

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

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| <u>Board of Clinical Social Workers</u> Agency and Division | <u>Chapter 877</u> Administrative Rules Chapter Number |
| <u>Martin Pittioni, Executive Director</u> Rules Coordinator | <u>503-373-1163</u> Telephone |

RULE CAPTION

Amends and repeals rule adoption, client records, complaint process, and impairment program rules

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

| | | | |
|-------------------------------------|-------------------------|---|---|
| <u>May 12, 2009</u> Hearing Date | <u>11:30 AM</u> Time | <u>3218 Pringle Road SE, 2nd Floor Conference Room</u> Location | <u>Mark Oldham, Board Chair</u> Hearings Officer |
|-------------------------------------|-------------------------|---|---|

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

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

ADOPT:

AMEND: 877-001-0005; 877-030-0100; 877-035-0000; 877-035-0010; 877-035-0012; 877-035-0013; 877-035-0015; 877-040-0000; 877-040-0003; 877-040-0010; 877-040-0015; 877-040-0045; 877-040-0050; 877-040-0055

REPEAL: 877-001-0000; 877-001-0010; 877-035-0005; 877-040-0020

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 675.510 - ORS675.600; ORS 675.990; ORS 676.175 - ORS 676.177; ORS 183.335; ORS 183.360

Other Auth.:

Stats. Implemented: ORS 675.510-ORS675.600; ORS 675.990; ORS183.335; ORS 183.360

RULE SUMMARY

This rule proposal: (1) Eliminates duplicative rule notice and rule making requirements already provided for in other statutes and rules; (2) Adopts the most current version of model rules for state agencies applicable to rule making; (3) Specifies rules addressing retention of client records; (4) Amends Impaired Professional Program rules and (5) Amends Complaint Process Rules with special emphasis on updating rules to reflect authority to delegate some complaint process functions to the staff level.

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.

May 12, 2009

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

| | | |
|---|------------------------|----------------|
|  | <u>MARTIN PITTIONI</u> | <u>3/13/09</u> |
| Signature | Printed name | Date |

*Hearing 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. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

State Board of Clinical Social Workers

Chapter 877

Agency and Division

Administrative Rules Chapter Number

Amends and repeals rule adoption, client records, complaint process, and impairment program rules

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

In the Matter of: Amendment of Rules in Oregon Administrative Rules Chapter 877, Divisions 1, 35 and 40

Statutory Authority: ORS 675.510-ORS675.600; ORS 675.990; ORS 676.175 - ORS 676.177; ORS 183.335; ORS 183.360

Other Authority:

Stats. Implemented: ORS 675.510-ORS675.600; ORS 675.990; ORS183.335; ORS 183.360

Need for the Rule(s): Addresses need for periodic rule review, eliminates and streamlines procedural rules, and updates rules for impaired professional program. The complaint process rule are updated to eliminate unnecessary rules and reflect the delegation of some investigation process functions to the staff level.

Documents Relied Upon, and where they are available:

The proposed rule is published on the Board's web site, www.oregon.gov/bcsw The web site also has a published February 2009 Newsletter with related articles on rule making and the changes in the Board's compliance function.

Copies of the proposed rule are also available by contacting the Board Office at 503.378.5735 or toll-free at 1.866.355.7050

Fiscal and Economic Impact:

Minimal impact with respect to record keeping costs. Possible indirect cost reduction for licensees under investigation due to a more streamlined and effective complaint process.

Statement of Cost of Compliance:

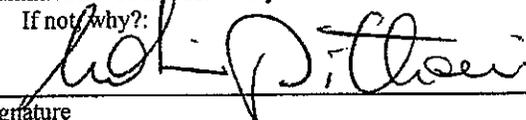
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None.
2. Cost of compliance effect on small business (ORS 183.336): Minimal
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

It is estimated that about 60 licensees per year are affected by the impairment program and complaint program rules. The entire licensee base of about 2800 licensees will be affected by the client record keeping requirements. However, most are likely to be in compliance already and for those who are not the cost of compliance will be minimal.
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: Minimal.
 - c. Equipment, supplies, labor and increased administration required for compliance: Minimal

How were small businesses involved in the development of this rule? A rule advisory committee that included licensees in private practice was consulted.

