OFFICE OF THE SECRETARY OF STATE LAVONNE GRIFFIN-VALADE SECRETARY OF STATE

CHERYL MYERS DEPUTY SECRETARY OF STATE AND TRIBAL LIAISON



ARCHIVES DIVISION STEPHANIE CLARK DIRECTOR

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#### NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

# CHAPTER 833 MENTAL HEALTH REGULATORY AGENCY OREGON BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

FILING CAPTION: Professional disclosure statement submission to the Board; renewal information.

# LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/21/2024 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group 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 the 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.

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# NEED FOR THE RULE(S)

Since 1989, ORS 675.755 has required applicants and licensees to provide to the Board professional disclosure statements (PDS) for review and approval. As the Board's licensing base has grown tremendously since that time, the PDS requirement has become increasingly burdensome. In 2022, Board staff reviewed at least 7,679 PDS submissions. In 2023, that number grew to at least 9,878 PDS submissions. This mandate has bogged down staff and caused bottlenecks in application processing. House Bill 4010 (2024), at Sections 10-11, removes Sections (4) and (5) from ORS 675.755 which require applicants and licensees to submit their PDS to the Board for approval, initially and when there is a change. This rulemaking proposes to implement HB 4010 (effective June 6, 2024) by removing all requirements to submit PDSs to the Board. It also makes some minor updates to the renewal process to reflect the Board's online licensing system.

# DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR Chapter 833 and ORS Chapter 675 are available on the OBLPCT website at https://www.oregon.gov/OBLPCT/Pages/LawsRules.aspx. House Bill 4010 can be found on the Oregon State Legislature website at https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/HB4010. The Diversity Study prepared by Keen Independent Research, LLC is available on the OBLPCT website at https://www.oregon.gov/oblpct/Documents/Diversity\_Study\_12-22.pdf.

# STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule amendment is likely to promote racial equity in the state. The Board is pursuing changes that remove unnecessary barriers to licensure in Oregon while maintaining strong consumer protection standards consistent with its mission. The Diversity Study produced by Keen Independent Research in December 2022 recommended removing unnecessary procedural hurdles related licensing that may cause confusion and/or add little or no value. The Board

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# proposes that policy changes that will result in increased diversity within the counseling and therapy professions will positively affect racial equity in the State.

#### FISCAL AND ECONOMIC IMPACT:

None expected.

## 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. Businesses are not subject to this rule. The Board will absorb the minimal costs required to implement these changes within its current staffing levels and budgeted resources.

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

Small businesses were not explicitly involved.

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

The proposed amendments are uncomplicated, stem from legislative action, do not result in fiscal impact, and were openly discussed during the April 5, 2024 public session full Board meeting where public feedback was solicited. The Board did not determine that an additional committee beyond the eight-member Board and its staff was necessary to develop the rules.

#### RULES PROPOSED:

833-020-0011, 833-020-0061, 833-050-0021, 833-050-0031, 833-050-0131, 833-050-0161, 833-075-0020, 833-075-0050, 833-075-0060

AMEND: 833-020-0011

RULE SUMMARY: Removes requirement to submit a professional disclosure statement to the Board as part of licensure application.

CHANGES TO RULE:

833-020-0011 Applications ¶

(1) Application for licensure as a professional counselor and marriage and family therapist must be submitted to the Board in a form and manner prescribed by the Board. $\P$ 

(2) Application for licensure must include gender, date of birth, social security number, practice and residence addresses, email address, similar licenses held in other states, and history of professional discipline, litigation, and criminal involvement and be accompanied by:¶

(a) The non-refundable application fee;¶

(b) Official transcript sent directly to the Board from the college or university and supporting documentation as necessary showing education requirements have been met;  $\P$ 

(c) Documentation to prove experience requirements have been met or request for registration as an associate with a proposed plan to obtain required experience; $\P$ 

(d) Verification that approved examination has been passed, or state examination is being requested (if applicable);  $\P$ 

(e) Proposed professional disclosure statement as specified in OAR 833-075-0050;¶

(f) Criminal history information as specified in OAR 833-120-0021; and ¶

 $(\underline{gf})$  Other clarifying information requested by the Board. $\P$ 

(3) Applicants will be allowed one year from application submission complete their application file, which documents that the applicant meets the educational requirements, examination requirements (except for associate registration method), and experience qualifications (if applicable) for licensure.¶

(4) Failure to withdraw the application or complete the process within the allowed time will result in closure of the file. An incomplete application includes but is not limited to an application in which:

