



# Oregon

Kate Brown, Governor



## Medical Board

1500 SW 1<sup>st</sup> Avenue, Suite 620

Portland, OR 97201-5847

(971) 673-2700

FAX (971) 673-2670

[www.oregon.gov/omb](http://www.oregon.gov/omb)

## Rulemaking Materials

The Administrative Affairs Committee on September 14, 2022, will review the following rules. If you have questions about these rulemakings please contact [elizabeth.ross@omb.oregon.gov](mailto:elizabeth.ross@omb.oregon.gov).

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 001 – OREGON MEDICAL BOARD

#### First Review – October 2022

The first proposed rule limits the type of late hearing requests the Oregon Medical Board will consider and accept. The second proposed rules make updates to align with the proposal to limit the type of late hearing requests.

**Edited and removed language in (5)(b) and (6), shown by strikethrough.**

#### 847-001-0005

##### **Model** Rules for Contested Cases

(1) The Oregon Medical Board adopts the Attorney General's Uniform and Model Rules for Contested Cases of the Attorney General in effect on January 1, (2008), and all amendments thereto are hereby adopted by reference as rules of the Oregon Medical Board.

(2) The board must accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing unless the board receives the request after the entry of the final order by default.

(3) The board may accept a late hearing request other than one described in section (2) above only if:

(a) The failure to timely request a hearing was due to the serious illness of a party lasting 30 days or more, the terminal illness of a member of the party's immediate family, destruction of the party's home or practice site, reasonable reliance on a statement of the agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of the agency; and

(b) The board receives the request before the entry of a final order by default.

(4) Due to the complexity of the Board's cases, except for orders of emergency license suspension, a party who requests a hearing must file a written answer within 30 days of a timely hearing request. The written answer must include a statement of each defense the party is raising.

(5) Regarding an answer filed by a party:

(a) Failure to raise a particular defense in the answer will be considered a waiver of such defense.

(b) New matters alleged in the answer are ~~must be~~ presumed to be denied by the Board.

(c) The answer may be amended, but no later than 60 days after the deadline provided in the notice to request a hearing.

(6) If the Board amends its notice (“Complaint and Notice”), then a party that requested a hearing may amend its answer up to 30 days after the agency issues the amended notice or prior to hearing, whichever is earlier.

[ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is available from the office of the Attorney General or the Medical Board.]

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 183.335, 183.341 & 677.275

### **847-001-0015**

#### **Delegation of Authority and Issuance of Final Order**

(1) The Oregon Medical Board (Board) has delegated to the Executive Director the authority to make certain procedural determinations on its behalf on matters arising under the Attorney General's Model Rules for Contested Cases in OAR 137-003-0001 to 137-003-0700. The procedural functions include, but are not limited to:

(a) For discovery requests before the Board, ~~to authorize~~ **ing** or **deny** **ing** requested discovery in a contested case, including the methods, timing and extent of discovery; ~~and to~~

**(b) i** **ssuing** a Qualified Protective Order over the materials subject to discovery, for the period prior to referring a case to the Office of Administrative Hearings;

**(c) b** ~~To~~ **R** **review** **ing** all requests to take a deposition of a witness and to authorize or deny any request for deposition. If a request to take a deposition is authorized, the Executive Director may specify the terms on which the deposition is taken, to include, but not limited to the location, the manner of recording, the time of day, the persons permitted to be present, and the duration of the deposition;

**(d) e** **Determining** **W** whether a request for hearing filed after the prescribed time will be accepted, based upon **OAR 847-001-0005-a finding of good cause**. In making this determination, the Executive Director may require the request to be supported by an affidavit or other writing to explain why the request is late and may conduct such further inquiry as deemed appropriate. ~~The Executive Director may authorize a hearing on whether the late filing should be accepted.~~ If **any party** ~~the Board~~ disputes the facts contained in the explanation as to why the request was late or the accuracy of the reason that the request was late, the requestor has a right to a hearing before an Administrative Law Judge (ALJ) on the reasons for that factual dispute;

**(d) e** ~~Whether the late filing of a document may be accepted based upon a finding of good cause;~~

**(d) e** Whether to issue a subpoena for the attendance of witnesses or to produce documents at the hearing;

| (~~e~~f) Prior to the issuance of a proposed order issued by an ALJ, whether the Board will consider taking notice of judicially cognizable facts or of general, technical or scientific facts in writing which are within the specialized knowledge of the Board;

(g) Whether to submit to the Board prior to an ALJ's proposed final order the following issues:

(A) The Board's interpretation of its rules and applicable statutes;

(B) Which rules or statutes are applicable to a proceeding;

(C) Whether the Board will answer a question transmitted to it by the ALJ;

(h) In regard to a proposed order issued by an ALJ, whether the Board's legal representative will file exceptions and present argument to the Board; and

(i) Whether a request for delay of hearing on emergency suspension will be accepted.

(2) All actions taken under section (1) of this rule must be reported to the Board at the regularly scheduled meeting in which the Board deliberates on the proposed order in the case.

(3) The Board's disciplinary and suspension cases brought under ORS 677.205 are exempt from the requirements of OAR 137-003-0655(7), which requires an agency to give written notice to the ALJ and all parties of the date by which the agency expects to issue an amended proposed order or a final order if the agency will not issue an amended proposed order or final order within 90 days of the proposed order. Due to the complexity of Board cases and the infrequency of regularly scheduled Board meetings, 90 days is an insufficient time for the Board to issue an amended proposed order or a final order.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 183.335, 183.341 & 677.275

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 001 – OREGON MEDICAL BOARD

#### First Review – October 2022

The proposed rule updates language to allow the Executive Director or Medical Director to issue final orders of license suspensions and reinstatements that occur by operation of law.

**Update from first draft: added section (5) to clarify process for continuing medical education deficiency cases.**

#### 847-001-0035

Approval of Suspensions, Reinstatements, and Terminations of Orders ~~by Operation of Law~~

(1) The Executive Director or Medical Director has the authority to issue final orders of license suspension that occur by operation of law and final orders of license reinstatement that occur by operation of law. ~~grant approval of Suspensions or Terminations of Orders that occur by operation of law.~~

(2) The Executive Director<sup>2</sup>s or Medical Director<sup>2</sup>s, upon proper notification under ORS 25.774, has the authority to issue final orders reinstating licenses that were suspended by operation of law pursuant to ORS chapter 25. The licensee may be reinstated to its pre-suspension status if the licensee is otherwise in good standing and has complied with OAR 847-008-0055, if applicable. ~~signature grants approval of the Suspension or Termination of Order, which becomes a public document. As a public document, the Suspension or Termination of Order may be released to the public.~~

(3) Orders issued under sections (1) or (2) of this rule are public documents.

(4) The Executive Director or Medical Director, upon proper notification or certification under ORS 305.385(4)(c), (d) or (5), has the authority to issue final orders suspending, reinstating, and provisionally reinstating licenses. The licensee may be reinstated to its pre-suspension status if the licensee is otherwise in good standing and has complied with OAR 847-008-0055, if applicable.

(5) The Executive Director or Medical Director has authority to issue final orders suspending licenses based on continuing medical education deficiencies, and to issue final orders reinstating licenses based on a licensee coming into compliance with continuing medical education requirements.

(~~3~~6) The Executive Director or Medical Director must forward orders issued under sections (1), (2) or (4) of this rule ~~Suspensions and Terminations of Orders~~ to the Board in a timely manner.