Administrative Rule Advisory Committee consulted? YES

If not, why?:



MARTIN PITTIONI 3/13/09

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

BOARD OF CLINICAL SOCIAL WORKERS

PROPOSED RULE CHANGES FOR DIVISIONS 1, 35 AND 40 (WITH EXACT TRACKING OF CHANGES)

PROPOSED EFFECTIVE DATE JULY 1, 2009

DIVISION 1

PROCEDURAL RULES

877-001-0000

Providing Notice of Rule Adoption

THIS RULE IS REPEALED IN ITS ENTIRETY

[Prior to adoption, amendment, or repeal of any Rule, the State Board of Clinical Social Workers shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By furnishing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By furnishing a copy of the notice to:

(a) The United Press International;

(b) The Associated Press;

(c) The Oregon Chapter of the National Association of Social Workers.]

877-001-0005

Model Rules of Procedure

[The most current Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are by this reference

adopted as the rules and procedures of the State Board of Clinical Social Workers and shall be controlling except as otherwise required by statutes or rules.] The board adopts the model rules applicable to rulemaking, OAR 137-001-0005 to 137-001-0100, effective on January 1, 2008.

877-001-0010

Rulemaking

THIS RULE IS REPEALED IN ITS ENTIRETY

[(1)(a) Pursuant to ORS 183.330-183.410 and rules adopted August 5, 1980, the Board may make rules necessary to carry out provisions of Chapter 769, Oregon Laws 1979 and ORS 44.040 and amend or repeal any rule or regulation it makes;

(b) Any person may appear and be heard at a hearing on any rules or regulations. The Board Administrator shall record the names and addresses of persons appearing. The Administrator shall send written notice to any person heard or represented at a hearing or requesting notice of the action taken by the Board;

(c) Before it becomes effective, a rule or regulation, or amendment or repeal, may be reviewed by the Attorney General's office.

(2) Contents of the Rules: The Board is authorized to adopt rules and regulations relating to the professional behavior and ethics of the practice of Clinical Social Work and the qualifications for certification and licensing of Clinical Social Workers consistent with the protection of the health and general welfare of the people in the State of Oregon, and consistent with the intent of Chapter 769, Oregon Laws 1979.

(3) Copies of the Rules: Copies of the proposed rules may be obtained from the State Board of Clinical Social Workers.]

877-030-0100

Retention of Client Records; Disposition of Client Records in Case of Death or Incapacity of Licensee

(1) In this rule, "client record" means information maintained in a written or electronic form regarding treatment or billing of a client.

(2) A licensee who serves clients outside of an agency setting must ensure that a client record is maintained for each such client and that all client records are legible and are kept in a secure, safe, and retrievable condition. At a minimum, a client record must include an assessment of the client, a treatment or intervention plan, and progress notes of therapy sessions, all of which should be recorded concurrently with the services provided.

(3) Retention of records. A licensee must retain a client record for seven years from the date of the last session with the client.

(4) A Licensed Clinical Social [Workers] Worker in private practice [shall] must make necessary arrangements for the maintenance of and access to client records [to ensure] that ensure the clients' right to confidentiality in the event of the death or incapacity of the licensee. In regard to this requirement:

(a) The licensee [shall] must name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate.

(b) Licensee [shall] must keep the board notified of the name of the qualified person.

(c) The board [shall] will not release the name of the qualified person except in the case of the death or incapacity of the licensee, or if the license of the licensee is inactive and a former client is unable to locate the licensee.

[(d)] (5) To be a qualified person under this rule [shall be defined as] a person must be a Licensed Clinical Social Worker or other licensed mental health professional licensed [in] under Oregon law.

