

OFFICE OF THE SECRETARY OF STATE  
SHEMIA FAGAN  
SECRETARY OF STATE  
  
CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
STEPHANIE CLARK  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

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

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

**FILED**  
12/09/2021 4:58 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Compliance with the Oregon Health Authority's COVID-19 requirements; AG model rule adoption

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/24/2022 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.*

CONTACT: LaRee Felton  
503-373-1196  
laree.felton@mhra.oregon.gov

3218 Pringle Road SE, Ste. 130  
Salem, OR 97302

Filed By:  
LaRee Felton  
Rules Coordinator

**NEED FOR THE RULE(S)**

This rule is being adopted at the direction of the Governor's Office. It is needed to ensure compliance with COVID-19 related rules that help keep Oregonians healthy and safe during a declared emergency. A failure to enforce compliance may adversely affect public health and safety.

**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>.

The Oregon Health Authority's rules are available at  
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1234>.

**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. Businesses are not subject to this rule.

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

Small businesses were not directly involved; however members of the Board who developed these amendments

represent small businesses.

---

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

The rules are straightforward and do not result in any fiscal impact. 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:

833-001-0005, 833-110-0042

AMEND: 833-001-0005

RULE SUMMARY: This amendment clarifies the Board's adoption by reference to the Attorney General's (AG) Model Rules, which includes the Department of Justice's OAR Chapter 137 Divisions 1-5.

CHANGES TO RULE:

833-001-0005

Model Rules of Procedure ¶

~~The most current Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are by this reference adopted~~ Board adopts the Attorney General's Model Rules of Procedure, OAR Chapter 137, Divisions 1 through 5, as ~~the~~its rules of procedure of the Board of Licensed Professional Counselors and Therapists and ~~must be controlling except as otherwise required by statute or rule~~under the Administrative Procedures Act.

Statutory/Other Authority: ORS 675.785, ORS 36.224, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 183.341

ADOPT: 833-110-0042

RULE SUMMARY: This new rule sets forth that failure to comply with any applicable provision of an Oregon Health Authority COVID-19-related rule constitutes gross negligence. Violations are subject to Board sanction.

CHANGES TO RULE:

833-110-0042

Compliance with the Oregon Health Authority's COVID-19 Requirements

(1) The Oregon Health Authority (OHA) has adopted certain rules to control the communicable disease COVID-19. Gross negligence includes failing to comply with any applicable provision of an OHA COVID-19-related rule or any provision of this rule. ¶

(2) Failing to comply as described in subsection (1) includes, but is not limited to:¶

(a) Failing to comply with OHA's rules requiring masks, face coverings or face shields, including OAR 333-019-1011, OAR 333-019-1015, and OAR 333-019-1025, if applicable; and¶

(b) Failing to comply with OHA's rules requiring vaccinations, including OAR 333-019-1010 and OAR 333-019-1030.¶

(3) No disciplinary action or penalty action shall be taken under this rule if the rule alleged to have been violated is not in effect at the time of the alleged violation.¶

(4) The Board may impose sanctions for violations of this rule in accordance with ORS 675.745.

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

Statutes/Other Implemented: ORS 675.745, ORS 675.785