Statutory/Other Authority: ORS 677.265 & 183.411

Statutes/Other Implemented: ORS 25.750, 25.774, 305.385, 677.190, 677.225 & 677.265

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 001 – OREGON MEDICAL BOARD

#### First Review – October 2022

The proposed rule amendments add definitions for “termination” and “modification” of Board Orders or Agreements. The proposed rule amendments clarify that “termination” means the licensee has successfully completed all of the terms contained in the Order or Agreement. A termination does not vacate, expunge, or otherwise nullify the Order or Agreement. The proposed rule amendments also clarify that “modification” of an Order or Agreement means the Board has agreed to modify or terminate some of the terms contained in the Order or Agreement, but the Order or Agreement remains in effect.

#### 847-001-0032

##### Modification and Termination of Board Orders and Agreements

###### (1) For purposes of Oregon Medical Board actions:

(a) “Terminate” or “termination” means the licensee has successfully completed all of the terms of the Order or Agreement or the Order or Agreement is no longer needed. A termination does not vacate, expunge, or otherwise nullify the Order or Agreement.

(b) “Modify” or “modification” means the Board has agreed to modify or terminate some of the terms of the Order or Agreement, which remains in effect.

~~(2)~~ Licensees must submit a request in writing to modify or terminate a Board Order or Agreement.

~~(3)~~ To request a modification to a Board Order or Agreement:

(a) Licensee must not have made a request to modify or terminate within the previous 12 months, and

(b) Licensee must have completed at least one term to the satisfaction of the Board.

~~(4)~~ To request termination of a Board Order or Agreement:

(a) Licensee must not have made a request to modify or terminate within the previous 12 months, and

(b) Licensee must have completed or complied with all of the terms in the Board Order or Agreement to the satisfaction of the Board.

| (~~5~~4) The Executive Director or Medical Director, via his/her signature, has the authority to terminate a Corrective Action Agreement upon licensee's successful completion of all of the terms in the agreement.

| (~~6~~5) The Executive Director or Medical Director must forward an Order Terminating Corrective Action Agreement to the Board in a timely manner.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.265

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 050 – OREGON MEDICAL BOARD

#### First Review – October 2022

The proposed rule clarifies the documents and official verifications a physician assistant applicant must ensure are submitted to the Oregon Medical Board for licensure. The proposed rule aligns with similar rules for other board licensees.

[The following language is new. For readability, it is not bolded/underlined.]

#### **847-050-0021**

##### **Documents to be Submitted for Licensure**

The documents submitted must be legible and no larger than 8 ½" x 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 ½" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. Official translations are required for documents issued in a foreign language. The following documents are required:

- (1) Application: Completed formal application provided by the Board. Required dates must include month, day, and year.
- (2) Birth Certificate: A copy of birth certificate and a copy of Change of Name documentation, Marriage Certificate, or Divorce Decree if the applicant's name has been changed by court order, adoption, marriage, divorce, etc.
- (3) Photograph: A close-up, passport-quality photograph, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application.
- (4) Legible fingerprints as described in OAR 847-008-0068 for the purpose of a criminal records background check.
- (5) The results of a Practitioner Self-Query from the National Practitioner Data Bank.
- (6) The Federation of State Medical Boards: A National Practitioner Databank Inquiry report.
- (7) The applicant must ensure the following required official documents are sent to the Board directly from:
  - (a) The physician assistant education program:
    - (i) Proof of completion of a physician assistant education program as specified in OAR 847-050-0020(1) and which includes degree issued, date of degree, dates of attendance, dates and reason



of any leaves of absence or repeated years, and dates, name and location of education program if a transfer student.

(ii) A Verification of Education form; which must include information about an applicant's knowledge base, clinical skills, medical judgement, professionalism, and ethics; including any concerns regarding possible impairment in the applicant's ability to safely practice their profession. If the school is unable to complete the form or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(b) Official Examination Certification: An official Examination Certification of the Physician Assistants National Certifying Examination (PANCE), showing the examination score, is required directly from the Certification of Physician Assistants (N.C.C.P.A.).

(c) Other state license verifications: health licensing boards in any jurisdiction where the applicant has ever been licensed; regardless of status, i.e. current, lapsed, never practiced there. Verification, sent directly from the boards, must show license number, date issued, examination grades if applicable and status.

(d) The Director or other official for practice and employment in hospitals, clinics, etc. in the United States and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic, must include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. If such verification is unavailable or incomplete, provide three reference letters from physicians or physician assistants in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.

(8) Any other documentation or explanatory statements as required by the Board, including but not limited to medical records and criminal or civil records.

Statutory/Other Authority: ORS 677.265, ORS 677.512

Statutes/Other Implemented: ORS 677.512

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 001 – OREGON MEDICAL BOARD

Final Review – October 2022

The rule amendment allows the Executive Director or Medical Director to terminate an Interim Stipulated Order if the Oregon Medical Board votes to close the case without disciplinary action.

#### 847-001-0030

##### Approval and Termination of Interim Stipulated Orders

(1) The Executive Director or Medical Director, via his/her signature, has the authority to grant approval of an Interim Stipulated Order that has been signed by a licensee of the Board.

(2) The Executive Director's or Medical Director's signature grants approval of the Interim Stipulated Order, which allows the Order to become a public document. As a public document, the Interim Stipulated Order may be released to hospitals, clinics, and other practice locations.

(3) The Executive Director or Medical Director, via his/her signature, has the authority to terminate an Interim Stipulated Order:

(a) ~~if~~If the licensee has addressed the identified concerns to the satisfaction of the Board and is deemed safe to return to practice; or

**(b) If the Board has voted to close the case without proceeding toward disciplinary action.**

(4) The Executive Director or Medical Director must forward Interim Stipulated Orders and Orders Terminating Interim Stipulated Orders to the Board in a timely manner.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.265 & 677.275

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 001 – OREGON MEDICAL BOARD

Final Review – October 2022

The rule amendment clarifies that Orders for Evaluation may not be negotiated and are confidential orders and enforceable by the Oregon Medical Board. Violating an Order for Evaluation is grounds for discipline under ORS 677.190(17).

#### 847-001-0024

##### Compliance with Investigation Process

(1) Licensees and applicants must comply with a Board investigation, including truthfully responding to inquiries and providing requested materials within the time allowed and complying with a subpoena. Failure to comply with a Board investigation violates ORS 677.190(17) and is grounds for disciplinary action.

(2) Licensees and applicants must comply with the terms of all Board Orders and Agreements, including Corrective Action Agreements and Consent Agreements or Consent Agreements for Re-entry to Practice. Failure to comply with the terms of a Board Order or Agreement violates ORS 677.190(17) and is grounds for disciplinary action.

(3) The board will monitor the National Practitioner Data Bank (NPDB) Continuous Query alert system for two years from the date of an allegation of sexual misconduct.

**(4) Orders for Evaluation may not be negotiated and are confidential orders enforceable by the Board. Violating an Order for Evaluation will be grounds for discipline under ORS 677.190(17).**

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.190, 677.205, 677.270 & 677.320

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 010 – OREGON MEDICAL BOARD

#### Final Review – October 2022

In January 2021, the Oregon Medical Board formed a Workgroup on Sexual Misconduct charged with reviewing rules and policies regarding the board's approach to sexual misconduct. The Workgroup held a series of public meetings in February, March, and April 2021 and one of the products of these meetings was a proposed rule similar to the American College of Obstetricians and Gynecologists (ACOG) recommendation for a chaperone to be present for all breast, genital, and rectal examinations. In July 2021, the Board posted notice of the draft rule and received public comments.

During the October 2021 Board meeting, the Sexual Misconduct Workgroup was tasked with reviewing the public comments. The reconvened Workgroup held a second series of public meetings in November 2021, January and March 2022. From these meetings, the Workgroup updated the rule to require a universal offering of a medical chaperone during all breast, genital, and rectal examinations, no matter the medical specialty.