DIVISION 35

IMPAIRED PROFESSIONAL PROGRAM

877-035-0000

[Definitions] Establishment of Program for Impaired Clinical Social Workers

["Impaired Clinical Social Worker" shall mean a Licensed Clinical Social Worker or a Clinical Social Work Associate who is unable to engage in the practice of social work with the skill and competency necessary for the protection of the public health because of substance abuse, mental illness, or incapacity including, but not limited to:

- (1) One who uses any controlled substance or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of clinical social work.*
- (2) One with a physical or mental condition that makes the licensee unable to conduct safely the practice of clinical social work.]*

(1) The board is required by ORS 675.600(1)(c) to: "Establish a program for impaired clinical social workers to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;" The board's program is described in this division of rules.

(2) Impaired clinical social worker is defined in ORS 675.510(4) as "a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse."

877-035-0005

Findings and Declarations

THIS RULE IS REPEALED IN ITS ENTIRETY

[The Board pursuant to ORS 675.540(1)(c) finds that because of the growing problem of chemical dependence and other infirmities which affect the ability of social workers to engage in the practice of social work, it is necessary in the interests of the protection of the public health to identify the impaired social worker and to provide rehabilitation opportunities for such impaired individuals on a voluntary or involuntary basis.]

877-035-0010

Identification and Rehabilitation

[Mandatory reporting defined:

(1) It is not the intent of the Board of Clinical Social Workers that each and every clinical social work error be reported.

(2) It is not the intent of the Board of Clinical Social Workers that mandatory reporting take away the disciplinary ability and responsibility from the employer of a Licensed Clinical Social Worker or Clinical Social Work Associate.

(3) Any] (1) A Licensed Clinical Social Worker or Clinical Social Work Associate knowing of a Licensed Clinical Social Worker or a Clinical Social Work Associate whose behavior or practice fails to meet professional standards for the level at which the social worker is certified or licensed, [shall] must report the social worker to the person in the work setting who has authority to institute corrective action. In the event that the Licensed Clinical Social Worker has no direct supervisor, this report [shall] must be made to the Board of Clinical Social Workers.

[(4)] (2) Any Licensed Clinical Social Worker or Clinical Social Work Associate who has knowledge or concern that the Licensed Clinical Social Worker or Clinical Social Work Associate's behavior or practice presents potential for or actual danger to the public health, safety, and welfare, [shall] must report or cause a report to be made to the Board of Clinical Social Workers. Failure of any Licensed Clinical Social Worker or Clinical Social Work Associate to comply with this reporting requirement may in itself constitute a violation of clinical social work standards.

877-035-0012

Confidentiality of Information Supplied to the Board

[(1)] The records and proceedings compiled by the board in regard to an impaired clinical social worker, including the record of [and his/her] treatment received by the clinical social worker, are [shall be] confidential and shall not be [considered as public records] disclosed to the public as required by ORS 676.175 and other applicable law; provided, however, all such information may be disclosed when the disclosure is made consistently with ORS 676.175, 676.177, and other applicable law. [:

(a) In a disciplinary hearing before the State Board of Clinical Social Workers or in a subsequent trial or appeal of a Board action or order.

(b) To Boards of other licensing agencies of other jurisdictions.

(c) Pursuant to an order of court of competent jurisdiction.

(d) To the current employer of the licensee.

(2) The name of any social worker who voluntarily agrees to enter a rehabilitation program and continues in such program including the required aftercare shall not be published.]

877-035-0013

Criteria which Disqualify People from Program

Criteria which disqualify Licensed Clinical Social Workers or Clinical Social Work Associates from involvement in the Impaired Professional Program are:

- (1) Criminal history involving injury/endangerment;
- (2) Sale or manufacture of illegal substances;
- (3) Sexual offenders;
- (4) Three previous disciplines from the board.

877-035-0015

Procedure for Evaluation of [*Competency*] Possible Impairment

(1) On its own motion or upon complaint by any person the board may require [*any*] a person licensed or certificated under ORS 675.510 et seq. to undergo evaluation [*and/or*] to determine if the person is an impaired clinical social worker [*rehabilitative therapy for impairment as defined above*].

(2) In order to determine whether a clinical social worker is impaired, the board may require the person:

[The Board of Clinical Social Workers may impose one or more of the disciplinary penalties designated in ORS 675.540(2) against any social worker found to be an impaired social worker who:]

(a) [*Refuses*] To cooperate with an evaluation ordered by the board.