(a) Required information or original signatures are not provided;¶

(b) Required forms are not submitted; or¶

(c) No fee or an insufficient fee is received.¶

(5) Applicants who complete their application file but are not approved for registration, examination, or licensure will be notified in writing that the application is being denied and state the reason(s) for denial.¶

(6) To be reconsidered for licensure, applicants who failed to become licensed, who were refused licensure, who withdrew from consideration, or associates who have allowed their registration to expire will be required to file a new application, fee, and resubmit all documentation necessary to meet the standards for licensure in effect at the time of reapplication. Applicants reapplying must fulfill any deficiencies that are the result of changes to requirements that may have been implemented between former and current application.¶

(7) An applicant must notify the Board immediately, but not less than within 30 days, if any information submitted on the application changes, including but not limited to: name, address, email address, telephone number,

complaints, disciplinary actions, litigation, criminal involvement, and employment investigations which results in disciplinary action. Failure to do so may be grounds for denial of the application or revocation of the license, once issued.

RULE SUMMARY: Removes requirement to submit a professional disclosure statement to the Board as part of relicensure application.

CHANGES TO RULE:

833-020-0061 Re-Licensure Method ¶

(1) The re-licensure method is required for applicants who were previously licensed by the Board within the last two years of their new application submission. The re-licensure method requires the applicant, as a previous Board licensee, to request a new license with a new license number, but without documenting further supervised clinical experience.¶

(2) To be considered for re-licensure, all of the following items must be received: ¶

(a) An application for re-licensure, in a form and manner prescribed by the Board, which must include complete and truthful responses to all of the questions regarding character and fitness, the applicant's current information and status, and any other information requested by the Board.¶

(b) The current application fee plus one current renewal fee;¶

(c) Updated proposed professional disclosure statement if required by OAR 833-075-0050; ¶

(d) Report of at least the minimum continuing education activities required in OAR Chapter 833, Division 80 completed within two years prior to the date the Board will issue the new license; and **¶** 

(ed) Disclosure as to whether the applicant has engaged in the unlicensed practice of professional counseling or marriage and family and therapy during the period since their previous license expired.¶

(3) To be considered for licensure more than two years after the expiration date of the prior license, an applicant must request a new license with a new license number by reapplying for licensure using the method of application that applies to their current situation under OAR 833-020-0021.¶

(4) All applicants for re-licensure must successfully pass the current Oregon law and rules examination.

Statutory/Other Authority: ORS 675.785 - 675.835, 676.160 - 676.180

Statutes/Other Implemented: ORS 675.785 - 675.835

RULE SUMMARY: Removes requirement to submit a professional disclosure statement to the Board as part of associate registration application.

CHANGES TO RULE:

833-050-0021 Application for Associate Registration ¶

(1) An applicant for registration must:¶

(a) Meet all registration requirements in effect at the time the application is submitted;  $\P$ 

(b) Request registration on Board approved forms;¶

(c) Unless exempted, submit a professional disclosure statement for board approval as specified in OAR 833-050-0031;¶

(d) Submit an application fee as specified in OAR 833-070-0011;¶

(ed) Meet the educational requirements for licensure according to OAR 833-030-0011 (Professional Counselor Associate) and/or 833-040-0011 (Marriage and Family Therapy Associate);¶

(f<u>e</u>) Agree to complete supervised clinical experience hours to meet the total number of hours required for licensure; and  $\P$ 

 $(\underline{gf})$  Abide by the Board's laws and rules.¶

(2) Applicants for professional counselor and marriage and family therapist must pay a fee for each license.¶
(3) Associate registration status is a transitional step toward licensure and is not intended as a means to avoid licensure. Applicants approved for registration as an associate will have five years to complete the supervised direct client contact hours necessary for licensure or for examination. Failure to meet the experience requirements for licensure within five years will result in expiration of registration and closure of the application file. The registered associate may petition the Board to allow extension of registration for up to one year beyond the maximum five years if the registered associate can show good cause for such extension.¶

(4) Former applicants who re-apply may transfer direct client contact hours accrued under a board-approved plan to their new plan.

RULE SUMMARY: Removes requirement for registered associates to submit to the Board additional or updated professional disclosure statements and deletes submission exemptions.