The rule allows a patient to decline the offer a chaperone, but it should be explained that the chaperone is an integral part of the clinical team whose role includes protecting the patient and the provider. If the patient declines, the rule would allow the OMB licensee to defer the examination for the protection of the patient and the licensee.

If a chaperone is requested, the rule requires an OMB licensee to use a trained chaperone, a person who holds an active Oregon license to practice a health care profession or unlicensed personnel who have taken a medical chaperone course (2 hours online for about \$55).

Attached is a Frequently Asked Questions document created by staff to accompany the rule to answer questions received throughout this process.

[The following language is new. For readability, it is not bolded/underlined.]

#### **847-010-0130**

##### **Medical Chaperones**

(1) As of January 1, 2023, a licensee must offer a trained chaperone to be physically present for all:

- (a) Genital and rectal examinations regardless of gender; and
- (b) Breast examinations for patients who identify as female.

(2) The licensee must ensure that the chaperone:

- (a) Is not a personal friend or relative of the patient or licensee; and
  - (b)(A) Holds an active Oregon license to practice a health care profession; or
  - (B) Completes a course for medical chaperones approved by the Oregon Medical Board.
- (3) During a breast, genital, or rectal examination when a chaperone is requested, the chaperone may not participate in acts that would obstruct or distract the chaperone from observing the licensee's behavior and actions throughout the exam, procedure, or clinical encounter.
- (4) For all breast, genital, and rectal examinations, the presence or absence of a chaperone must be documented in the patient chart.
- (5) The patient may decline the presence of a chaperone for a breast, genital, and rectal examination. If the patient declines, the licensee:
- (a) May defer the breast, genital, or rectal examination if, in the provider's judgment, deferring the examination is in the best interest of the patient and the licensee.
  - (b) May perform the examination and document the patient's consent to proceed without the presence of a chaperone.
- (6) A licensee is not required under this rule to offer a chaperone be present in circumstances in which it is likely that failure to examine the patient would result in significant and imminent harm to the patient, such as during a medical emergency.
- (7) A licensee is not required to offer a chaperone if a chaperone is already present in the normal course of the examination.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.265

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 010 – OREGON MEDICAL BOARD

#### Final Review – October 2022

Interpreters offer a language and cultural bridge between a licensee and patient with Limited English Proficiency (LEP) and those who prefer to communicate in a language other than English. Utilizing certified and qualified interpreters will ensure that proper communication to achieve desired health outcomes. The ability to access an interpreter who can communicate in the patient's preferred language will have a positive impact on patients from a variety of racial and ethnic backgrounds who may have barriers to oral communication.

The rule implements directives set forth in HB 2359 (2021) requiring Board licensees, reimbursed with public funds, in whole or in part, to utilize health care interpreters from the Oregon Health Authority's health care interpreter central registry when arranging for or providing services to a person with LEP or who prefers to communicate in a language other than English or who communicates in signed language. The rule aligns with OAR 333-002-0250 adopted by the Oregon Health Authority. Similar to the OHA rule, the OMB rule provides exceptions for when a licensee is proficient in the patient's preferred language and good faith efforts to locate an interpreter on the registry. Licensees may incur startup and ongoing costs to comply with HB 2359.

At the suggestion of the Administrative Affairs Committee on June 8, 2022, the language below clarifies that a licensee is responsible for ensuring records are maintained for each encounter subject to this rule, rather than having the licensee actually create or maintain the record.

[The following language is new. For readability, it is not bolded/underlined.]

#### **847-010-0140**

##### **Health Care Interpreters**

(1) For the purpose of this rule, the following terms are defined:

(a) "Certified health care interpreter" has the meaning given in ORS 413.550, an individual who has been approved and certified by the Oregon Health Authority under ORS 413.558.

(b) "Limited English proficient" or "LEP" means a level of English proficiency that is insufficient to ensure equal access to public services without an interpreter.

(c) "Qualified health care interpreter" has the meaning given in ORS 413.550, an individual who has been issued a valid letter of qualification from the authority under ORS 413.558.

(2) Oregon Medical Board licensees, reimbursed with public funds, in whole or in part, must utilize qualified or certified health care interpreters from the Oregon Health Authority's health care interpreter central registry when arranging for or providing services to a person with LEP or who prefers to communicate in a language other than English or who communicates in signed language

for onsite interpreting and no later than July 1, 2023, for remote interpreting. Exceptions are allowed when the licensee:

(a) Has documented proficiency in the preferred language of the person with LEP or communicates in the signed language of choice. The licensee must adopt a language services policy, and abide by language proficiency requirements, consistent with nationally recognized professional standards of care as outlined by organizations such as the American Medical Association, the Joint Commission, the National Committee for Quality Assurance or another equivalent national standard; or

(b) Has made a good faith effort to obtain a health care interpreter from the central registry and has found that none are available to provide interpreting. In this circumstance, the licensee may work with the non-registered interpreter for that visit or episode of care. For each visit or episode of care that a licensee works with a non-registered interpreter, the licensee must create and maintain records of the good faith efforts made by the licensee to work with an interpreter from the central registry. At a minimum, licensees must develop and maintain policies, processes, and outcomes describing:

(A) The steps the licensee takes to work with an interpreter from the central registry for a health care appointment;

(B) The efforts the licensee makes to reduce reliance on interpreters who are not on the central registry; and

(C) How the licensee efforts are increasing the number of health care interpreting appointments scheduled with interpreters from the central registry; or

(c) Has maintained records that the person with LEP or who is Deaf or Hard of Hearing was offered services of a health care interpreter from the health care interpreter central registry at no cost to the person with LEP or who is Deaf or Hard of Hearing and the person with LEP or who is Deaf or Hard of Hearing has declined and chosen a different interpreter.

(3) Licensee must ensure records are maintained of each encounter in which the licensee worked with a health care interpreter from the health care interpreter central registry or worked with an interpreter not on the central registry and met one of the exceptions in section (2) of this rule. The record must include:

(a) The full name of the health care interpreter.

(b) The health care interpreter's central registry number, if applicable.

(c) The language interpreted.

(4) Licensees must provide personal protective equipment, consistent with established national standards, to health care interpreters providing services on-site at no cost to the interpreter. The licensee may not require that the health care interpreter procure the health care interpreter's own personal protective equipment as a condition of working with the licensee.

Statutory/Other Authority: ORS 677.265, OL 2021, chapter 453, section 2 (HB 2359)  
Statutes/Other Implemented: OL 2021, chapter 453, section 2

**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 847, DIVISION 010 – OREGON MEDICAL BOARD**  
**Final Review – October 2022**

The rule implements HB 4096 (2022) providing that physicians or physician assistants authorized in another state or United States territory may practice in Oregon in connection with a coordinating organization or other entity without compensation for 30 days each calendar year. The rule would take effect January 1, 2023.

On June 8, 2022, the Administrative Affairs Committee inquired about adding a definition of “coordinating organization or other entity” to the proposed rule. Upon further review, the Board does not have statutory authority to define that term.

[The following language is new. For readability, it is not bolded/underlined.]