(b) [*Refuses*] To enter a rehabilitation program or ongoing monitoring recognized by the board.

(c) [*Fails*] To sign a release allowing the board to fully communicate with the rehabilitation program regarding the clinical social worker's progress or lack thereof.

(d) [*Fails*] To complete a rehabilitation program or [*ongoing*] participate in monitoring [*recognized*] required by the board.

[*(e) Is found by the Board not to be capable of rehabilitation because of the severity of his or her impairment.*]

(3) The evaluation referred to in section (1) of this rule will be performed by a drug and evaluation center or professional of the board's choosing. The evaluator shall have access to all material regarding the [*Clinical Social Work Associate or Licensed Clinical Social Worker*] clinical social worker in the board's files and will have additional authority to contact all persons who have previously communicated to the board regarding the alleged impaired status of the Clinical Social Work Associate or Licensed Clinical Social Worker.

DIVISION 40

PROCEDURES FOR HANDLING COMPLAINTS TO THE BOARD

877-040-0000

Management of Complaints

- (1) The board intends to provide fair, expeditious response to complaints.
- (2) A board member who is unable to render an impartial, objective decision regarding *[any]* a complaint *[shall]* must abstain from participating in the preparation, hearing, deliberation and disposition of *[such]* the complaint. An abstention *[shall be]* is effective *[from]* at the time a board member announces *[his/her the]* a decision not to participate.
- (3) *[If]* A board member who is a complainant or respondent in a complaint, *that Board member shall be* is disqualified from participating in the preparation, hearing, deliberation and disposition of *[such]* the complaint.
- (4) The board may initiate a complaint.
- (5) The Consumer Protection Committee oversees investigations of complaints received by the board. The committee may conduct investigations, prepare reports, and negotiate proposed agreements and may perform other duties prescribed by the board. In carrying out these duties, the committee may assign to the board's staff the duties of conducting investigations and preparing reports. Subject to the approval of the committee, the board Administrator may assist in negotiating a proposed agreement with a respondent.
- (6) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality granting the board and its counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in the dismissal of the complaint.

877-040-0003

Definitions

The following definitions *[shall]* apply *[to]* in this division of rules:

(1) "Complainant" -- A person or group of persons who files a complaint.

(2) "Complaint" -- A mandatory report or [specific charge filed on an approved form that a Clinical Social Worker] an allegation that a person regulated by the board [who is a licensee or candidate for license] has committed an act [in violation of ORS 675.540 or the Code of Ethics, OAR 877-030-0030 to 877-030-0090] that would subject the person to discipline under ORS 675.540. A ["Complaint" shall] complaint should specifically describe the [act] conduct complained of to the best of the ability of the complainant. [A "Complaint" shall identify by name the complainant and respondent.]

[(2)] (3) "Consumer Protection Committee" -- A committee of one or more board members [charged with the investigation and preparation of reports to the Board concerning complaints or alleged violations. The "Consumer Protection Committee" shall have the full power of the Board to conduct investigations, prepare reports, negotiate agreements, and perform such other duties as may be prescribed by the Board from time to time] assigned by the board to fulfill specified functions related to complaints.

[(3)] "Complainant" -- Any person or group of persons who files a complaint. The Board may, on its own action, initiate an investigation or file a complaint.]

[(4)] "Contested Case" -- A proceeding as defined in ORS 183.310(2)]

[(5)] (4) "Respondent" -- A [Clinical Social Worker who is a licensee or candidate for license] person regulated by the board against whom a complaint [has been] is filed.

[(6)] "Stipulated Agreement" -- A written agreement entered into at any time after a complaint has been filed which resolves such complaint. A "stipulated agreement" shall be signed by the respondent and the Chair or the Board's designee, and shall include at least the following statements :

(a) The agreement has been freely and voluntarily made by respondent;

(b) An explanation of the particular facts and violations stipulated to by the respondent and the Board; and

(c) Respondent's agreement to accept a designated form of discipline in exchange for the agreement.]

877-040-0010

Form of Complaints

(1) Any person may file a complaint alleging a violation of ORS 675.510 to 675.600 or of the rules of the board. A complaint must be in writing and may be submitted on a form provided by the board for complaints. [The Consumer Protection Committee shall investigate all complaints made to the Board.]

