Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form

FILED
12-12-16 8:19 PM
ARCHIVES DIVISION
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Oregon Board of Naturopathic Medicine — 850
Agency and Division — Administrative Rules Chapter Number

Anne Walsh — (971) 673-0193
Rules Coordinator — Telephone

Oregon Board of Naturopathic Medicine, 800 NE Oregon St., Suite 407, Portland, OR 97232
Address

RULE CAPTION

adopts guidelines on ethics into rule

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

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:
850-050-0010
850-050-0190

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:
685.125

Other Authority:

Statutes Implemented:
685.110

RULE SUMMARY

add as a violation "Failure to act in accordance with the American Association of Naturopathic Physicians (2015) Code of Ethics as adopted by the Board"

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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

02-12-2017 4:00 p.m.	Anne Walsh	Anne.Walsh@state.or.us
Last Day *(m/d/yyyy)* and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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Oregon Board of Naturopathic Medicine — 850

Agency and Division — Administrative Rules Chapter Number

adopts guidelines on ethics into rule

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

In the Matter of:

850-050-0010
850-050-0190

Statutory Authority:

685.125

Other Authority:

Statutes Implemented:

685.110

Need for the Rule(s):

To clarify the code of ethics in rule for disciplinary purposes

Documents Relied Upon, and where they are available:

ORS 685

Fiscal and Economic Impact:

None

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

n/a

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

n/a

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

n/a

c. Equipment, supplies, labor and increased administration required for compliance:

n/a

How were small businesses involved in the development of this rule?

n/a

Administrative Rule Advisory Committee consulted?: No

If not, why?:

Consultation with legal counsel and requesting comment from all interested parties.

02-12-2017 4:00 p.m.	Anne Walsh	Anne.Walsh@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

DIVISION 50
DISCIPLINE

850-050-0010
Sanctions for Violations
The following lists the Board's disciplinary practices with respect to most common violations of law. Other less common violations may also result in discipline. The Board will determine the severity of each violation and decide the discipline to impose accordingly.
(1) General violations.

(a) The Board may attempt to resolve by non-disciplinary means, allegations of the following kinds of violations, if the Board determines there are compelling mitigating circumstances and if the licensee has not been the subject of a final order which finds the licensee committed a violation of a similar nature:

(A) Practicing outside the scope of practice;

(B) Inadequate charting;

(C) Failure to report a change of address;

(D) Prescribing off the formulary;

(E) False or misleading advertising; or

(F) Failure to refer upon termination.

(b) The Board generally will take formal disciplinary action for allegations of the following kinds of violations

(A) Negligent prescribing;

(B) Negligent treatment;

(C) ~~Conduct contrary to the~~ ***Failure to act in accordance with the American Association of Naturopathic Physicians (2015) Code of Ethics as adopted by the Board*** ~~standard of ethics~~;

(D) Failure to refer when referral is appropriate;

(E) Untimely response to Board investigation;

(F) Aiding or abetting unlawful practice by an unlicensed person;

(G) Sexual impropriety with a patient; or

(H) Conviction of a crime involving moral turpitude.

(c) Discipline for violations listed in (1)(c) may include a letter of reprimand, a civil penalty, probation, license suspension, license limitations, and license revocation.

(d) For violations which are not listed in subsections (1)(a) and (b) of this rule, the Board will determine the appropriate discipline.

(2) Aggravating and Mitigating Factors or Circumstances. Discipline proposed by the Board may increase in severity, possibly up to license revocation, if there are aggravating circumstances. Discipline may decrease in severity if there are mitigating circumstances.
(a) Aggravating circumstances include, but are not limited to, the following:
(A) The same or similar violation has occurred more than once;

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(B) The violation occurred or was repeated over a significant length of time;
(C) The licensee has previously been disciplined by the Board or in another jurisdiction;
(D) The violation was deliberate or grossly negligent;
(E) The licensee received some benefit from committing the violation;
(F) The violation involved a significant chance for causing harm to the patient or the public.
(b) Mitigating circumstances include, but are not limited to, the following:
(A) The licensee accepted responsibility for the violation;
(B) The licensee practiced a significant period of time without complaints or disciplinary action taken by the Board or any other jurisdiction.
(3) Probation. Probation may be added where the circumstances indicate that future monitoring, training, or other follow-up is necessary or appropriate. Probation may include completion of an approved treatment program when a licensee is alleged to engage in habitual or excessive use of drugs or alcohol.
(4) Practice Restriction. Practice restriction or practice limitation may be added where the circumstances warrant more than a civil penalty but less than a license suspension.
(5) Education. Education may be required when the circumstances indicate that further education is merited to prevent a recurrence of the violation.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.110
Hist.: BNE 7-2005, f. & cert. ef. 10-27-05

850-050-0190
Discipline or Denial of License
The Board may refuse to grant a license to practice Naturopathic medicine in the State of Oregon, or may discipline a license, for any of the following reasons:
(1) Commitment to a mental health institution. A copy of the record of commitment, certified to by the clerk of the court entering the commitment, is conclusive evidence of the commitment.
(2) Habitual use of ardent spirits, narcotics, or other intoxicants to such an extent as to incapacitate him/her from the performance of his/her professional duties.
(3) ~~Any conduct or practice contrary to recognized~~ ***Engaging in any conduct or practice in conflict with the Code of Ethics of the American Association of Naturopathic Physicians (2015) as adopted by the Board.*** ~~standards of ethics of the naturopathic profession, which includes but is not limited to:~~
(4) Any conduct or practice contrary to recognized standards which includes but is not limited to:
(a) Engaging in any conduct which constitutes a violation of any provision of ORS 163.305 through 163.465, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil, or administrative litigation, or admitted to or stipulated by the professional;
(b) Engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, whether initiated by the patient or not;
(c) Any behavior, gesture, or expression that is sexually seductive or sexually demeaning to a patient, or any action that shows a lack of respect for the patient's privacy;
(d) Entering into an intimate sexual relationship with a patient or with a former patient if within six months after the doctor(d)r-patient relationship is terminated, unless a prior sexual relationship existed~~.~~;
(e) Breaching patient confidentiality
(***5***) Fraud or misrepresentation related to naturopathic medicine.

(***6***) The use of any advertising in which untruthful, improper, misleading, or deceptive statements are made.
(***7***) Claiming superiority to or a greater skill than that possessed by fellow naturopathic physicians.
(***8***) Aiding or abetting the unlawful practice of any of the healing arts by an unlicensed person.
(***9***) The advertising or holding oneself out to diagnose or treat a patient by any secret formula method, treatment, or procedure.
(***10***) The guaranteeing of a cure or "results" from any treatment.
(***11***) Failure to refer the patient to an appropriate care provider upon termination of treatment where referral is called for, unless termination was the decision of the patient and the licensee had no opportunity to refer the patient.
(***12***) Prescribing or dispensing a substance that is not listed on the formulary compendium.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.225
Hist.: NE 1, f. 11-12-57; NE 3-1980, f. & ef. 9-11-80; NE 3-1992, f. & cert. ef. 11-5-92; BNE 4-1998(Temp), f. & cert. ef. 8-26-98 thru 2-22-99; administrative correction 8-9-99; BNE 4-2005, f. & cert. ef. 4-13-05; Renumbered from 850-010-0190, BNE 8-2005, f. & cert. ef. 10-27-05

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