**847-010-0200**

**Physician and Physician Assistant Volunteer Practice**

- (1) For the purpose of this rule “health care practitioner” means a physician or physician assistant authorized to practice in another state or United States territory.
- (2) Under the provisions of this rule, a health care practitioner may practice in Oregon in connection with a coordinating organization or other entity without compensation for up to 30 days each calendar year if approved to do so by the Oregon Medical Board.
- (3) A health care practitioner must submit the following to the Oregon Medical Board, at least 10 days prior to commencing volunteer practice in this state:
  - (a) Proof that the health care practitioner is in good standing and is not the subject of an active disciplinary action in any jurisdiction in which the health care practitioner is authorized to practice;
  - (b) An acknowledgement that the health care practitioner may provide services only within the scope of practice of the health care profession that the health care practitioner is authorized to practice and will provide services pursuant to ORS chapter 677 and Board rules, whichever is more restrictive;
  - (c) An attestation that the health care practitioner will not receive compensation for practice in Oregon;
  - (d) The name and contact information of the coordinating organization or other entity through which the health care practitioner will practice; and
  - (e) The dates on which the health care practitioner will practice in Oregon.
- (4) The Oregon Medical Board will provide approval and confirmation within 10 days of receiving the information described in section (3) of this rule.

Statutory/Other Authority: ORS 677.265, OL 2022, chapter 62 (HB 4096)

Statutes/Other Implemented: OL 2022, chapter 62 (HB 4096)



## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISIONS 020, 023, 026, 070, 080 – OREGON MEDICAL BOARD

#### Final Review – October 2022

The rule amendment clarifies current practice that during the licensure process the Oregon Medical Board will require reference letters, if an employer does not provide a performance statement, such as: they're eligible for rehire, they were in good standing when they left, or they are still here and would be welcomed to remain on staff.

#### **847-020-0160**

#### **Letters and Official Verifications to be Submitted for Licensure (MD/DO)**

The applicant must ensure that official documents are sent to the Board directly from:

(1) The school of medicine:

(a) A Dean's Letter of Recommendation must include a statement concerning the applicant's moral and ethical character and overall performance as a medical student. If the school attests that a Dean's Letter is unavailable or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(b) Verification of Medical Education form must include degree issued, date of degree, dates of attendance for each year, dates and reason for any leaves of absence or repeated years, and dates, name and location of school of medicine if a transfer student.

(2) The Fifth Pathway Hospital, if such applies: An evaluation of overall performance and specific beginning and ending dates of training.

(3) The Educational Commission for Foreign Medical Graduates: Verification of certification.

(4) The Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in the United States and other countries: An evaluation of overall performance, specialty and specific beginning and ending dates of training.

(5) The Director or other official for practice and employment in hospitals, clinics, etc. in the United States and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic, must include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. **If such verification is unavailable or incomplete, and** ~~F~~for physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are

familiar with the applicant's practice and who have known the applicant for more than six months.

(6) All health licensing boards in any jurisdiction where the applicant has ever been licensed; regardless of status, i.e., current, lapsed, never practiced there: Verification, sent directly from the boards, must show license number, date issued, examination grades if applicable and status.

(7) Official Examination Certifications: An official examination certification showing the examination score is required directly from the National Board of Medical Examiners, the National Board of Osteopathic Medical Examiners, the Medical Council of Canada, the Federation of State Medical Boards or the individual state administering the exam.

(8) The Federation of State Medical Boards: A Board Action Databank Inquiry report.

(9) Any other documentation as required by the Board, including but not limited to medical records and criminal or civil records.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.010, ORS 677.100 & ORS 677.265

#### **847-023-0015**

#### **Letters and Official Verifications to be Submitted for Licensure (Emeritus Physicians)**

(1) The applicant must ensure that either official documents are sent directly to the Board from the source or a certified copy is sent directly to the Board from another state medical board where the applicant is licensed:

(a) The Verification of Medical Education form, which includes degree issued, date of degree, dates of attendance, dates and reason of any leaves of absence or repeated years, and dates, name and location of medical school if a transfer student. Graduates of medical schools in the United States must have graduated from a school per OAR 847-020-0120(1) and graduates of international medical schools must have graduated from a school per 847-020-0130(2).

(b) A Dean's Letter of Recommendation, which includes a statement concerning the applicant's moral and ethical character and overall performance as a medical student. If the school attests that a Dean's Letter is unavailable or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(c) A letter from the Fifth Pathway Hospital, if such applies, which includes an evaluation of overall performance and specific beginning and ending dates of training.

(d) A letter from the Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in the United States and other countries in which the postgraduate training was served, which includes an evaluation of overall performance and specific beginning and ending dates of training.

(2) The applicant must ensure that official documents are sent directly to the Board from:

(a) The Director or other official for practice and employment in hospitals, clinics, etc. in the United States and other countries: A currently dated original letter (a copy is not acceptable), from the hospital/clinic, which must include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. **If such verification is unavailable or incomplete, and** ~~F~~for physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.

(b) The health licensing board in a state, district, territory or jurisdiction in the United States or Canada where the applicant has been licensed and is currently practicing or most recently practiced: Verification, which must show license number, date issued and status.

(c) Official Examination Certifications: An official examination certification showing the examination score is required from the National Board of Medical Examiners (NBME), the National Board of Osteopathic Medical Examiners (NBOME), the Federation Licensing Examination (FLEX), the Federation of State Medical Boards for the United States Medical Licensing Examination (USMLE), or the Medical Council of Canada.

(d) The Federation of State Medical Boards: A Board Action Databank Inquiry report.

(e) The Educational Commission for Foreign Medical Graduates Verification of Certification.

(f) Any other documentation as required by the Board, including but not limited to medical records and criminal or civil records.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.100, 677.120 & 677.265

#### **847-026-0020**

#### **Letters and Official Grade Certifications to be Submitted for Licensure (MD/DO Expedited Endorsement)**

The applicant must request official letters or verifications to be sent to the Board directly from the following:

(1) The Executive Secretary of the State Boards in the United States or Canada where the applicant has been currently or most recently practicing. The currently dated original verification of license (copy is not acceptable) shall show license number, date issued, grades if applicable and status.

(2) The National Board of Medical Examiners (NBME), the National Board of Osteopathic Medical Examiners (NBOME), the Medical Council of Canada (LMCC), or the Federation of State Medical Boards (FLEX, USMLE) must provide an official grade certification if not available from the initial state of licensure;

(3) The Director or other official for practice and employment in hospitals, clinics and surgical centers in the United States and Canada. A verification form or letter with original signature must be submitted from the practice sites where the applicant was physically practicing which shall include an evaluation of overall performance and specific beginning and ending dates of practice and employment from the past five (5) years. **If such verification is unavailable or incomplete, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.**

Statutory/Other Authority: ORS 677.265, ~~ORS 677.133 & HB 2435 (2009)~~

Statutes/Other Implemented: ORS 677.265, ~~ORS 677.133 & HB 2435 (2009)~~

#### **847-070-0022**

##### **Documents to be Submitted for Licensure (Acupuncture)**

The documents submitted must be legible and no larger than 8 ½" x 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 ½" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. Official translations are required for documents issued in a foreign language. The following documents are required:

- (1) Application: Completed formal application provided by the Board. Required dates must include month, day and year.
- (2) Birth Certificate: A copy of birth certificate and a copy of Change of Name documentation, Marriage Certificate, or Divorce Decree if the applicant's name has been changed by court order, adoption, marriage, divorce, etc.
- (3) Acupuncture School Diploma: A copy of a diploma showing graduation from an approved school of acupuncture for those applicants who qualify under OAR 847-070-0016(1).
- (4) Photograph: A close-up, passport-quality photograph, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application.
- (5) A letter from the Dean of the applicant's program of acupuncture for those applicants who qualify under OAR 847-070-0016(1).
- (6) A letter from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) verifying current certification in acupuncture by the NCCAOM for those applicants who qualify under OAR 847-070-0016(1) or (2).

(7) A letter verifying licensure in good standing from the state or states of all prior and current health-related licensure.