[(2) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality allowing the Board and its counsel access to records and other materials which are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with these requirements may result in dismissal of the complaint.]¹

(2) A complaint must identify the complainant and the respondent.

877-040-0015

Notification to Respondent

(1) The Consumer Protection Committee may send a letter to the respondent stating the nature of the investigation and, if [. When] appropriate, [waivers of confidentiality shall be included with this letter] an authorization to release confidential records. The committee will ask the respondent to provide a written reply[, accompanied by any documentation] within 30 days together with documents the respondent considers relevant [, shall be requested within 30 days].

(2) If the respondent replies to the request of the board, the reply [shall be] is reviewed by the Consumer Protection Committee. The committee may ask for additional or more specific information [may be requested. Materials may be accepted] from the respondent [or counsel. Written statements from any other persons should be accompanied by an explanation of their relevance to the matter under consideration].

[(3) If the respondent does not reply, the Consumer Protection Committee shall send a letter to the respondent noting the failure to reply and requiring a response within 15 days of the date of mailing. This letter shall inform the respondent that the Consumer Protection Committee may recommend a disposition to the Board at its next regularly scheduled Board meeting. If there is no response, the Board will proceed to review the complaint and determine what actions shall be taken. The Committee may recommend that a formal hearing be called even though there has been no response to the Board's request.]

877-040-0020

¹ Moved to rule -0000.

Presentation to the Board

[When all materials are assembled, the Consumer Protection Committee may review the file in consultation with the Board's counsel. A designated Committee member will make a report to the Board, following the procedures outlined in ORS 183.310 to 183.500, and shall clearly set forth the issues on which the Board should consider possible action.]²

877-040-0045

Stipulated Agreement

In the event the Consumer Protection Committee [*shall submit any*] submits a proposed stipulated agreement to the [*full*] board for consideration[. *If*], the board may:

(1) [*determines*] Determine that approval is warranted [, *the Board may*] and authorize the Chair or the board's designee to sign the agreement on behalf of the board[.];

(2) [*If the Board determines*] Determine that approval is not warranted[.];

(3) [*the Board may*] Direct the Consumer Protection Committee to renegotiate the agreement[.]; or [*may institute disciplinary action by contested case notice pursuant to ORS 183.310 to 183.550*]

(4) Take any other action authorized by law.

877-040-0050

Contested Case Hearing

[(1) When the Board institutes disciplinary actions, notice of proposed actions, orders, or other official documents they must be served by certified mail, return receipt requested, on respondents and their attorneys. Notices must include:

² August 4, 2008 note from Kyle:

No, the process has not changed from the standpoint that the CPC Chair still summarizes the case and recommendation of the committee. The concern I had is with the use of the word "report." While "report" has many meanings, here the meaning is unclear and could be interpreted to mean the "report" that is prepared by the investigator or administrator, pursuant to requirement for making a report to the board in ORS 676.165, not "reporting" to the board. I believe that many years ago, CPC members actually did do the investigations and reports. I agree with your initial suggestion of repealing this entire rule, it is not necessary and raises questions. If it is not repealed, we need to clarify what "report" means for purposes of this rule so that there is no confusion.

(a) A short and plain statement of the matters charged.

(b) Reference to the particular sections of the Statutes and Rules involved.

(c) A statement that respondents have the right to request a Contested Case Hearing by filing a written request for hearing with the Board within the time specified in the Notice.

(d) A statement that failure to file a timely request for hearing shall be deemed a waiver of the right to a hearing under ORS Chapter 183, unless the failure to file a timely request for hearing was beyond the reasonable control of the respondent.

(e) A statement that the record of the complaint, including information in the Board's files related to the complaint, automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.]

