



# Oregon

Kate Brown, Governor

## Board of Psychologist Examiners

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Oregon.gov/OBPE

December 15, 2016

To: OBPE Stakeholders

RE: Notice of Proposed Rulemaking Hearing  
Removal of Thirty Day Letter Requirement

The Board is proposing to remove the “Thirty Day Letter” as a required step in the complaint procedure found in OAR 858-020-0055. Please review the enclosed Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact. Below are some Q & A to further explain the Board’s proposed action.

**Q:** What is a “Thirty Day Letter”?

**A:** Once an investigation is complete, the Board must issue a thirty day letter prior to initiating further action. The rule, OAR 858-020-0055, requires that the Board “notify the respondent of the specific allegations of conduct that the Board may consider to be violations of APA Ethical Principles or Oregon statutes and administrative rules. The letter shall require a response from the respondent within 30 days from the date of mailing and provide warning that failure to respond may result in Board disposition of the complaint without the response.”

**Q:** Why is the Board proposing to change the process?

**A:** The Board reviewed the complaint process and determined that the thirty-day letter issuance and response requirement has resulted in an unnecessary burden for both the Board and the respondent. This additional step to issue a formal letter by certified mail and require a written response, none of which are required by law, delays the investigation process by at least two months, since the Board only meets every other month. This has frequently led to a slower resolution of complaints. The Board recognizes that being subject to an investigation can be very stressful to our licensees and applicants, and does not wish to prolong the process.

**Q:** Does this mean that the Board will no longer notify me if a complaint is filed against me?

**A:** No. The Board still must notify respondents that a complaint was filed, including a statement of the general allegations to be investigated per OAR 858-020-0045(1). This proposal does not change the notification requirement.

**Q:** Does this mean that I will no longer be provided an opportunity to respond to the complaint allegations?

**A:** No, this just eliminates the thirty day letter response requirement which occurs *after* the investigation is completed. The Board’s investigator is responsible for notifying the

respondent, collecting evidence, interviewing witnesses, and developing an investigative report to the Board. The Board will review the information and determine whether it needs more information to make a decision. On review, the Board may direct the investigator to continue the investigation, which may include the issuance of a thirty day letter. Currently, the letter is always required, even when all of the necessary information is gathered. Frequently the Board will hear from frustrated licensees that they have already provided all of the information requested, so why are they again being asked to respond to the allegations? They must respond in writing within 30 days, and then wait until the Board meets again to review the same response that the respondent has already provided.

**Q:** Does this affect my right to request a contested case hearing?

**A:** No. If the Board votes to issue a Notice, the respondent still has the right to file an answer and request a hearing. Nothing in this proposal will change that right in any way.

**Q:** Where can I find the rules related to the complaint process?

**A:** Here: [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_858/858\\_020.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_858/858_020.html)

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

<b>FILED</b> 12-15-16 11:59 AM ARCHIVES DIVISION SECRETARY OF STATE
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Board of Psychologist Examiners	858
Agency and Division	Administrative Rules Chapter Number
LaRee' Felton	(503) 373-1196
Rules Coordinator	Telephone
Board of Psychologist Examiners, 3218 Pringle Rd. SE, Suite 130, Salem, OR 97302	
Address	

**RULE CAPTION**

Removes "Thirty-Day Letter" requirement from investigation process.

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Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
2-22-17	10:00 a.m.	3218 Pringle Road SE; Salem, OR 97302	LaRee Felton

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

- ADOPT:**
- AMEND:**  
OAR 858-020-0055
- REPEAL:**
- RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.
- AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**  
ORS 675.110; 676.160-.180

**Other Authority:**

**Statutes Implemented:**  
ORS 675.110; 676.160-.180

**RULE SUMMARY**

The proposed amendment modifies the Board's investigation process by eliminating the "Thirty-Day Letter" step required prior to commencing procedures for imposing sanctions. Currently, subsequent to the completion of an investigation and prior to issuing a notice of proposed action, the Board must first issue a letter specifying allegations and requiring a response from the respondent within 30 days. This rule amendment would remove that requirement.

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.

02-22-2017 5:00 p.m.	LaRee' Felton	laree.felton@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
12-15-16 11:59 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Board of Psychologist Examiners  
Agency and Division

858  
Administrative Rules Chapter Number

Removes "Thirty-Day Letter" requirement from investigation process.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The amendment of OAR 858-020-0055.

**Statutory Authority:**

ORS 675.110; 676.160-.180

**Other Authority:**

**Statutes Implemented:**

ORS 675.110; 676.160-.180

**Need for the Rule(s):**

The Board reviewed the investigation process in detail at its strategic planning session of November 19, 2016. It determined that the thirty-day letter issuance and response requirement has resulted in an unnecessary burden for both the Board and the respondent. This additional step delays the investigation process by at least two months, and has frequently led to a slower resolution of complaints. The Board recognizes that when it is reviewing a case, it may still opt to continue the investigation when more information is needed to make a decision.

**Documents Relied Upon, and where they are available:**

OAR Chapter 858, Division 10, and ORS Chapter 675 and 676 are available on the OBPE website at [Oregon.gov/obpe/Pages/laws\\_rules.aspx](http://Oregon.gov/obpe/Pages/laws_rules.aspx).

**Fiscal and Economic Impact:**

None.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

Changes have no projected fiscal impact.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

None

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

None

**c. Equipment, supplies, labor and increased administration required for compliance:**

None

**How were small businesses involved in the development of this rule?**

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

**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

This amendment is straightforward and has no fiscal impact.

02-22-2017 5:00 p.m.	LaRee' Felton	laree.felton@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

# BOARD OF PSYCHOLOGIST EXAMINERS

## DIVISION 20

### COMPLAINTS, INVESTIGATIONS, AND CONTESTED CASE HEARINGS

858-020-0055

#### Investigator's Report to the Board

(1) When the investigation is complete, the investigator will make an investigation report to the Board, in accordance with the timeline and procedures outlined in ORS 183.310 to 183.500 and 676.160 to 676.180, and shall clearly set forth the issues on which the Board should consider possible action.

(2) The Board shall consider the investigator's report and the standards for disciplinary actions under its statutes and OAR 858-010-0075. The Board may:

(a) Dismiss the complaint;

(b) Continue the investigation; or

(c) Commence procedures for imposing sanctions. ~~Issue a Thirty Day Letter. The Board administrator shall notify the respondent of the specific allegations of conduct that the Board may consider to be violations of APA Ethical Principles or Oregon statutes and administrative rules. The letter shall require a response from the respondent within 30 days from the date of mailing and provide warning that failure to respond may result in Board disposition of the complaint without the response.~~

Stats. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 4-2012(Temp), f. & cert. ef. 10-18-12 thru 4-16-13; Administrative correction, 5-22-13; BPE 3-2013, f. & cert. ef. 9-30-13