CHANGES TO RULE:

## 833-050-0031

Registered Associate Professional Disclosure Statement (PDS) ¶

(1) Registered associates must furnish clients with a copy of a Board-approved pProfessional dDisclosure sStatement (PDS) before providing counseling or therapy. When providing disclosure statements via electronic communication, registered associates must ensure a means of documenting confirmation of receipt and acknowledgement of the PDS.¶

(2) A professional disclosure statement must include the following information about the registered associate Content. The PDS must include the following information required by this section and ORS 675.755:¶

(a) Name, business address and telephone number;  $\P$ 

(b) Name of the registered associate's supervisor(s);¶

(c) Philosophy and approach to counseling or marriage and family therapy<del>, including reference to any codes of standards or ethics to which the registered associate subscribes</del>;¶

(d) Formal education and training, including title of highest relevant degree, and the school that granted the degree, and major coursework;¶

(e) Supervision requirements;¶

(f) A statement indicating adherence to the Oregon Licensing Board's Code of Ethics set forth in OAR Chapter 833, Division 100;  $\P$ 

(g) The standard fee for service, including discounted rates or sliding scale and a statement that no fees will be charged and no additional fee will be added to another set fee such as a hospital room daily chargFee schedule; (h) A bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon registered associates have the right: (f)

(A) To expect that an registered associate has met the minimum qualifications of training and experience required by state law;¶

(B) To examine public records maintained by the Board and to have the Board confirm credentials of a registered associate;¶

(C) To obtain a copy of the Code of Ethics;¶

(D) To report complaints to the Board;  $\P$ 

(E) To be informed of the cost of professional services before receiving the services;¶

(F) To be assured of privacy and confidentiality while receiving services as defined by rule or law. Registered associates must include an explanation of each exception to confidentiality; and  $\P$ 

(G) To be free from being the object of discrimination on any basis listed in the Code of Ethics while receiving services.  $\P$ 

(i) The <u>Board's</u> name, address, telephone number, and email address <del>of the Oregon Board of Licensed Professional</del> Counselors and Therapists; and¶

(j) A statement indicating the following: "Additional information about this registered associate is available on the Board's website: www.oregon.gov/oblpct."¶

(32) The professional disclosure statement PDS Distribution. Unless exempt under subsection (d), below, registered associates must provide each client with a PDS consistent with section (1) of this rule.

<u>registered associates must provide each client with a PDS consistent with section (1) of this rule. (a) When providing a PDS via electronic communication, registered associates must ensure a means of</u>

documenting confirmation of receipt and acknowledgement of the PDS.¶

(b) The PDS must be accessible to people with disabilities.¶

(4<u>c</u>) Registered associates will<u>must make a reasonable effort to</u> assist their clients to understand the information in the professional disclosure statement.¶

(5) Whenever a registered associate changes the professional disclosure statement, the new statement must be provided to the Board for approval PDS.

(d) The PDS distribution requirements of this section do not apply to:

(A) Registered associates who are not practicing professional counseling or marriage and family therapy in Oregon;¶

(B) Registered associates whose practice is:¶

(i) Providing crisis response;¶

(ii) Serving residential psychiatric patients only;

(iii) Employment by a correctional institution; or¶

(iv) Employment by a local, state or federal government agency, a public university listed in ORS 352.002, an organization licensed or certified by the Oregon Health Authority, or a group practice if the employer supplies a PDS, informed consent, or equivalent document(s) containing the information required in section (1) of this rule. Upon a request by the Board, registered associates must provide a copy of such document(s) within ten (10) days.¶

(e) Unless exempted under subsection (d), above, a registered associate who fails to provide a PDS may not charge the client a fee for services.

RULE SUMMARY: Removes requirement for registered associates to submit to the Board updated professional disclosure statements at renewal. Updates and clarifies online renewal submission process.

CHANGES TO RULE:

#### 833-050-0131

Associate Registration Renewal  $\P$ 

(1) A registered associate must renew registration annually each year following initial registration. Annual renewal is due by the first day of the month of initial registration to be considered timely.¶

(2) Registration renewal requires the registered associate to provide to the Board a renewal fee as established in OAR 833-070-0011, renewal forms, and an updated Professional Disclosure Statement if there have been changesubmit an application for registration renewal in a form and manner prescribed by the Board, which must include the renewal fee, complete and truthful responses to all of the questions regarding character and fitness, clinical supervised experience, registrant's current information and status, and any other questions.¶

(3) Late Renewal. A registered associate may renew a registration after the first day of the month but within the renewal month by, in addition to completing the requirement in section (2) above, submitting to the Board the required delinquent fee. If these are not timely submitted, then the associate registration will be expired. Expired registered associates must reapply pursuant to OAR 833-020-0071 in order to practice as a registered associate or be considered for licensure.¶

(4) Renewal may be denied if any of the conditions of the plan are not being met.  $\P$ 

(5) Registered associates must renew registration annually until being granted a license or the expiration or denial of associate registration.¶

(6) A former registered associate who allows their registration to lapse, and continues to practice professional counseling or marriage and family therapy unregistered in violation of ORS 675.825(1)(d), is subject to disciplinary action, to include but not limited to the following sanctions:¶

