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PERMANENT ADMINISTRATIVE RULES

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 08/05/2016 by the
Board of Licensed Professional Counselors and Therapists 833
Agency and Division Administrative Rules Chapter Number
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To become effective Upon filing. Rulemaking Notice was published in the July 2016 Oregon Bulletin.

RULE CAPTION

Definitions, rulemaking procedures, contested case hearings, investigations and failure to cooperate, and criminal history checks.

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 with the Administrative Rules Unit prior to filing.

- ADOPT:**
- AMEND:**
833-001-0000, 833-001-0015, 833-001-0020, 833-010-0001, 833-110-0011, 833-110-0021, 833-120-0011, 833-120-0021, 833-120-0041
- REPEAL:**
833-120-0031
- RENUMBER:**
- AMEND AND RENUMBER:**

Statutory Authority:
ORS 675.705 - 675.835, 676.150 - 676.990

Other Authority:
HB 3168 (2013); HB 2250 (2015)

Statutes Implemented:
ORS 675.715 - 675.835, 676.160 - 676.180

RULE SUMMARY

This amendment makes clarifications to the rulemaking procedures and process for obtaining information from the Board, and clarifies that contested case hearings are closed to the public. It adds new definitions for AAMFT, Board, Hour Equivalents, LMFT, LPC, and NBCC, and modifies the Regional Accrediting Agency definition. In Division 110, it clarifies and amends the complaint procedures, reorganizes, and removes unnecessary and redundant language. It establishes that failure to cooperate with a Board investigation constitutes unprofessional conduct which may subject a licensee, intern or applicant to disciplinary action.

Regarding criminal history checks (Division 120), this rulemaking updates statute numbers and rule references, reorganizes, removes confusing and redundant language, clarifies procedures, and eliminates certain exceptions. It repeals the Board's "information considered" related to a criminal history check and implements the statewide uniform fitness determination process and criminal records administrative rules. This includes factors considered as part of fitness determination, such as mitigating circumstances, how a subject individual may contest an adverse determination, confidentiality of criminal offender information, and consequence for failure to comply per law.

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BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

DIVISION 1

PROCEDURAL

833-001-0000

Notice of Proposed Rulemaking

Prior to the adoption, amendment, or repeal of any rule, the Board of Licensed Professional Counselors and Therapists must:

- (1) Publish notice of the adoption, amendment, or repeal in the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) Deliver by electronic or postal mail such notice to persons on the Board of Licensed Professional Counselors and Therapists mailing list established pursuant to ORS 183.335(1)(c), and deliver by electronic mail to the legislators specified in 183.335(1)(d) at least 49 days before the effective date of the rule.
- (3) Deliver by electronic mail such notice to the following:
 - (a) United Press International and Associated Press;
 - (b) Oregon Counseling Association;
 - (c) Oregon Chapter of the American Association of Marriage and Family Therapists; and
 - (d) Oregon college and university departments offering graduate degrees in counseling and marriage and family therapy.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 183.341

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1994, f. 12-30-94, cert. ef. 1-1-95; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2010, f. & cert. ef. 1-5-10

833-001-0015

Hearing Request and Answers; Consequences of Failure to Answer

- (1) A hearing request must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued.

(2) If an answer is required, it must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued and must include the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(3) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer will be presumed admitted;

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

(c) New matters alleged in the answer (affirmative defenses) will be presumed to be denied by the agency; and

(d) Evidence will not be taken on any issue not raised in the notice and the answer.

(4) Contested case hearings are closed to the public.

Stat. Auth.: ORS 675

Stats. Implemented: ORS 183.413

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90;

BLPCT 1-2010, f. & cert. ef. 1-5-10

833-001-0020

Obtaining Information

(1) The Board will provide the following information to members of the public in response to in-person or telephone inquiries regarding a particular applicant, registered intern, or licensee: name, license/registration number, date licensed/registered, if license/registration is active or expired, business address and telephone number, summary of education and experience, and if there are or have been any disciplinary actions proposed by the Board plus the status, disposition, or resolution of the proposed disciplinary actions, unless otherwise subject to or prohibited by law, statute, rule or regulation.

(2) Requests for any information other than that listed in section (1) of this rule, including written verifications of licensure, may be required to be in writing, and may require payment for copies of documents.

