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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OTLB 5-2020
CHAPTER 339
OCCUPATIONAL THERAPY LICENSING BOARD

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Executive Order Compliance during a Declared Emergency

EFFECTIVE DATE: 08/12/2020 THROUGH 02/05/2021

AGENCY APPROVED DATE: 08/07/2020

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NEED FOR THE RULE(S):

To allow agency to enforce licensee's compliance with Governor's Executive Orders during a declared emergency.

JUSTIFICATION OF TEMPORARY FILING:

Adoption at the request of the Governor to ensure compliance of Executive Orders that help keep Oregonian's safe during a declared emergency.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Copies of the Executive Orders are available at: <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>
Copies of Oregon Health Authority Guidance are available at: <https://govstatus.egov.com/OR-OHA-COVID-19>

AMEND: 339-010-0020

RULE TITLE: Unprofessional Conduct

RULE SUMMARY: Oregon occupational therapy practitioners must comply with Governor's Executive Orders during a declared emergency.

RULE TEXT:

- (1) Unprofessional conduct relating to patient/client safety, integrity and welfare includes:
- (a) Intentionally harassing, abusing, or intimidating a patient/client, either physically or verbally;
 - (b) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;
 - (c) Engaging in assault and/or battery of patient/client;
 - (d) Failing to respect the dignity and rights of patient/client, regardless of social or economic status, personal attributes or nature of health problems;
 - (e) Engaging in sexual improprieties or sexual contact with patient/client;
 - (f) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a

patient/client to a third person;

(g) Taking property of patient/client without consent.

(h) Failing to follow principles and related standards of conduct as defined in the Occupational Therapy Code of Ethics (2015), by the American Occupational Therapy Association, to the extent they do not conflict with ORS 675.210 through 675.340.

(2) Unprofessional conduct relating to professional competency includes:

(a) Engaging in any professional activities for which licensee is not currently qualified;

(b) Failing to maintain competency;

(c) Failing to provide a comprehensive service that is compatible with current research and within an ethical and professional framework;

(d) Failing to obtain a physician's referral in situations where an OT is using a modality not specifically defined in ORS 675.210(3);

(e) Failing to provide professional occupational therapy based on evaluation of patient's/client's needs and appropriate treatment procedures;

(f) Using an occupational therapy aide in violation of the law or Board rules regarding occupational therapy.

(3) Unprofessional conduct relating to the Board includes:

(a) Practicing occupational therapy without a current Oregon license;

(b) Failing to renew license in a timely manner;

(c) Failing to provide the Board with any documents requested by the Board;

(d) Failing to answer truthfully and completely any question asked by the Board;

(e) Failing to provide evidence of competency when requested;

(f) Violating the Practice Act, Board rules or Board Orders;

(g) Failing to cooperate with Board investigations.

(4) Unprofessional conduct relating to impaired function includes:

(a) Engaging in or assisting in the practice of occupational therapy while impaired by alcohol or other drugs;

(b) Use of alcohol or other drugs in a manner that creates a risk of harm to patient/client;

(c) Engaging in the practice of occupational therapy while one's ability to practice is impaired by reason of physical or mental disability or disease.

(5) Unprofessional conduct relating to federal or state law or rules:

(a) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person or intentionally obstructing or attempting to obstruct another person from filing such report;

(b) Obtaining or attempting to obtain compensation by misrepresentation;

(c) Engaging in assault and/or battery of any person;

(d) Conviction of a crime or engaging in any act which the Board determines substantially relates to the practice of occupational therapy or indicates an inability to safely and proficiently engage in the practice of occupational therapy; or failing to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;

(e) Disciplinary actions imposed by another professional licensing body based on acts by the licensee similar to acts giving rise to discipline under the Practice Act or rules of the Board;

(f) Engaging in false, misleading or deceptive advertising.

(g) Fails to notify the appropriate licensing board of any conduct by another licensed medical provider when the licensee has reasonable cause to believe that the medical provider has engaged in prohibited or unprofessional conduct. As used in this subparagraph, "prohibited conduct" means a criminal act against a patient or a criminal act that creates a risk of harm to a patient and "unprofessional conduct" means conduct unbecoming a medical provider or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the medical provider's profession or conduct that endangers the health, safety or welfare of a patient.

(h) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of

employment or business as required by OAR 339-010-0018.

(6) Unprofessional Conduct in a Declared Emergency:

(a) Unprofessional conduct during a declared emergency includes failing to comply with any applicable requirement of a Governor's Executive Orders, including but not limited to:

(A) Providing occupational therapy services when permitted, but without wearing Personal Protective Equipment (PPE) when PPE is required;

(B) Providing occupational therapy services at a business required to be closed;

(b) Unprofessional conduct during a declared emergency includes failing to comply with applicable Oregon Health Authority (OHA) guidance implementing a Governor's Executive Orders, including but not limited to failing to follow guidance on providing occupational therapy services in person.

(c) No disciplinary action or penalty action shall be taken under this section if the Executive Order provision or OHA guidance alleged to have been violated is not in effect at the time of the alleged violation.

STATUTORY/OTHER AUTHORITY: ORS 675.230, 675.240, 675.250, 675.300, 675.310

STATUTES/OTHER IMPLEMENTED: ORS 675.300(1)(a)