[(2) If] When the board [disciplines a Licensed Clinical Social Worker or a Clinical Social Work Associate] takes disciplinary action, the board will place notice of this action [will be placed] in the Directory of Clinical Social Work Associates and Licensed Clinical Social Workers [Notice shall be published in] and will provide information about the action for publication to the official newspaper of the county where the [Associate or licensee] person disciplined practices and in Marion County. The board will also provide notice of the action [Notice shall be sent] to the Oregon Chapter of the National Association of Social Workers (NASW) and [also published in] to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS). [Thereafter, inquiries about the respondent's status should be answered by the Board's Administrator in accordance with ORS 676.175. Requests for additional information should be considered by the full Board, acting with the advice of its counsel. Individual Board members and employees of the Board shall abstain from discussion and disclosure of details of complaints outside of the official activities described in these Rules.]

877-040-0055

Request for Hearing

(1) To request a contested case hearing, a respondent, or an attorney on behalf of the respondent, must submit a written hearing request and answer [shall be made in writing] to the board [by a party or his/her attorney and must be received by the Board] within the time specified in the notice of proposed action.

(2) An answer [shall] must include the following:

(a) An admission or denial of each factual matter alleged in the notice of proposed action [; and] .

(b) A short and plain statement of each relevant affirmative defense the [party] respondent may have to the allegations in the notice of proposed action.

(3) Except for good cause:

(a) Factual matters alleged in the notice of proposed action and not denied in the answer [shall be] are presumed admitted[;].

(b) Failure to raise a particular defense in the answer [will be considered] constitutes a waiver of [such] the defense[;].

(c) New matters alleged in the answer [(affirmative defenses) shall be] , including affirmative defenses, are presumed [to be] denied by the board[; and].

(d) Evidence [shall] may not be taken on [any] an issue not raised in the notice of proposed action [and] or the answer.

Proposed rule revisions (without tracked changes – proposed final clean text)

DIVISION 1

PROCEDURAL RULES

877-001-0000

Providing Notice of Rule Adoption

THIS RULE IS REPEALED IN ITS ENTIRETY

[Prior to adoption, amendment, or repeal of any Rule, the State Board of Clinical Social Workers shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By furnishing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By furnishing a copy of the notice to:

(a) The United Press International;

(b) The Associated Press;

(c) The Oregon Chapter of the National Association of Social Workers.]

877-001-0005

Model Rules of Procedure

The board adopts the model rules applicable to rulemaking, OAR 137-001-0005 to 137-001-0100, effective on January 1, 2008.

877-001-0010

Rulemaking

THIS RULE IS REPEALED IN ITS ENTIRETY

[(1)(a) Pursuant to ORS 183.330-183.410 and rules adopted August 5, 1980, the Board may make rules necessary to carry out provisions of Chapter 769, Oregon Laws 1979 and ORS 44.040 and amend or repeal any rule or regulation it makes;

(b) Any person may appear and be heard at a hearing on any rules or regulations. The Board Administrator shall record the names and addresses of persons appearing. The Administrator shall send written notice to any person heard or represented at a hearing or requesting notice of the action taken by the Board;

(c) Before it becomes effective, a rule or regulation, or amendment or repeal, may be reviewed by the Attorney General's office.

(2) Contents of the Rules: The Board is authorized to adopt rules and regulations relating to the professional behavior and ethics of the practice of Clinical Social Work and the qualifications for certification and licensing of Clinical Social Workers consistent with the protection of the health and general welfare of the people in the State of Oregon, and consistent with the intent of Chapter 769, Oregon Laws 1979.

(3) Copies of the Rules: Copies of the proposed rules may be obtained from the State Board of Clinical Social Workers.]

DIVISION 30 – Amendment of OAR 877-030-0100

877-030-0100

Retention of Client Records; Disposition of Client Records in Case of Death or Incapacity of Licensee

(1) In this rule, “client record” means information maintained in a written or electronic form regarding treatment or billing of a client.

(2) A licensee who serves clients outside of an agency setting must ensure that a client record is maintained for each such client and that all client records are legible and are kept in a secure, safe, and retrievable condition. At a minimum, a client record must include an assessment of the client, a treatment or intervention plan, and progress notes of therapy sessions, all of which should be recorded concurrently with the services provided.

(3) Retention of records. A licensee must retain a client record for seven years from the date of the last session with the client.