(a) If the person practices during the period of 1-30 days following registration lapse: \$100 civil penalty and assessment of costs of the disciplinary process (if any);¶

(b) If the person practices during the period of 31-60 days following registration lapse: \$250 civil penalty and assessment of costs of the disciplinary process (if any);¶

(c) If the person practices during the period of 61-90 days following registration lapse: \$500 civil penalty, reprimand, and assessment of costs of the disciplinary process (if any);¶

(d) In addition to section (c), for each additional 30-day period in which the person practices following 91 days of registration lapse, the Board shall assess an additional \$250 civil penalty and assess the costs of the disciplinary process (if any).

RULE SUMMARY: Removes requirement for registered associates to provide to the Board updated professional disclosure statements.

CHANGES TO RULE:

833-050-0161 Current Information to Board ¶

(1) All registered associates must provide current contact information to the Board, including: ¶

(a) Physical residence address and post office box, if applicable;  $\P$ 

(b) Electronic mail address;¶

(c) Home and work telephone numbers; and ¶

(d) Any nickname or alternative personal name used by the individual; and ¶

(e) An updated, current Professional Disclosure Statement being provided to clients as required above.¶

(2) Registered associates must inform the Board office of any changes to information within 30 days of the change in a form and manner prescribed by the Board.¶

(3) Registered associates must submit a change of name in a form and manner prescribed by the Board, accompanied by a copy of the legal document showing the name change, within 30 days of the change.

Statutory/Other Authority: ORS 675.785 - 675.835, 676.160 - 676.180

Statutes/Other Implemented: ORS 675.785 - 675.835

RULE SUMMARY: Removes requirement for licensees to submit to the Board updated professional disclosure statements at renewal. Updates and clarifies online renewal submission process.

CHANGES TO RULE:

833-075-0020 License Renewal/Late Renewal ¶

(1) Before the Board will renew a license, a licensee must, no more than 45 days before or during the renewal month:¶

(a) Submit a completed renewal form provid<u>n application for renewal in a form and manner prescrib</u>ed by the Board, which <u>will<u>must</u> include responses to all character and fitness <u>complete and truthful responses to all</u> <u>questions regarding continuing education, character and fitness, licensee's current information and status, and</u> <u>any other</u> questions, and a sworn statement that there is no reason for denial of renewal;¶</u>

(b) Pay the appropriate renewal fee;¶

(c) Submit continuing education information detailing compliance with the requirements, if applicable; (d) Submit an updated professional disclosure statement, if there have been changes or if renewal information indicates that the one on file with the Board contains false, incomplete, outdated or misleading information; and (ed) Complete the required healthcare workforce data survey and pay the fee established by the Oregon Health Authority pursuant to ORS 676.410.

(2) Late Renewal. A licensee may renew a license in the month following the renewal month by, in addition to completing the requirements of section (1) above, submitting to the Board the required delinquent fee. If these are not timely submitted, then the license shall lapse.¶

(3) The licensee holds the burden of proof of submission of the items required for renewal. Failure to receive a courtesy reminder from the Board shall not relieve a licensee of the renewal requirements and consequences.

 (4) The Board shall have discretion to waive the delinguent fee in cases of documented hardship.

(5) A former licensee who allows their license to lapse, and continues to practice professional counseling or marriage and family therapy unlicensed in violation of ORS 675.825(1)(d), is subject to disciplinary action, to include but not limited to the following sanctions:¶

(a) If the person practices during the period of 1-30 days following license lapse: \$250 civil penalty and assessment of costs of the disciplinary process (if any);¶

(b) If the person practices during the period of 31-60 days following license lapse: 500 civil penalty and assessment of costs of the disciplinary process (if any);

(c) If the person practices during the period of 61-90 days following license lapse: 1,000 civil penalty, reprimand, and assessment of costs of the disciplinary process (if any);

(d) In addition to section (c), for each additional 30-day period in which the person practices following 91 days of license lapse, the Board shall assess an additional \$500 civil penalty and assess the costs of the disciplinary process (if any).

Statutory/Other Authority: ORS 675.785 - 675.835, ORS 676.410

Statutes/Other Implemented: ORS 675.785 - 675.835, ORS 676.410

RULE SUMMARY: Removes requirement for licensees and temporary practitioners to submit to the Board additional or updated professional disclosure statements, and for applicants to submit professional disclosure statement to the Board for approval along with the application. Deletes professional disclosure statement submission exemptions.

