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AND TRIBAL LIAISON



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 852  
BOARD OF OPTOMETRY

**FILED**

11/06/2023 2:34 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Health Care Interpreter enforcement rule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/21/2023 2:00 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: Shelley Hanson  
971-701-1194  
shelley.g.hanson@obo.oregon.gov

1500 Liberty St SE, Ste 210  
Salem, OR 97302

Filed By:  
Shelley Hanson  
Rules Coordinator

NEED FOR THE RULE(S)

Allows the Board to enforce the OHA requirement

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Laws/rules--online

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

This rule allows non-English speaking individuals the right to health care interpretation services.

FISCAL AND ECONOMIC IMPACT:

None unless there's a violation and a civil penalty.

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).*

This rule affects any actively licensed OD's who accept federal and state funds for services.

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

Our Board is comprised of 4 licensed OD's.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULE SUMMARY: Gives the Board enforcement authority for violations of HCI regulations under the OHA.

CHANGES TO RULE:

852-060-0027

Definition of Unprofessional Conduct ¶¶

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:¶¶

(1) Any conduct or practice contrary to recognized standards of ethics of the optometric profession.¶¶

(2) Fraud, misrepresentation or dishonesty, including but not limited to:¶¶

(a) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading or deceitful statements are made.¶¶

(b) Misrepresenting any facts to a patient concerning treatments or fees.¶¶

(c) Making a false statement to the Board or to an agent of the Board.¶¶

(d) Willfully deceiving or attempting to deceive the Board, an employee of the Board, or an agent of the Board in any application or renewal, or in reference to any matter under investigation by the Board. This includes but is not limited to the omission, alteration or destruction of any records in order to obstruct or delay an investigation by the Board, or to omit, alter or falsify any information in patient or business records to avoid potential disciplinary action.¶¶

(3) Advertising professional methods or professional superiority, including using the term "board certified" without defining which board has provided the certification.¶¶

NOTE: As a licensing and regulatory agency, the Oregon Board of Optometry does not "board certify" optometric physicians.¶¶

(4) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor," or any contraction thereof, "clinic," "institute," "specialist," or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."¶¶

(5) Aiding an unlicensed person in the practice of optometry.¶¶

(6) Permitting another person to use the optometrist's license¶¶

(7) Failure to train and directly supervise persons to whom optometric services have been appropriately delegated.¶¶

(8) Prescribing, dispensing or administering controlled substances outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.¶¶

(9) Habitual, excessive or unlawful use of intoxicants, drugs or controlled or mind-altering substances.¶¶

(10) Failing to keep complete and accurate records for a patient.¶¶

(11) Failing to retain patient records in an accessible print or electronic format.¶¶

(12) Failing to immediately give the prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination.¶¶

(13) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose information.¶¶

(14) Failing make appropriate transfer of the custody of patient records.¶¶

(15) Obstruction and harassment, including but not limited to:¶¶

(a) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.¶¶

(b) Conduct determined by the Board to be harassment of any complainant by the licensee or any member of the licensee's staff or practice, regardless of complaint case closure status.¶¶

(c) The use of threats, harassment, or any other conduct that obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.¶¶

(d) The discharge of an employee based primarily on the employee's attempt to comply with or aid in the compliance of the Board's rules, or with the Board's enforcement activities.¶¶

(16) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to waiver of confidentiality privileges except attorney-client privilege.¶¶

(17) Making an agreement with a patient or person, or any person or entity representing patients or persons, or providing any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Oregon Board of Optometry; to truthfully and fully answer any questions posed by an agent or representative of the Board; or to participate as a witness in a Board proceeding.¶¶

(18) Failing to respond in writing to a Board request for information as required.¶¶

- (19) Failing to provide the Board with requested patient records.¶
- (20) Failing to appear before the Board at a time and place designated by the Board for such appearance.¶
- (21) Failing to comply with a Board order.¶
- (22) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.¶
- (23) Failing to give timely written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any licensing agency of any state.¶
- (24) Failing to give written notification to the Board of any felony or misdemeanor convictions within 10 days of the conviction.¶
- (25) Failure to timely report own or other licensee's suspected prohibited or unprofessional conduct, arrests or convictions as required by ORS 676.150, 683.335, and 683.340.¶
- (26) Conduct that could be construed as moral turpitude.¶
- (27) Any conduct unbecoming a licensee, or detrimental to the best interests of public, including failure to fully comply with Executive Orders issued by the Governor during a declared disaster or emergency.¶
- (28) Sexual misconduct, including but not limited to:¶
- (a) Sexual abuse: Includes conduct that constitutes a violation of any provision of ORS 163.305 through 163.479, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil or administrative litigation, or admitted or stipulated by the professional;¶
- (b) Sexual Violation: Includes professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital-to-genital contact; oral-to-genital contact; oral-to-anal contact; oral-to-oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present; and¶
- (c) Sexual Impropriety: Includes any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation, making comments about potential sexual performance during an examination or consultation; requesting the details of sexual history unless medically necessary; questioning or discussing sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; or kissing of a sexual nature.¶
- (29) Practice optometry in any optometry office or clinic not owned by an Oregon licensed optometrist(s).¶
- (30) Failing to follow the Health Care Interpreter regulations per ORS 413.550-413.558 and OAR 950-050.
- Statutory/Other Authority: ORS 683, 182, 676
- Statutes/Other Implemented: ORS 683.140, 683.270, 676.150, 182.466