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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 852
BOARD OF OPTOMETRY

FILED
12/07/2021 8:42 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates to gross ignorance and inefficiency rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/28/2022 1:00 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)

This updates the Board's rules to clarify the meaning and intent of the gross ignorance and inefficiency statute.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Board discussions documented in meeting minutes and emails from the Board President and Vice President. Available through the Executive Director

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. These rules are only used if there is a standard of care violation that requires enforcement action.

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

The Board is comprised of 4 licensed OD's.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 852-060-0028

RULE SUMMARY: Updates the Board's rules to expand the meaning of gross ignorance and inefficiency.

CHANGES TO RULE:

852-060-0028

Definition of Gross Ignorance or Inefficiency ¶¶

In determining gross ignorance or inefficiency within the meaning of ORS 683.140(1)(c) the Board may take into account relevant factors and practices, including but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice optometry in this state, the current teachings at accredited optometry schools, relevant technical reports published in recognized optometry journals, and the desirability of reasonable experimentation in the furtherance of the practice of optometry. Gross Ignorance or Inefficiency may include, but is not limited to:¶¶

- (1) Lacking the knowledge or ability to discharge professional obligations within the practice of optometry.¶¶
- (2) Deviating from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Oregon acting in the same or similar circumstances.¶¶
- (3) Failing to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.¶¶
- (4) Failing to conform to the minimal standard of acceptable and prevailing practice of optometry in this state.¶¶
- (5) Failing to perform adequate testing or failing to use test results to assess the patient and prepare an adequate plan of care.¶¶
- (6) Failing to adequately document patient care provided, maintain adequate patient records, and/or to document patient care or plan of care.¶¶
- (7) Exceeding the scope of practice.¶¶
- (8) Any practice or conduct that does, or might, constitute a danger to the health or safety of the patient.¶¶
- (9) Any conduct, practice or condition that does or might adversely affect an optometrist's ability to safely and skillfully practice optometry.¶¶
- (10) Gross malpractice or repeated malpractice.¶¶
- (11) Failing to timely comply with provisions of federal law or state statute governing the practice of optometry.

Statutory/Other Authority: ORS 683; ORS 182

Statutes/Other Implemented: ORS 683.140, 683.270, 182.466