(4) A Licensed Clinical Social Worker in private practice must make necessary arrangements for the maintenance of and access to client records that ensure the clients’ right to confidentiality in the event of the death or incapacity of the licensee. In regard to this requirement:

(a) The licensee must name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate.

(b) Licensee must keep the board notified of the name of the qualified person.

(c) The board will not release the name of the qualified person except in the case of the death or incapacity of the licensee, or if the license of the licensee is inactive and a former client is unable to locate the licensee.

(5) To be a qualified person under this rule a person must be a Licensed Clinical Social Worker or other licensed mental health professional licensed under Oregon law.

DIVISION 35

IMPAIRED PROFESSIONAL PROGRAM

877-035-0000

Establishment of Program for Impaired Clinical Social Workers

(1) The board is required by ORS 675.600(1)(c) to: “Establish a program for impaired clinical social workers to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;” The board’s program is described in this division of rules.

(2) *Impaired clinical social worker* is defined in ORS 675.510(4) as “a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse.”

877-035-0005

Findings and Declarations

THIS RULE IS REPEALED IN ITS ENTIRETY

[The Board pursuant to ORS 675.540(1)(c) finds that because of the growing problem of chemical dependence and other infirmities which affect the ability of social workers to engage in the practice of social work, it is necessary in the interests of the protection of the public health to identify the impaired social worker and to provide rehabilitation opportunities for such impaired individuals on a voluntary or involuntary basis.]

877-035-0010

Identification and Rehabilitation

(1) A Licensed Clinical Social Worker or Clinical Social Work Associate knowing of a Licensed Clinical Social Worker or a Clinical Social Work Associate whose behavior or practice fails to meet professional standards for the level at which the social worker is certified or licensed, must report the social worker to the person in the work setting who has authority to institute corrective action. In the event that the Licensed Clinical Social

Worker has no direct supervisor, this report must be made to the Board of Clinical Social Workers.

(2) Any Licensed Clinical Social Worker or Clinical Social Work Associate who has knowledge or concern that the Licensed Clinical Social Worker or Clinical Social Work Associate's behavior or practice presents potential for or actual danger to the public health, safety, and welfare, must report or cause a report to be made to the Board of Clinical Social Workers. Failure of any Licensed Clinical Social Worker or Clinical Social Work Associate to comply with this reporting requirement may in itself constitute a violation of clinical social work standards.

877-035-0012

Confidentiality of Information Supplied to the Board

The records and proceedings compiled by the board in regard to an impaired clinical social worker, including the record of treatment received by the clinical social worker, are confidential and shall not be disclosed to the public as required by ORS 676.175 and other applicable law; provided, however, all such information may be disclosed when the disclosure is made consistently with ORS 676.175, 676.177, and other applicable law.

877-035-0013

Criteria which Disqualify People from Program

Criteria which disqualify Licensed Clinical Social Workers or Clinical Social Work Associates from involvement in the Impaired Professional Program are:

- (1) Criminal history involving injury/endangerment;
- (2) Sale or manufacture of illegal substances;
- (3) Sexual offenders;
- (4) Three previous disciplines from the board.

877-035-0015

Procedure for Evaluation of Possible Impairment

(1) On its own motion or upon complaint by any person the board may require a person licensed or certificated under ORS 675.510 et seq. to undergo evaluation to determine if the person is an impaired clinical social worker .

(2) In order to determine whether a clinical social worker is impaired, the board may require the person:

(a) To cooperate with an evaluation ordered by the board.

(b) To enter a rehabilitation program or ongoing monitoring recognized by the board.

(c) To sign a release allowing the board to fully communicate with the rehabilitation program regarding the clinical social worker's progress or lack thereof.

(d) To complete a rehabilitation program or participate in monitoring required by the board.

(3) The evaluation referred to in section (1) of this rule will be performed by a drug and evaluation center or professional of the board's choosing. The evaluator shall have access to all material regarding the clinical social worker in the board's files and will have additional authority to contact all persons who have previously communicated to the board regarding the alleged impaired status of the Clinical Social Work Associate or Licensed Clinical Social Worker.