(8) A letter from the Director or other official for practice and employment to include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. **If such verification is unavailable or incomplete, and for acupuncturists who have been or are in solo practice, three reference letters from acupuncturists in the local treatment community who are familiar with the applicant's practice and who have known the applicant for more than six months.**

Statutory/Other Authority: ORS 677.265 & 677.759

Statutes/Other Implemented: ORS 677.275 & 677.759

### **847-080-0017**

#### **Letters and Official Verifications to be Submitted for Licensure (Podiatric)**

The applicant must ensure that official documents are sent to the Board directly from:

(1) The School of Podiatry:

(a) The Verification of Medical Education form, which includes: degree issued, date of degree, dates of attendance, dates and reason of any leaves of absence or repeated years, and dates, name and location of school of podiatric medicine school if a transfer student.

(b) A Dean's Letter of Recommendation, which includes a statement concerning the applicant's moral and ethical character and overall performance as a podiatric medical student. If the school attests that a Dean's Letter is unavailable or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(2) The Director of Podiatric Education, Chairman or other official of the residency hospital in U.S.: A currently dated original letter (a copy is not acceptable), sent directly from the hospitals in which any post-graduate training was served, which includes an evaluation of overall performance and specific beginning and ending dates of training.

(3) The Director or other official for practice and employment in hospitals, clinics, etc., in the U.S. and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic, which includes an evaluation of overall performance and specific beginning and ending dates of practice and employment. **If such verification is unavailable or incomplete, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.**

(4) All health licensing boards in any jurisdiction where the applicant has ever been licensed; regardless of status, i.e., current, lapsed, never practiced there: Verification, sent directly from the boards, must show license number, date issued and status.

(5) Official Examination Certification: An official certification of examination scores for the American Podiatric Medical Licensing Examination (APMLE) Parts I, II and III or the National Board of Podiatric Medical Examiners (NBPME) examination Parts I, II and III is required directly from the NBPME or the Federation of Podiatric Medical Boards.

(6) Federation of Podiatric Medical Boards Disciplinary Report: A Disciplinary Report sent directly from the Federation of Podiatric Medical Boards to the Board.

(7) Any other documentation as required by the Board, including but not limited to medical records and criminal or civil records.

Statutory/Other Authority: ORS 677.265 & 677.820

Statutes/Other Implemented: ORS 677.820, 677.825 & 677.830

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 025 – OREGON MEDICAL BOARD

Final Review – October 2022

The rule amendments update the telemedicine status licensee rules to clarify language, add consistent definitions, and incorporate amendments to align with HB 3036 (2012) sections 3 through 6. The rule also includes changes to align with HB 4034 (2022) sections 14 and 16.

Based on discussion at the July 7, 2022, Board meeting, the rule was updated to restrict telemedicine status licensees from prescribing controlled substances for the management of chronic pain.

#### 847-025-0000

##### Preamble

- (1) A ~~physician or physician assistant granted a license to practice medicine across state lines~~ **telemedicine licensee** is subject to all the provisions of the Medical Practice Act (ORS Chapter 677), and to all the administrative rules of the Oregon Medical Board.
- (2) A ~~physician or physician assistant granted a license to practice medicine across state lines~~ **telemedicine licensee** has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician or physician assistant licensed under ORS Chapter 677, including but not limited to the following:
- (a) The ~~physician or physician assistant shall~~ **telemedicine licensee must** establish an appropriate provider-patient relationship;
  - (b) The ~~physician or physician assistant shall~~ **telemedicine licensee must** make a judgment based on some type of objective criteria upon which to diagnose, treat, correct, or prescribe;
  - (c) The ~~physician or physician assistant shall~~ **telemedicine licensee must** engage in all necessary practices that are in the best interest of the patient; and
  - (d) The ~~physician or physician assistant shall~~ **telemedicine licensee must** provide for an acceptable continuity of care for patients, including follow-up care, information, and documentation of care provided to the patient or suitably identified care providers of the patient;

~~(e) The physician or physician assistant shall refrain from writing prescriptions for medication resulting only from a sale or consultation over the Internet. Reference: moved to 847-025-0030(3)(i)~~

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141

## **847-025-0010**

### **Definitions**

**For the purpose of OAR chapter 847, division 025:**

**(1) “Applicant” means an out-of-state physician or physician assistant applying for a license to practice medicine across state lines.**

**(2) “Telemedicine licensee” means an out-of-state physician or physician assistant granted a license to practice medicine across state lines under ORS 677.135 through 677.141.**

**(3) “The practice of medicine across state lines” means:**

~~(1a)~~ The rendering directly to a person of a written or otherwise documented medical opinion concerning the diagnosis or treatment of that person located within Oregon for the purpose of patient care by a physician or physician assistant located outside Oregon as a result of the transmission of individual patient data by ~~electronic or other means~~ **telemedicine as defined in Oregon Laws 2022, chapter 45, section 14**, from within Oregon to that physician, the physician’s agent, or physician assistant outside Oregon; or

~~(2b)~~ The rendering of medical treatment directly to a person located within Oregon by a physician or physician assistant located outside Oregon as a result of the outward transmission of individual patient data by ~~electronic or other means~~ **telemedicine as defined in Oregon Laws 2022, chapter 45, section 14**, from within this state to that physician, the physician’s agent, or a physician assistant outside the state.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141, **Oregon Laws 2022, chapter 45, section 14 (HB 4034)**

## **847-025-0020**

### **Exemptions**

A license to practice across state lines is not required of a physician or physician assistant:

(1) Engaging in the practice of medicine across state lines in an emergency ~~(ORS 677.060(5))~~; or



(2) Located outside this state who consults with another physician or physician assistant licensed to practice medicine in this state, and who does not undertake the primary responsibility for diagnosing or rendering treatment to a patient in Oregon;

(3) Located outside the state and has an established provider-patient relationship with a person who is in Oregon temporarily and who requires the direct medical treatment by that physician or physician assistant.

Statutory/Other Authority: ORS 677.265 & 677.137

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141

## **847-025-0030**

### **Limitations**

(1) A license for the practice of medicine across state lines does not permit a **telemedicine licensee** ~~physician or physician assistant~~ to practice medicine in the state of Oregon except when engaging in the practice of medicine across state lines.

(2) A license to practice medicine across state lines is not a limited license per ORS 677.132 or ORS 677.535.

(3) A ~~physician or physician assistant issued a license to practice medicine across state lines shall~~ **telemedicine licensee must** not:

(a) Act as a dispensing physician as described in ORS 677.010-(5) **or dispensing physician assistant as described in ORS 677.511**; *Reference: moved from OAR 847-025-0030(3)(i)*

(b) **Prescribe controlled substances for the management of chronic pain to a person located in Oregon.** ~~Administer controlled substances for the treatment of intractable pain to a person located within in Oregon, per ORS 677.470, 677.489;~~

(c) Provide written documentation for purposes of ORS ~~475B.797~~ **475C.783**;

(d) Employ a physician assistant as defined in ORS 677.495 to treat a person located within Oregon;

(e) Assert a lien for services under ORS 87.555;

(f) Act as a supervising physician of an Oregon-certified First Responder or Emergency Medical Technician as defined in ORS 682.245;

(g) Be eligible for any tax credit provided by ORS 316.076;

(h) Participate in the Rural Health Services Program under 442.550 to 442.570; or

**(i) Prescribe medication based only on a sale or form over the Internet, unless an appropriate provider-patient relationship is established and the standard of care described in ORS 677.095 and 677.265 is met.** *Reference: moved from 847-025-0000(2)(e) and updated*

~~(i) Dispense prescription drugs as a physician assistant under ORS 677.511. Reference: moved to OAR 847-025-0030(3)(a)~~