(3) Pursuant to ORS 676.175, information regarding complaints against or information obtained through investigations into the conduct of licensees, non-licensed individuals, or applicants for licensure will not be disclosed.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 192

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; BLPCT 1-2010, f. & cert. ef. 1-5-10

BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

DIVISION 10

DEFINITIONS

833-010-0001

Definitions

The definitions of terms used in ORS 675.705 to 675.835 and these administrative rules of the Board are:

- (1) "AAMFT" means the American Association for Marriage and Family Therapy.
- (2) "Accredited program" means the graduate program is fully accredited by COAMFTE, CACREP, or CORE.
- (3) "Board" means the Oregon Board of Licensed Professional Counselors and Therapists.
- (4) "Board approved program" means a graduate program that the Board had found to be comparable to an accredited program.
- (5) "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.
- (6) "CRCC" means the Commission on Rehabilitation Counselor Certification.
- (7) "Client record" means any information maintained in a written or electronic form about a client.
- (8) "Clinical experience" means the professional practice of applying principles and methods to provide assessment, diagnosis, and treatment of individuals and families with mental health disorders.
- (9) "COAMFTE" means the Commission on Accreditation of Marriage and Family Therapy Education.

- (10) "CORE" means the Council on Rehabilitation Education.
- (11) "Direct client contact hours" means only those clinical experience hours that are therapeutic or a combination of assessment and subsequent therapeutic interactions.
- (12) "Distance learning" means coursework, or training that does not involve attending a presentation or program in the presence of the instructor or facilitator and other courses through electronic communication.
- (13) "Distance Services" means any use of technology that replaces face to face delivery of counseling or therapy service. Such technologies include, but are not limited to, use of computer hardware and software, telephones, the internet, online assessment instruments and other communication devices.
- (14) "Electronic communication" means communication through use of videoconference, telephone, teleconference, internet, electronic mail, chat-based, or video-based.
- (15) "Equivalent" means comparable in content and quality, but not identical.
- (16) "Hour Equivalents" means that when requirements for licensure are given in quarter hours, the following formula will be used to determine equivalent hours:
- (a) Two semester hours is equal to three quarter hours;
 - (b) One semester is equal to 1.5 quarters;
 - (c) One quarter credit hour equals 10 clock hours;
 - (d) One semester credit hour equals 15 clock hours.
- (17) "Intern registration plan" means a written description of post-graduate supervised work experience activities an applicant must complete to qualify for a license as a professional counselor or marriage and family therapist.
- (18) "LMFT" means licensed marriage and family therapist.
- (19) "LPC" means licensed professional counselor.
- (20) "NBCC" means the National Board for Certified Counselors.
- (21) "Official transcript" means a document certified by an accredited college or university indicating degree earned, hours and types of coursework, examinations and scores, completed by the student; and submitted by the school to the Board.
- (22) "Practicing" means engaging in any of the activities listed in the definitions of marriage and family therapy and professional counseling set forth in ORS 675.705, including but not limited to

providing clinical supervision to another mental health professional who is providing counseling or therapeutic services to clients.

(23) "Receipt" means the date received by the Board office as shown by US Postal Service postmark, or date received stamp if document was not mailed or without postmark.

(24) "Regional accrediting agency" means of one of the regional institutional accreditation bodies recognized by the United States Secretary of Education and established to accredit senior institutions of higher education.

(25) "Registered intern" means an applicant for licensure who has met the educational requirement for licensure, and is in the process of obtaining the required supervised work experience under a registration plan approved by the Board.

(26) "Supervision" means a professional relationship between a qualified supervisor and an intern, counselor, or therapist during which the supervisor provides guidance and professional skill development and oversight to the intern, counselor or therapist.

Stat. Auth.: ORS 675.715 & 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 4-2012, f. 10-24-12, cert. ef. 11-1-12

BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

DIVISION 110

COMPLIANCE

833-110-0011

Response to Complaints

(1) The Board will review and accept for consideration a complaint filed by any person, group of persons, or the Board on its own action that is specific as to the conduct upon which the complaint is based. A complaint will be rejected if it does not allege a violation for which the Board has the grounds to impose sanctions pursuant to ORS 675.745 or 675.825.

(2) A complaint that a licensee, registered intern or applicant for licensure is incompetent or has committed an act or acts in violation of the law or rules adopted by the Board including the Code of Ethics will be considered a complaint of professional misconduct. A complaint that an unlicensed person has practiced or used a title in violation of ORS 675.825 will be considered a complaint of unlicensed practice.

(3) The Board will make forms available to the public and encourage complainants to use the Board's investigation request form. If a complaint is first made in verbal form, or does not contain information substantially equivalent to the Board's form, then the Board's representative may require the complainant to use the Board's form to initiate an investigation. If the complainant is a client or former client of the respondent, then the complainant should sign a release form allowing the Board and its legal 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 dismissal of the complaint.

(4) Upon receipt of a valid complaint, a complaint file will be opened. A preliminary investigation or review will be conducted to determine if additional investigation and the assignment of additional investigators is necessary, or whether to file a report with the Board recommending the complaint be dismissed without further action. If additional investigation is deemed necessary, then the subject of the complaint will be notified that he/she is under investigation and provided with general information regarding the allegations being investigated. Notification may request a written response.

