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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 858
MENTAL HEALTH REGULATORY AGENCY
OREGON BOARD OF PSYCHOLOGY

FILED
05/23/2018 10:31 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Grounds for disciplinary action and notice required for contested case hearings.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/27/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
LaRee Felton
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/27/2018

TIME: 10:00 AM

OFFICER: LaRee Felton

ADDRESS:

3218 Pringle Road SE
Salem, OR 97302

NEED FOR THE RULE(S):

The Board determined that there is a need to clarify that there are ramifications for failure to comply with terms of a Board order and cooperate with a Board investigation, since this is not explicitly addressed in rule. Also, it determined to amend the time to request a contested case hearing to streamline compliance processing and better align with other boards.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Chapter 858, Division 20, and ORS Chapter 675 are available on the OBOP website at Oregon.gov/obpe/Pages/laws_rules.aspx.

FISCAL AND ECONOMIC IMPACT:

None.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost

of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None; changes have no projected fiscal impact.

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

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This amendment is straightforward and has no fiscal impact.

RULES PROPOSED:

858-020-0045, 858-020-0075

AMEND: 858-020-0045

RULE SUMMARY: The proposed amendment sets forth that failure to comply with terms of a Board order or cooperate with a Board investigation constitutes a violation of ORS 675.070(2) and is grounds for disciplinary action.

CHANGES TO RULE:

858-020-0045

Notice and Investigation Process ¶¶

(1) Notice to Respondent. The Board's administrator shall notify the respondent by letter when a complaint is filed, or an investigation has been initiated, into respondent's conduct or practice. The notice letter shall provide respondent with a citation to the laws and regulations that apply to the investigation. The notice letter shall also set out the general allegations to be investigated. The investigator may modify the scope of the investigation as needed. The Board Administrator may delegate this notification procedure to the Board's investigator.¶¶

(2) Notice to Supervisors. When a complaint is filed against an individual acting under the supervision of a licensed psychologist, the supervising psychologist(s) shall be notified that any investigation into the conduct of the supervisee may affect the licensure of the supervisor(s). The Board may open a companion investigation naming the supervisor(s).¶¶

(3) Purpose of Investigation. The purpose of the investigation shall be to determine whether sufficient credible evidence exists of violation of rules or laws administered by the Board to justify issuance of a Notice of Intent to Impose sanctions against a person licensed by the Board or such other action as the circumstances may warrant.¶¶

(4) Scope of Investigation. The investigator shall seek guidance as appropriate and necessary from individual Board members, the full Board, agency legal counsel, and the Board's administrator. If the Board decides to operate with a Consumer Protection Committee structure, that committee shall serve as the primary source of guidance for the investigator.¶¶

(5) Cooperation. Failure by respondent to cooperate with a board investigation constitutes unprofessional conduct per ORS 675.070(2), and is grounds for disciplinary action. Cooperation by respondent includes:¶¶

(a) Submitting client records to the Board's investigator, with or without a signed release by the client, for a full investigation of the allegations presented in the notice letter;¶¶

(b) Sending a complete case file to the Board's investigator;¶¶

(c) Being available for a personal interview with the Board's investigator; and¶¶

(d) Responding to questions presented by the Board's investigator.¶¶

(6) Duty of the Investigator. The investigator shall collect evidence, interview witnesses and make a written report to the Board.¶¶

(7) The Board may delay approving a licensure application, renewing a license, or issuing a license to a candidate for licensure if the person has a complaint under investigation until the complaint has been resolved.¶¶

(8) Licensees and applicants must comply with the terms of all Board orders and agreements. Failure to comply constitutes a violation of ORS 675.070(2)(h) and is grounds for disciplinary action.

Statutory/Other Authority: ORS 675.020, 675.110, ORS 675.070

Statutes/Other Implemented: ORS 675.110

AMEND: 858-020-0075

RULE SUMMARY: The proposed amendment changes the time to request a contested case hearing subsequent to the Board issuing a notice of proposed disciplinary action from 30 day of mailing of the notice to 21 days of the issuance of the notice.

CHANGES TO RULE:

858-020-0075

Contested Case Hearings ¶¶

- (1) When the Board institutes disciplinary actions, notice of proposed actions must be served on the respondent(s) or the respondent's legal counsel by certified mail, return receipt.¶
- (2) The notice shall comply with ORS 183.411 to 183.497, and shall state that the respondent has the right to request a contested case hearing by filing an answer to the notice of disciplinary action and written request for hearing within ~~30~~21 days of the ~~mailing~~issuance of the notice.¶
- (3) Failure to request a hearing within ~~30~~21 days of the ~~mailing~~issuance of the notice of disciplinary action shall be deemed a default and a final order shall be issued by the Board.¶
- (4) A contested case hearing will be conducted by an impartial administrative law judge who has not been involved in the initial investigation of the complaint, in accordance with ORS 183.310-183.550 and the Board's Notice of Rights and Procedures.¶
- (5) Only the Board may order testimony be taken by deposition.¶
- (6) All hearings shall be conducted in Salem, Oregon, unless a different location is stipulated to by all parties and approved by the Board.¶
- (7) Contested case hearings are closed to the public.

Statutory/Other Authority: ORS 183.425(1), 183.425(2), 675.110

Statutes/Other Implemented: 183.425(2), 675.110, ORS 183.425(1)