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141

## **847-025-0040**

### **Qualifications**

(1) To qualify for a license to practice medicine across state lines:

(a) An ~~out-of-state physician or physician assistant~~ **applicant** must hold a full, unrestricted license to practice medicine in ~~any-an~~other state, must not have been the recipient of a previous disciplinary or other actions by any other state or jurisdiction **and must otherwise meet the standards of licensure under ORS chapter 677.** ~~;~~ ~~or~~

(b) An ~~out-of-state physician or physician assistant~~ **applicant** who **meets the qualifications for a license to practice medicine across state lines with the exception of being** ~~has been the~~ recipient of previous disciplinary or other action by ~~any-another~~ state or jurisdiction may be issued a license for the practice of medicine across state lines if the Board finds that the previous disciplinary or other action does not indicate that the ~~physician or physician assistant~~ **applicant** is a potential threat to the public interest, health, welfare and safety of the citizens of the state of Oregon. ~~;~~ ~~and~~

~~(c) Must otherwise meet the standards of licensure under ORS 677. Reference: moved to OAR 847-025-0040(1)(a)~~

(2) An ~~out-of-state physician or physician assistant would~~ **applicant does** not qualify for a license to practice medicine across state lines if the applicant is the subject of a pending investigation by a state medical board or another state or federal agency.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141

## **847-025-0050**

### **Application**

(1) When applying for a license to practice medicine across state lines, the ~~physician or physician assistant shall~~ **applicant must** submit to the Board:

(a) The completed application, fees, documents, letters, and any other information required by the Board for physician licensure as stated in OAR 847, division 020 or physician assistant licensure as stated in OAR 847, division 50; and

(b) A description of the applicant's intended practice of medicine across state lines in the state of Oregon.

(2) ~~A physician or physician assistant~~ **An applicant** applying for a license to practice medicine across state lines is subject to the requirements in OAR 847-008-0010.

Statutory/Other Authority: ORS 677.265 & 677.139

Statutes/Other Implemented: ORS 677.100, 677.139 & 677.265

#### **847-025-0060**

#### **Medical Records and Personal Appearance**

A ~~physician or physician assistant granted a license to practice medicine across state lines shall~~ **telemedicine licensee must:**

(1) Comply with all applicable laws, rules, and regulations in this state governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this state are maintained; and

(2) Produce patient medical records or other materials as requested by the Board and appear before the Board following receipt of a written notice issued by the Board. Failure of the **telemedicine licensee** ~~physician or physician assistant~~ to appear or to produce records or materials as requested shall constitute grounds for disciplinary action per ORS 677.190.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139 & 677.141

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 065 – OREGON MEDICAL BOARD

#### FINAL REVIEW – October 2022

The Health Professionals' Services Program (HPSP) is a consolidated statewide program utilized by several boards to assist health care providers with substance use or mental health disorders so they may continue to safely provide care. The HPSP monitors health care providers with the goal of rehabilitation. The Board may refer a licensee to HPSP or a licensee may self-refer. When referred, HPSP works with the Board to ensure the licensee is monitored in accordance with their Board agreement. When a licensee self-refers, HPSP works with the licensee to develop an individualized monitoring agreement and will keep the licensee's enrollment confidential, if the licensee follows their HPSP agreement. The rule amendments make updates to align with current practice and terminology.

Based on discussion at the July Board meeting, definition (16) was updated from “substance abuse” to “substance use disorder.”

#### 847-065-0005

##### **Licensees with Mental ~~Illness~~ Health Disorder Treated in Hospital Exceeding 25 Consecutive Days**

A licensee's participation in the Health Professionals' Services Program (HPSP), to include inpatient evaluations or treatment in a treatment facility that exceeds 25 consecutive days, does not require an automatic suspension of a licensee, if the licensee is in compliance with their HPSP agreement and does not practice medicine, podiatry, or acupuncture during a period of impairment. If the HPSP makes a determination that the licensee has a mental ~~illness~~ health disorder that affects the ability of the licensee to safely practice ~~medicine~~, the HPSP will ask the licensee to immediately withdraw from practice. If the licensee declines, the HPSP will immediately report to the Board that the licensee has a mental ~~illness~~ health disorder that affects the ability of the licensee to safely practice, and with this report provide a copy of the evaluation upon which this determination is based.

Statutory/Other Authority: ORS 677.265, 676.190, 676.200

Statutes/Other Implemented: ORS 677.225, ~~& 677.645~~ 676.185 to 676.200

#### 847-065-0010

##### **Purpose, Intent and Scope**

The Oregon Medical Board recognizes that substance use disorders and/or mental health disorders are potentially progressive, chronic diseases. The Board believes that physicians,

podiatric physicians, physician assistants, and acupuncturists who develop these diseases can, with appropriate treatment, be assisted with recovery and return to the practice of medicine. podiatry, and or acupuncture. It is the intent of the Board that a licensee with a substance use disorder and/or mental health disorder may have the opportunity to enter the Health Professionals' Services Program (HPSP). Participation in the HPSP does not shield a licensee from possible disciplinary action.

Statutory/Other Authority: ORS ~~676.190, 676.200, 676.185–676.200 &~~ 677.265

Statutes/Other Implemented: ORS 676.185–676.200 & ~~677.265~~

## **847-065-0015**

### **Definitions**

The following definitions apply to OAR chapter 847, division 065, except as otherwise stated in the definition:

(1) “Assessment or evaluation” means the process an independent third-party evaluator uses to diagnose the licensee and to ~~recommend treatment options~~ make treatment recommendations for the licensee.

(2) “Board” means the Oregon Medical Board.

(3) “Business day” means Monday through Friday, except legal holidays as defined in ORS 187.010 ~~(or and~~ ORS 187.020).

(4) “Contractor” means the entity that has contracted with the health profession licensing boards ~~Division~~ to conduct the HPSP.

(5) “Diagnosis” means the principal mental health or substance use diagnosis listed in the current Diagnostic Statistical Manual (DSM). The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment.

~~(6) “Division” means the Department of Human Services, Addictions and Mental Health Division.~~

~~(67)~~ “DSM” means the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

~~(78)~~ “Federal regulations” means:

(a) As used in ORS 676.185(5)(d), a “positive toxicology test result as determined by federal regulations pertaining to drug testing” means a test result that meets or exceeds the cutoff concentrations shown in 49 CFR § 40.87 (2009); and

(b) As used in ORS 676.190(56)(g), requiring a “licensee to submit to random drug or alcohol testing in accordance with federal regulations” means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees’ unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee must have an equal chance of being tested each time selections are made, as described in 40 CFR § 199.105(c)(5) (2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 40 CFR § 199.105(c)(7) (2009).

(89) “Fitness to practice evaluation” means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee’s health practice.

~~(10) “Final enrollment” means a licensee has provided all documentation required by OAR 847-065-0035 and has met all eligibility requirements to participate in the HPSP.~~

~~(119)~~ “Independent third-party evaluator” means an individual or center who is approved by the Board to evaluate, diagnose, and offer treatment options make treatment recommendations for substance use disorders and/or mental health disorders.

~~(1210)~~ “Licensee” means a licensed physician, podiatric physician, physician assistant or acupuncturist who is licensed or certified by the Board.

~~(1311)~~ “Mental health disorder” means a clinically significant syndrome identified in the current DSM that is associated with disability or with significantly increased risk of disability.

~~(1412)~~ “Monitoring agreement” means an individualized agreement between a licensee and the contractor that meets the requirements for a diversion agreement set by ORS 676.190.