(5) Failure to cooperate with Board representatives during an investigation constitutes unprofessional conduct which may subject a licensee, intern or applicant to disciplinary action. Cooperation includes:

(a) Submitting client records to the Board's representative, with or without a signed release by the client, for a full investigation of the allegations;

(b) Sending a complete case file to the Board's representative;

(c) Being available for a personal interview with the Board's representative; and

(d) Responding to questions presented by the Board's representative.

(6) The Board may delay approving a licensure application or issuing an intern registration or license until a complaint has been resolved.

(7) The investigator shall collect evidence and interview witnesses. At the conclusion of the investigation, a report will be filed with the Board in accordance with the timelines and procedures outlined in ORS 676.160–676.180. The report will clearly set forth the issues on which the Board should consider possible action.

(8) The Board will maintain written procedures for handling complaints, which will be available through the Board office.

(9) Complaint and information gathered by investigation into licensee or applicant competency or conduct will be kept confidential in accordance with ORS 676.160–676.180.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10

833-110-0021

Complaint Disposition

(1) Following review of the investigation report, the Board may:

(a) Dismiss the complaint;

(b) Continue the investigation;

(c) Issue a notice of proposed action;

(d) Propose non-disciplinary action; or

(e) Negotiate a stipulated agreement in lieu of hearing, default, or disciplinary action.

(2) Board discussions will be held in executive session, closed to the public. Decisions as to action will be voted upon during a public meeting, but case numbers will be used. Decisions to propose enforcement action will be made known to the public if adopted by a majority vote of the Board. A notice of intent to propose enforcement action with opportunity for hearing will be issued by the Board Administrator and served upon the applicant or licensee, and may be provided to the complainant.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

DIVISION 120

CRIMINAL HISTORY CHECKS

833-120-0011

Purpose and Scope

(1) The purpose of these rules is to provide for the screening under ORS 181A.195 of licensees, registered interns, and applicants for licensure with the Oregon Board of Licensed Professional Counselors and Therapists to determine if they have a history of criminal behavior such that they

would be unable to, or should not be allowed to, perform the services of a Licensed Professional Counselor or Licensed Marriage and Family Therapist.

(2) The following persons (“subject individuals”) must take the steps necessary to complete a nationwide criminal history check under ORS 181A.195:

- (a) All applicants for licensure to the Board in accordance with OAR 833 Division 20; and
- (b) A licensee or registered intern who is the subject of inquiry or investigation by the Board.

Stat. Auth.: ORS 181.534, 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 181.534, 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11; BLPCT 4-2016, f. & cert. ef. 4-1-16.

833-120-0021

Procedural Requirements

(1) To complete a criminal history check, the Board will require each subject individual to:

- (a) Provide fingerprints pursuant to ORS 181A.170 (additional fingerprints may be required if the initial fingerprints are rejected);
- (b) Provide personal information necessary to obtain the criminal history check pursuant to OAR 125-007-0220; and
- (c) Pay to the Board the actual costs charged by the Oregon State Police (OSP) and the Federal Bureau of Investigation (FBI).

(2) The Board may also request, and the applicant, licensee, or registered intern must provide, the following information:

- (a) Responses to a criminal history questionnaire; and
- (b) Written response to questions by the Board regarding the person’s criminal history.

(3) The Board will make a final fitness determination based on criminal offender information and other factors, pursuant to ORS 181A.195(10)(d) and OAR 125-007-0260 to 125-007-0270.

(4) A subject individual may contest an adverse final fitness determination pursuant to OAR 125-007-0300.

(5) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the Board will deny the licensure application or revoke the license.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11

833-120-0041

Record Keeping and Confidentiality

(1) Criminal offender information is confidential under ORS 181A.195(11) and 676.175 and OAR 125-007-0310, and will not be disseminated by the Board except to persons with a demonstrated and legitimate need to know the information, including:

(a) The subject of a fingerprint-based criminal history check may be provided a copy of the results, if requested in writing prior to the completion of the criminal history check process; and

(b) Criminal history information may be used as exhibits during a contested case hearing process.

(2) Information obtained directly from the Law Enforcement Data System will be managed by the Board in accordance with applicable OSP requirements.

(3) Fingerprint cards, if returned to the Board by OSP or the FBI, will be destroyed. No copies, facsimiles, or other materials from which the fingerprints could be reproduced will be maintained by the Board.

(4) Challenges to the accuracy or completeness of criminal background information must be made to the reporting agency and not to the Board.

(5) A person against whom disciplinary action is taken by the Board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS Chapter 183.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 11-10-11; Administrative correction 11-18-11; BLPCT 3-2011, f. 12-3-11, cert. ef. 12-15-11