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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 335
BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

FILED
12/02/2020 12:26 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adding the violation of executive orders health emergency to the definition of "Unprofessional Conduct."

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/12/2021 5:00 PM

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.

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Filed By:
David Linn
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/22/2021

TIME: 4:00 PM - 5:00 PM

OFFICER: David Linn

ADDRESS: BSPA Online Zoom

Meeting

800 NE Oregon St.

Suite 407

Portland, OR 97232

NEED FOR THE RULE(S):

Covid-19

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Agenda and draft rules available on website: oregon.gov/bspa

FISCAL AND ECONOMIC IMPACT:

None

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Temporary rules have been noticed and in effect for several months without comment.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

General rule language was adopted for the emergency.

AMEND: 335-005-0010

RULE SUMMARY: Adding the violation of executive orders during a public health emergency to the definition of "Unprofessional Conduct."

CHANGES TO RULE:

335-005-0010

Definitions ¶¶

- (1) Misrepresentation includes any untrue statements or statements that are likely to mislead. Misrepresentation also includes the failure to state any information that is material and that reasonably ought to be considered.¶¶
- (2) Unprofessional Conduct includes:¶¶
- (a) Failure or refusal of an applicant for a license from the Board or of a licensee of the Board to cooperate fully in any investigation conducted by the Board.¶¶
 - (b) Making a false statement to the Board.¶¶
 - (c) Attempting to obtain a license from the Board by means of fraud, misrepresentation, or concealment of material facts.¶¶
 - (d) Sexual misconduct with a client.¶¶
 - (e) Any act of theft, dishonesty or misrepresentation involving a client, another practitioner, third party providers, or a government agency.¶¶
 - (f) Habitual or excessive use of intoxicants, drugs or controlled substances.¶¶
 - (g) Assisting or permitting any person to practice speech-language pathology or audiology without a license.¶¶
 - (h) Practicing speech-language pathology or audiology when impaired by drugs, alcohol or any other substance.¶¶
 - (i) Verbal or physical abuse of a client.¶¶
 - (j) Sexual harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:¶¶
 - (A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;¶¶
 - (B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or¶¶
 - (C) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.¶¶
 - (k) Violating an employer's ethics or conduct policy.¶¶
 - (l) Conviction of a crime or admitting to an act that even in the absence of a conviction would constitute a crime.¶¶
 - (m) Failing to report to this Board a misdemeanor or felony conviction or arrest for a felony crime within 10 days after the conviction or arrest.¶¶
 - (n) Failing to immediately report to the Board any adverse action taken against a license or certificate holder by a state or federal agency; or another state speech-language pathology or audiology licensing agency; or professional association.¶¶
 - (o) Unprofessional conduct as defined in ORS 676.150.¶¶
 - (p) During a declared emergency, unprofessional conduct includes failing to comply with any applicable provision of a Governor's Executive Orders or any provision of this rule. This includes, but is not limited to:¶¶
 - (A) Operating a business required by an Executive Order to be closed;¶¶

(B) Providing services at a business required by an Executive Order to be closed;¶

(C) Failing to comply with Oregon Health Authority (OHA) guidance implementing an Executive Order, including but not limited to:¶

(i) Failing to satisfy required criteria in OHA guidance prior to resuming elective and non-emergent procedures;¶

(ii) Failing to implement a measured approach when resuming elective and non-emergent procedures in accordance with OHA guidance; ¶

(D) Failing to comply with any Oregon State agency guidance implementing an Executive Order;¶

(3) "Telepractice" is the application of telecommunications technology to delivery of professional services at a distance for assessment, intervention, and/or consultation. "Telepractice" means, but is not limited to, telehealth, telespeech, teleSLP, telehear, telerehab, teletherapy, teleswallow, teleaudiology when used separately or together.¶

(a) "Patient" or "client" means a consumer of telepractice services.¶

(b) "Telepractice service" means the application of telecommunication technology to deliver audiology and/or speech-language pathology services at a distance for assessment, intervention and/or consultation. ¶

(c) "Client/patient site" means the location of the patient or client at the time the service is being delivered via telecommunications. ¶

(d) "Clinician site" means the site at which the audiologist or speech-language pathologist delivering the service is located at the time the service is provided via telecommunications.

Statutory/Other Authority: ORS 681

Statutes/Other Implemented: ORS 681.330