DIVISION 40

PROCEDURES FOR HANDLING COMPLAINTS TO THE BOARD

877-040-0000

Management of Complaints

- (1) The board intends to provide fair, expeditious response to complaints.
- (2) A board member who is unable to render an impartial, objective decision regarding a complaint must abstain from participating in the preparation, hearing, deliberation and disposition of the complaint. An abstention is effective at the time a board member announces a decision not to participate.
- (3) A board member who is a complainant or respondent in a complaint is disqualified from participating in the preparation, hearing, deliberation and disposition of the complaint.
- (4) The board may initiate a complaint.
- (5) The Consumer Protection Committee oversees investigations of complaints received by the board. The committee may conduct investigations, prepare reports, and negotiate proposed agreements and may perform other duties prescribed by the board. In carrying out these duties, the committee may assign to the board's staff the duties of conducting investigations and preparing reports. Subject to the approval of the committee, the board Administrator may assist in negotiating a proposed agreement with a respondent.
- (6) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality granting the board and its counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in the dismissal of the complaint.

877-040-0003

Definitions

The following definitions apply in this division of rules:

- (1) "Complainant" -- A person or group of persons who files a complaint.
- (2) "Complaint" -- A mandatory report or an allegation that a person regulated by the board has committed an act that would subject the person to discipline under ORS 675.540. A complaint should specifically describe the conduct complained of to the best of the ability of the complainant
- (3) "Consumer Protection Committee" -- A committee of one or more board members assigned by the board to fulfill specified functions related to complaints.
- (4) "Respondent" -- A person regulated by the board against whom a complaint is filed.

877-040-0010

Form of Complaints

- (1) Any person may file a complaint alleging a violation of ORS 675.510 to 675.600 or of the rules of the board. A complaint must be in writing and may be submitted on a form provided by the board for complaints.
- (2) A complaint must identify the complainant and the respondent.

877-040-0015

Notification to Respondent

- (1) The Consumer Protection Committee may send a letter to the respondent stating the nature of the investigation and, if appropriate, an authorization to release confidential records. The committee will ask the respondent to provide a written reply within 30 days together with documents the respondent considers relevant.
- (2) If the respondent replies to the request of the board, the reply is reviewed by the Consumer Protection Committee. The committee may ask for additional or more specific information.

877-040-0020

Presentation to the Board

THIS RULE IS REPEALED IN ITS ENTIRETY

[When all materials are assembled, the Consumer Protection Committee may review the file in consultation with the Board's counsel. A designated Committee member will make a report to the Board, following the procedures outlined in ORS 183.310 to 183.500, and shall clearly set forth the issues on which the Board should consider possible action.]

877-040-0045

Stipulated Agreement

In the event the Consumer Protection Committee submits a proposed stipulated agreement to the board for consideration, the board may:

- (1) Determine that approval is warranted and authorize the Chair or the board's designee to sign the agreement on behalf of the board;
- (2) Determine that approval is not warranted;
- (3) Direct the Consumer Protection Committee to renegotiate the agreement; or
- (4) Take any other action authorized by law.

877-040-0050

Contested Case Hearing

When the board takes disciplinary action, the board will place notice of this action in the Directory of Clinical Social Work Associates and Licensed Clinical Social Workers and will provide information about the action for publication to the official newspaper of the county where the person disciplined practices and in Marion County. The board will also provide notice of the action to the Oregon Chapter of the National Association of Social Workers (NASW) and to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS).

877-040-0055

Request for Hearing

(1) To request a contested case hearing, a respondent, or an attorney on behalf of the respondent, must submit a written hearing request and answer to the board within the time specified in the notice of proposed action.

(2) An answer must include the following:

(a) An admission or denial of each factual matter alleged in the notice of proposed action.

(b) A short and plain statement of each relevant affirmative defense the respondent may have to the allegations in the notice of proposed action.

(3) Except for good cause:

(a) Factual matters alleged in the notice of proposed action and not denied in the answer are presumed admitted.

(b) Failure to raise a particular defense in the answer constitutes a waiver of the defense.

(c) New matters alleged in the answer, including affirmative defenses, are presumed denied by the board.

(d) Evidence may not be taken on an issue not raised in the notice of proposed action or the answer.