~~(1513)~~ “Positive toxicology test result” means a test result that meets or exceeds the cutoff concentrations shown in 49 CFR 40.87 (2009), a test result that shows other drugs or alcohol, or a test result that fails to show the appropriate presence of a currently prescribed drug that is part of a treatment program related to a condition being monitored by HPSP.

~~(1614)~~ “Provisional enrollment” means temporary enrollment, pending verification that a licensee meets all program eligibility criteria.

~~(1715)~~ “Self-referred licensee” means a licensee who seeks to participate in the program without a referral from the Board.

(~~1816~~) “Substance ~~abuse~~ **disorder**” means a disorder related to the taking of a drug of abuse, (including alcohol. **This includes substance use disorders with modifiers of mild, moderate, or severe and substance-induced disorders, including but not limited to intoxication, withdrawal, and other substance/medication-induced mental health disorders (psychotic disorders, bipolar and related disorders, depressive disorders, anxiety disorders, obsessive-compulsive and related disorders, sleep disorders, sexual dysfunctions, delirium, and neurocognitive disorders), as defined in DSM-5 criteria.**); ~~to the side effects of a medication; and to a toxin exposure, including: substance use disorders (substance dependence and substance abuse) and substance-induced disorders (including but not limited to substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorders and mood disorders), as defined in DSM criteria.~~

(~~1917~~) “Substantial non-compliance” means that a licensee is in violation of the terms of ~~his or her~~ **their** monitoring agreement in a way that gives rise to concerns about the licensee’s ability or willingness to participate in the HPSP. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.185(5). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(~~2018~~) “Toxicology testing” means urine testing or alternative chemical monitoring including blood, saliva, breath, **nail**, or hair as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

(~~2119~~) “Treatment” means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder and/or mental **health** disorder.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265  
Statutes/Other Implemented: ORS 676.185 - 676.200 ~~& 677.265~~

## **847-065-0020**

### **Participation in Health Professionals’ Services Program**

Effective July 1, 2010, the Board must participate in the Health Professionals’ Services Program and may refer eligible licensees to the contractor in lieu of or in addition to discipline. Only licensees who meet the eligibility criteria may be referred by the Board to the contractor.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265  
Statutes/Other Implemented: ORS 676.185–676.200 ~~& 677.265~~

## **847-065-0025**

### **Eligibility for Participation in Health Professionals’ Services Program**

(1) Licensee must be evaluated by an independent third-party evaluator.

(2) The evaluation must include a diagnosis of a substance use disorder and/or mental **health** disorder with the appropriate diagnostic code from the DSM, and treatment ~~options~~ **recommendations**.

(3) Licensee must provide a written statement agreeing to enter the HPSP and agreeing to abide by all rules established by the Board.

(4) Licensee must enter into the “HPSP Monitoring Agreement.”

(5) The Board will determine whether a Board-referred licensee’s practice has presented or presents a danger to the public. The contractor will determine whether a self-referred licensee’s practice has presented or presents a danger to the public.

Statutory/Other Authority: ORS ~~676.185 – 676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185 - 676.200 ~~& 677.265~~

#### **847-065-0030**

##### **Procedure for Board Referrals**

(1) When the Board receives information involving a licensee who may have **a** substance ~~abuse~~ **use** and/or a mental **health** disorder, the Board staff will investigate and complete a report to be presented at a Board meeting.

(2) If licensee meets eligibility criteria and the Board approves entry into the HPSP, the Board will provide a written referral. The referral must include:

(a) A copy of the report from the independent third-party evaluator who diagnosed the licensee;

(b) The treatment ~~options~~ **recommendations** developed by the independent third-party evaluator;

(c) A statement that the Board has investigated the licensee’s professional practice and conduct;

(d) A description of any restrictions or requirements imposed by the Board or recommended by the Board on the licensee’s professional practice;

(e) A written statement from the licensee agreeing to enter the HPSP and agreeing to abide by all terms and conditions established by the contractor; and

(f) A statement that the licensee has agreed to report;



(A) ~~a~~Any arrest for or conviction of a misdemeanor or felony crime to the Board within three business days after the licensee is arrested or convicted.

(B) Any citation for the use or possession of any DEA scheduled substances, including but not limited to citations for Class E violations, to the contractor within three business days of the citation.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185–676.200 & ~~677.265~~

## 847-065-0035

### Procedure for Self-Referred Licensees

Board licensees may self-refer to the HPSP.

(1) Provisional Enrollment: To be provisionally enrolled in the program, a self-referred licensee must:

(a) Sign a written consent allowing disclosure and exchange of information among the contractor, the contractor's investigator, the licensee's employer, independent third-party evaluators and treatment providers;

(b) Sign a written consent allowing disclosure and exchange of information among the contractor, the Board, the licensee's employer, independent third-party evaluators and treatment providers in the event the contractor determines the licensee to be in substantial non-compliance with ~~his or her~~ their monitoring agreement as defined in OAR 847-065-0065;

(c) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by the Board; and

(d) Agree to and sign a ~~monitoring~~ provisional enrollment agreement, which includes a statement that the licensee agrees to report to the contractor.:

(A) Any arrest for or conviction of a misdemeanor or felony crime to the Board within three business days after the licensee is arrested or convicted.

(B) Any citation for the use or possession of any DEA scheduled substances, including but not limited to citations for Class E violations, within three business days of the citation.

(2) Final Enrollment: To move from provisional enrollment to final enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the contractor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the contractor's investigation to determine whether the licensee's practice while impaired, as defined in OAR 847-010-0073, presents or has presented a danger to the public; ~~and~~

(c) Enter into an ~~amended~~ monitoring agreement, ~~if required by the contractor; and~~

(d) Has met all eligibility requirements to participate in the HPSP.

(3) Once a self-referred licensee seeks enrollment in the HPSP, failure to successfully complete final enrollment, as outlined in section (2) of this rule, may constitute substantial non-compliance and may be reported to the Board.

Statutory/Other Authority: ORS ~~676.185—676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185 - 676.200 ~~& 677.265~~

#### **847-065-0040**

##### **Disqualification Criteria**

Licensees, either Board-referred or self-referred, may be disqualified from entering or participating in the HPSP for factors including, but not limited to:

- (1) Licensee's disciplinary history;
- (2) Severity and duration of the licensee's impairment;
- (3) Extent to which licensee's practice can be limited or managed to eliminate danger to the public;
- (4) If licensee's impairment cannot be managed with treatment and monitoring;
- (5) Evidence of criminal history that involves injury or endangerment to others;
- (6) Evidence of sexual misconduct;
- (7) Evidence of non-compliance with a monitoring program from another state;
- (8) Pending investigations with the Board or boards from other states;
- (9) Previous Board investigations with findings of substantiated abuse or dependence; and

(10) Prior enrollment in, but failure to successfully complete, the Oregon Medical Board Health Professionals Program or HPSP.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185–676.200 ~~& 677.265~~

#### **847-065-0045**

##### **Approval of Independent Third-Party Evaluators**

(1) To be approved by the Board as an independent third-party evaluator, an evaluator must be:

(a) Licensed as required by the jurisdiction in which the evaluator works;

(b) Able to provide a comprehensive assessment of and written report describing a licensee's diagnosis, degree of impairment, and treatment ~~options~~ recommendations; and

(c) Able to facilitate ~~a urinalysis~~ toxicology testing of the licensee at intake.

(2) The Board reserves the right to not approve an independent third-party evaluator for any reason.

