (c) Enter into an amended monitoring agreement, if required by the vendor.
- (4) Once a self-referred licensee seeks enrollment in the HPSP, failure to complete final enrollment may constitute substantial non-compliance and may be reported to the Board.
- (5) Upon final enrollment of a self-referred licensee, the vendor shall send to the monitoring entity a copy of the written evaluation by the independent third-party evaluator and a copy of the amended monitoring agreement, if any.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0050

Disqualification Criteria

Licensees, either Board-referred or self-referred, may be disqualified from entering the HPSP for factors including, but not limited to:

- (1) Licensee's disciplinary history;
- (2) Severity and duration of the licensee's impairment;
- (3) Extent to which licensee's practice can be limited or managed to eliminate danger to the public;
- (4) Likelihood that licensee's impairment can be managed with treatment;
- (5) Evidence of criminal history that involves injury or endangerment to others;
- (6) A diagnosis requiring treatment because of sexual offenses or sexual misconduct;
- (7) Evidence of non-compliance with a monitoring program from other state;
- (8) Pending investigations with the Board or boards from other states;
- (9) Previous Board investigations with findings of substantiated abuse or neglect; and
- (10) Prior enrollment in, but failure to successfully complete, either the Nurse Monitoring Program or HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0060

Approval of Independent Third-Party Evaluators

- (1) To be approved by the Board as an independent third-party evaluator, an evaluator must:
 - (a) Be licensed as required by the jurisdiction in which the evaluator works;
 - (b) Have a minimum of a Master's Degree in a mental health discipline;
 - (c) Provide evidence of additional education and experience as shown by one of the following:
 - (i) Department of Transportation Substance Abuse Professional qualification;
 - (ii) Certified Alcohol and Drug Counselor II or III;
 - (iii) Board Certified in Addiction Medicine by either ASAM or American Board of Psychiatry and Neurology.
 - (d) Provide evidence of assessments at the licensure level of the licensee being evaluated
 - (e) The Board will not accept an evaluator as independent in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0070

Approval of Treatment Providers

- (1) To be approved by the Board as a treatment provider, a provider must be:
 - (a) Licensed as required by the jurisdiction in which the provider works;
 - (b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, level of licensure, and treatment options proposed by the independent third-party evaluator; and
 - (c) Able to obtain a urinalysis of the licensee at intake.
- (2) The Board will not accept a provider as a treatment provider in a particular case if, in the Board's judgment, the provider's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0080

Licensee Responsibilities

- (1) All licensees must:
 - (a) Agree to report any arrest for or conviction of a misdemeanor or felony crime to the vendor and the Board within three business days after the licensee is arrested or convicted of the crime; and
 - (b) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the Board by rule or order;
 - (c) Abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the HPSP and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;
 - (d) Report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;
 - (e) Participate in a treatment plan approved by a third party;
 - (f) Limit practice as required by the HPSP;
 - (g) Cooperate with supervised monitoring of practice;
 - (h) Participate in a follow-up evaluation, when necessary, of licensee's fitness to practice;
 - (i) Submit to random drug or alcohol testing;
 - (j) Report at least weekly to the HPSP regarding the licensee's compliance with the monitoring agreement;
 - (k) Report at least weekly to the HPSP regarding the licensee's compliance with the agreement;
 - (l) Report any arrest for or conviction of a misdemeanor or felony crime to the HPSP within three business days after the licensee is arrested or convicted;
 - (m) Report applications for licensure in other states, changes in employment and changes in practice setting;
 - (n) Agree to be responsible for the cost of evaluations, toxicology testing and treatment;

- (o) Report to the HPSP any investigations or disciplinary action by any state or state agency, including Oregon;
 - (p) Participate in required meetings according to the treatment plan; and
 - (q) Maintain current license status.
- (2) In addition to the requirements listed in section one of this rule, self-referred licensees must also provide to the HPSP a copy of a report of the licensee's criminal history, at least once per calendar quarter or more often if required by the HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0090

Completion Requirements

- (1) To successfully complete the Health Professionals' Services Program, licensees with a substance use disorder, or with a mental health disorder and a substance use disorder, must have worked for at least two years in a monitored practice. Licensees must complete the required two years of monitored practice within four years of entering the Health Professionals' Services Program.
- (2) To successfully complete the Health Professionals' Services Program, licensees with a mental health disorder, but no substance use disorder, must have worked for at least one year in a monitored practice. Licensees must complete the required year of monitored practice within two years of entering the Health Professionals' Services Program.
- (3) The Board may extend by one year the time within which a licensee must complete the monitored practice if the licensee has remained compliant with the program.
- (4) A licensee who does not complete the required term of monitored practice will be discharged from the Health Professionals' Services Program and may be subject to discipline.
- (5) The time spent working in a monitored practice before transferring from the Nurse Monitoring Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of monitored practice.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0100

Substantial Non-Compliance Criteria

- (1) The HPSP or the monitoring entity will report substantial non-compliance with the diversion agreement within one business day after the HPSP learns of non-compliance, including but not limited to information that a licensee:
 - (a) Engaged in criminal behavior;
 - (b) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;
 - (c) Was impaired in a health care setting in the course of the licensee's employment;
 - (d) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;
 - (e) Violated a restriction on the licensee's practice imposed by the HPSP or the licensee's Board;
 - (f) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

- (g) Entered into a diversion agreement, but failed to participate in the HPSP;
 - (h) Was referred to the HPSP, but failed to enroll in the HPSP;
 - (i) Forged, tampered with, or modified a prescription;
 - (j) Violated any rules of prescriptive/dispensing authority;
 - (k) Violated any provisions of OAR 851-070-0080;
 - (l) Violated any terms of the diversion agreement; or
 - (m) Failed to complete the monitored practice requirements as stated in OAR 851-070-0090.
- (2) The Board, upon being notified of a licensee's substantial non-compliance will investigate and determine the appropriate sanction, which may include a limitation of licensee's practice and any other sanction, up to and including termination from the HPSP and formal discipline.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State.