

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

FILED
3-2-15 11:45 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Oregon Board of Naturopathic Medicine
Agency and Division
Administrative Rules Chapter Number
850
Anne Walsh
Rules Coordinator
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Address

RULE CAPTION

Clarifies the Board's authority to conduct Law Enforcement Data System (LEDS) checks on licensees

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:

850-030-0020

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; 685.195

Other Authority:

Statutes Implemented:

685.195

RULE SUMMARY

Clarifies the Board's authority to conduct criminal background checks as part of the license renewal, in order to assure fitness to practice. Full text is available at Oregon.gov/obnm

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.

04-30-2015 2:00 p.m. Anne Walsh Anne.Walsh@state.or.us
Last Day (m/d/yyyy) and Time Rules Coordinator Name Email Address
for public comment

*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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3-2-15 11:45 AM
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Oregon Board of Naturopathic Medicine
Agency and Division

850
Administrative Rules Chapter Number

Clarifies the Board's authority to conduct Law Enforcement Data System (LEDS) checks on licensees

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

In the Matter of:

850-030-0020

Statutory Authority:

685.125; 685.195

Other Authority:

Statutes Implemented:

685.195

Need for the Rule(s):

to clarify the Board's authority to conduct LEDS checks on license renewals

Documents Relied Upon, and where they are available:

ORs 685, available at Oregon.gov/obnm

Fiscal and Economic Impact:

n/a

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/

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

minimal to run reports once a year with renewals

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

n/a

Administrative Rule Advisory Committee consulted?:No

If not, why?:

input is requested of all interested parties

04-30-2015 2:00 p.m.	Anne Walsh	Anne.Walsh@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

(Draft Changes – strike through for deleted text; bold and underlined for new text)
Send comments to obnm.info@state.or.us reference rule number in response
Must be received no later than 2:00pm, April 30, 2015

850-030-0020

~~(State and Nationwide)~~Criminal Records Checks, Fitness Determinations

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees in order to determine if they have a history of criminal behavior such that they are not fit to be granted or hold a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require fingerprints of all applicants for an initial license as a naturopathic physician, licensees applying to reinstate a lapsed license, and licensees under investigation to **conduct records checks in order to** determine the fitness of an applicant or licensee. These fingerprints will be provided on prescribed forms made available by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the Board will submit fingerprints to the Oregon Department of State Police to conduct a Criminal History Check and a National Criminal History Check. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police. **The Board may conduct a criminal record check on licensees applying to renew a license using the Law Enforcement Data System (LEDS) maintained by the Department of State Police.**

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit the licensee's license may not be **renewed or** reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the applicant or licensee at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
(F) A recommendation of an employer.

(6) All requested background checks include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

~~(9) (The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.)~~

~~(10)~~ The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

~~(11)~~**10** If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon submission of a new request.

~~(12)~~**11** If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.195

Hist.: BNE 2-2007, f. & cert. ef. 6-12-07; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08