(3) The Board or contractor will not accept an evaluator as independent in a particular case if, in the Board's or contractor's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185–676.200 ~~& 677.265~~

#### **847-065-0050**

##### **Approval of Treatment Providers**

(1) To be approved by the Board as a treatment provider, a provider must be:

(a) Licensed as required by the jurisdiction in which the provider works;

(b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, and treatment ~~options~~ recommendations proposed by the independent third-party evaluator; and

(c) Able to facilitate ~~a urinalysis~~ toxicology testing of the licensee at intake.

(2) A treatment provider may not have a personal or professional relationship with a licensee.

(3) The Board will maintain a list of treatment providers available to licensees upon request.

Statutory/Other Authority: ORS ~~676.185–676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185–676.200 ~~& 677.265~~

## **847-065-0055**

### **Licensee Responsibilities**

All licensees must:

(1) Agree to report any arrest for or conviction of a misdemeanor or felony crime to the contractor within three business days after the licensee is arrested or convicted of the crime;

(2) Agree to report to the contractor any citation for the use or possession of any DEA scheduled substances, including but not limited to citations for Class E violations, within three business days of the citation;

(3) Comply continuously with ~~his or her~~ **their** monitoring agreement, including any restrictions on ~~his or her~~ **their** practice, for ~~at least~~ two years or longer **as described in OAR 847-065-0060**, as specified in the monitoring agreement **or addenda to the monitoring agreement**;

(4) Abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the contractor and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(5) Report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours to contractor;

(6) Participate in a treatment plan approved by a third-party evaluator or treatment provider;

(7) Limit practice as required by the contractor or the Board;

(8) Cooperate with supervised monitoring of practice;

(9) Participate in a follow-up evaluation, when necessary, of licensee's fitness to practice;

(10) Submit to random drug or alcohol testing **as outlined in the monitoring agreement**; ~~unless the licensee is diagnosed with solely a mental health disorder and the Board does not otherwise require the licensee to submit to random drug and alcohol testing~~;

(11) Report at least weekly to the contractor regarding the licensee's compliance with the monitoring agreement;

(12) Report applications for licensure in other states, changes in employment and changes in practice setting to the contractor;

(13) Agree to be responsible for the cost of evaluations, toxicology testing, treatment, ~~and~~ monitoring groups, and periodic monitoring consultations;

(14) Report to the contractor any investigations or disciplinary action by any state, or state or federal agency, including Oregon;

(15) Participate in required ~~meetings~~ activities according to the treatment plan; and

(16) Maintain a license status and report any changes in license status.

Statutory/Other Authority: ORS ~~676.185 – 676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185 - 676.200 ~~& 677.265~~

#### **847-065-0060**

##### **Completion Requirements**

(1) The time spent participating in a monitored program before transferring from the Health Professionals Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of monitored practice.

(2) ~~The licensee will remain enrolled in the program for a minimum of two consecutive years. Licensees who receive a diagnosis of substance use disorder, mild, or have a mental health diagnosis without substance use disorder must be enrolled in the program for a minimum of two years. These licensees may be required to be enrolled for a longer period if the evaluator or contractor is able to document concerns for the safety of the public or licensee or if otherwise directed by the Oregon Medical Board.~~

(3) Licensees who receive a diagnosis of substance use disorder, moderate or severe, with or without a mental health disorder, must be enrolled in the program for a minimum of five years. These licensees may be required to be enrolled for a longer period of time if the evaluator or contractor is able to document concerns for the safety of the public or licensee or if otherwise directed by the Oregon Medical Board.

~~(43)~~ The Board-referred licensee must have complied with the licensee's monitoring agreement to the satisfaction of the Board. The self-referred licensee must have complied with the licensee's monitoring agreement to the satisfaction of the contractor.

Statutory/Other Authority: ORS ~~676.185 – 676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185 - 676.200 ~~& 677.265~~

## 847-065-0065

### Substantial Non-Compliance Criteria

(1) The contractor will report substantial non-compliance with a ~~diversion~~ **monitoring** agreement to the Board within one business day after the contractor learns of the substantial non-compliance, including but not limited to information that a licensee:

- (a) Engaged in criminal behavior;
- (b) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;
- (c) Was impaired in a health care setting in the course of the licensee's employment;
- (d) Received a positive toxicology test result;
- (e) Violated a restriction on the license's practice imposed by the contractor or the Board;
- (f) Was civilly committed for mental illness;
- (g) Entered into a ~~diversion~~ **monitoring** agreement, but failed to participate in the HPSP;
- (h) Was referred to the HPSP, but failed to enroll in the HPSP;
- (i) Forged, tampered with, or modified a prescription;
- (j) Violated any rules of prescriptive authority;
- (k) Violated any provisions of OAR 847-065-0055;
- (L) Violated any terms of the ~~diversion~~ **monitoring** agreement; or
- (m) Failed to complete the monitored practice requirements as stated in OAR 847-065-0060.

(2) The Board will review reports from the program. The Board may request the contractor to provide the licensee's complete record, and the contractor must send these records to the Board as long as a valid release of information is in place.

(3) If the Board finds that a licensee is substantially noncompliant with a ~~diversion~~ **monitoring** agreement, the Board may investigate and determine the appropriate sanction.

Statutory/Other Authority: ORS ~~676.185—676.200 & 676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185 - 676.200 & ~~677.265~~

### **847-065-0070**

#### **Licensees with Primary Residence or Work Site Outside of Oregon**

If a licensee's primary residence or work site is located outside the State of Oregon, the licensee must enroll in the HPSP, in accordance with OAR 847-065-0025 and 847-065-0030 for Board-referred or 847-065-0035 for self-referred licensees, and may choose to be monitored by the out-of-state's health professional program if the following conditions are met:

- (1) The other state's health professional program is substantially similar with the relevant Oregon statutes. It is the duty of the contractor to verify this information and notify the Board of any discrepancies;
- (2) The other state's health professional program sends quarterly reports on the licensee to the contractor; and
- (3) The other state's health professional program will promptly report any substantial non-compliance with the licensee's ~~diversion~~ **monitoring** agreement to the contractor.

Statutory/Other Authority: ORS ~~676.185-676.200~~ & ~~676.190, 676.200,~~ 677.265

Statutes/Other Implemented: ORS 676.185-676.200 & ~~677.265~~

## OREGON ADMINISTRATIVE RULES

### CHAPTER 847, DIVISION 080 – OREGON MEDICAL BOARD

Final Review – October 2022

The Oregon Podiatric Medical Association requested removing the American Board of Foot and Ankle Surgery requirement for a podiatric physician to perform ankle surgery and allow that aspect to be a credentialing issue at the hospital level. The rule amendment removes board certification as a qualification for a podiatric physician to perform ankle surgery, but retains the surgical residency requirements.

#### 847-080-0022

##### Qualifications to Perform Ankle Surgery

Ankle surgery must be conducted in a certified hospital or in an ambulatory surgical center certified by the Oregon Health Authority Division. To be eligible to perform ankle surgery in the sState of Oregon, the licensed podiatrist ~~shall meet the qualifications from one of the following sections prior to being approved by the Board to perform ankle surgery:~~ **must have completed a surgical residency approved by the Council on Podiatric Medical Education (CPME).**

~~(1) Completion of a Council on Podiatric Medical Education (CPME) approved surgical residency; board certification by the American Board of Foot and Ankle Surgery (ABFAS); documented clinical experience as approved by the Board; and current clinical privileges to perform reconstructive/rearfoot ankle surgery in a Joint Commission approved hospital; or~~

~~(2) Completion of a CPME approved surgical residency; and board qualified by the ABFAS in Reconstructive Rearfoot/Ankle Surgery progressing to board certification in Reconstructive Rearfoot/Ankle Surgery within seven years.~~

Statutory/Other Authority: ORS 677.245

Statutes/Other Implemented: ORS 677.805 & 677.812