CHANGES TO RULE:

833-075-0050 Professional Disclosure Statement (PDS) ¶

(1) Professional Disclosure Statement (PDS) Content. The PDS must include the following information required by this section and ORS 675.755:¶

(a) Name, business address and telephone number;  $\P$ 

(b) Philosophy and approach to counseling or marriage and family therapy;  $\P$ 

(c) A statement indicating adherence to the Oregon Licensing Board's Code of Ethics set forth in OAR chapter 833, division 100;¶

(d) A bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:¶

(A) To expect that a licensee or temporary practitioner has met the minimum qualifications of training and experience required by state law;  $\P$ 

(B) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee or temporary practitioner;¶

(C) To obtain a copy of the Code of Ethics;  $\P$ 

(D) To report complaints to the Board;¶

(E) To be informed of the cost of professional services before receiving the services;¶

(F) To be assured of privacy and confidentiality while receiving services as defined by rule or law. Licensees and temporary practitioners must include an explanation of each exception to confidentiality; and **¶** 

(G) To be free from being the object of discrimination on any basis listed in the Code of Ethics while receiving services.¶

(e) Formal education and training, including title of highest relevant degree earned and school granting degree;¶

(f) Oregon licensure requirements for continuing education and supervision;  $\P$ 

(g) Fee schedule;¶

(h) A statement indicating the following: "Additional information about this counselor or therapist is available on the Board's website: www.oregon.gov/oblpct"; and  $\P$ 

(i) The Board's name, address, telephone number, and email address.  $\P$ 

(2) PDS Distribution. Unless exempted under subsection (d), below, licensees and temporary practitioners must provide each client with a PDS consistent with section (1) of this rule. $\P$ 

(a) When providing a PDS via electronic communication, licensees and temporary practitioners must ensure a means of documenting confirmation of receipt and acknowledgement of the PDS.¶

(b) Licensees and temporary practitioners must make a reasonable effort to assist the client to understand the information presented in the PDS.¶

(c) The PDS must be accessible to people with disabilities.¶

(d) The PDS distribution requirements of this section do not apply to:  $\P$ 

(A) Licensees on inactive status or not practicing professional counseling or marriage and family therapy in Oregon;¶

(B) Licensees and temporary practitioners whose practice is:  $\P$ 

(i) Providing crisis response;¶

(ii) Serving residential psychiatric patients only;  $\P$ 

(iii) Employment by a correctional institution; or¶

(iv) Employment by a local, state or federal government agency, a public university listed in ORS 352.002, an organization licensed or certified by the Oregon Health Authority, or a group practice if the employer supplies a PDS, informed consent, or equivalent document(s) containing the information required in section (1) of this rule. Upon a request by the Board, licensees and temporary practitioners must provide a copy of such document(s) within ten (10) days.¶

(e) Unless exempted under subsection (d), above, a licensee or temporary practitioner who fails to provide a PDS may not charge the client a fee for services.  $\P$ 

(3) Board Approval of PDS.¶

(a) An applicant for licensure or temporary practice must submit a PDS for Board approval upon application for a

license, except those who are exempt from the PDS distribution requirements under subsection (2)(d) of this rule or those who have not yet identified any practice site in Oregon at the time of application, who may submit their PDS for approval at a later date, prior to beginning practice.¶

(b) Whenever a licensee or temporary practitioner adds or changes a PDS, the new statement must be presented to the Board for approval, except:¶

(A) If the licensee or temporary practitioner is exempt from the PDS distribution requirements under subsection (2)(d) of this rule; or¶

(B) If the only changes to the PDS are to the PDS contents described in subsections (1)(a), (1)(f), (1)(g), or (1)(i) of this rule.

Statutory/Other Authority: ORS 675.785

Statutes/Other Implemented: ORS 675.785, ORS 675.755

RULE SUMMARY: Removes requirement for licensees to provide to the Board updated professional disclosure statements.

CHANGES TO RULE:

833-075-0060 Current Information to Board ¶

(1) All licensees must provide current contact information to the Board, including:¶

(a) Physical residence address and post office box, if applicable;¶

(b) Electronic mail address;¶

(c) Home and work telephone numbers; and  $\P$ 

(d) Any nickname or alternative personal name used by the individual; and  $\P$ 

(e) An updated, current Professional Disclosure Statement being provided to clients.

(2) Licensees must inform the Board of any changes to information within 30 days of the change in a form and manner prescribed by the Board. $\P$ 

(3) Licensees must submit a change of name in a form and manner prescribed by the Board, accompanied by a copy of the legal document showing the name change, within 30 days of the change.

Statutory/Other Authority: ORS 675.785

Statutes/Other Implemented: ORS 675.755, 675.785