

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
INTERIM DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 858
MENTAL HEALTH REGULATORY AGENCY
OREGON BOARD OF PSYCHOLOGY

FILED
09/25/2019 12:34 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishes military spouse temporary practice authorization and fee; modifies contested case hearing procedure; contact information.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2019 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.

CONTACT: LaRee Felton
503-373-1196
laree.felton@oregon.gov

3218 Pringle Road SE, Ste. 130
Salem, OR 97302

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: 10/24/2019

TIME: 10:00 AM

OFFICER: LaRee Felton

ADDRESS: Oregon Board of
Psychology

First Floor Large Conference Room
3218 Pringle Road SE
Salem, OR 97302

NEED FOR THE RULE(S):

The Board needs to adopt and amend these rules to implement House Bill 3030 (2019) and Senate Bill 688 (2019), which require professional licensing boards to issue temporary practice authorizations to spouses of members of the Armed Forces of United States who are stationed in Oregon. The Board determined that there is a need to add an exemption to the notice requirements of OAR 137-003-0655(7) for contested case hearing procedures because the complexity of Board cases and the infrequency of regularly scheduled Board meetings makes 90 days an insufficient time for the Board to issue an amended proposed order or a final order. There is also a need to update the notification requirements to add a requirement to provide an email address, as the Board is preparing to implement a new online licensing system.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Chapter 858 and ORS Chapter 675 are available on the OBOP website at <https://www.oregon.gov/Psychology/Pages/LawsRules.aspx>. House Bill 3030 (2019) can be found at: <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB3030>, and Senate Bill 688 (2019) can be found at: <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB688>.

FISCAL AND ECONOMIC IMPACT:

Applicants for temporary practice authorization will pay a fee of \$900. Absent a temporary practice authorization processes, individuals generally would be required to obtain regular licensure from this agency in order to practice psychology in Oregon, at a higher fee. Although the volume of applications is difficult to predict, very few are anticipated. So this rule amendment is only expected to result in an insignificant decrease in Other Fund revenue for the agency.

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, other than the fee that applies to individuals who apply for temporary practice authorization. Small businesses are not subject to this rule. The rule amendment adds an expedited process for military spouses to be able to practice their profession in Oregon for a period of up to two years, at a lower cost than the total fees involved with licensure application and two-year renewal.

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?

The rules are believed to be fully compatible with the legislative direction. The Board did not determine that an additional committee beyond the nine-member Board and its staff was necessary to develop the rules.

RULES PROPOSED:

858-010-0056, 858-010-0060, 858-010-0061, 858-010-0075, 858-020-0025, 858-020-0045, 858-020-0075, 858-030-0005

ADOPT: 858-010-0056

RULE SUMMARY: The new proposed rule implements House Bill 3030 (2019) and Senate Bill 688 (2019) by establishing the application procedures and requirements for the Board of Psychology to grant temporary practice authorizations to spouses of members of the Armed Forces of the United States who are stationed in Oregon.

CHANGES TO RULE:

858-010-0056

Temporary Practice Authorization

(1) The Board may grant a temporary practice authorization to the spouse of a member of the Armed Forces of the United States who is stationed in Oregon as follows:¶

(a) Temporary Psychologist Authorization may be issued to applicants that possess a current, active license to practice psychology in good standing in another state based on a doctoral degree in psychology.¶

(b) Temporary Psychologist Associate Authorization may be issued to applicants that possess a current, active license to perform functions within the practice of psychology in good standing in another state based on a master's degree in psychology. If the applicant is authorized to practice only under supervision in the other state, then the applicant must comply with the continued supervision requirements of OAR 858-010-0038.¶

(c) To qualify for Temporary Practice Authorization, an applicant must be in good standing, with no restrictions or

limitations upon, actions taken against, or investigation or disciplinary action pending against his or her license in any jurisdiction where the applicant is or has been licensed.

(2) A Temporary Practice Authorization issued by the Board is not renewable, and is only valid until the earliest of the following:

(a) Two years after the date of issuance;

(b) The date the spouse of the person to whom the temporary practice authorization was issued completes the spouse's term of service in Oregon; or

(c) The date the person's authorization issued by another state expires.

(3) To apply for a Temporary Practice Authorization, an applicant must submit to the Board's office:

(a) A complete Temporary Authorization Application;

(b) A copy of the marriage certificate showing the name of the applicant and the name of the active duty member of the Armed Forces of the United States;

(c) A copy of the assignment to a duty station located in Oregon by official active duty military order for the spouse named in the marriage certificate; and

(d) The temporary practice authorization fee. This fee is not refundable except in extraordinary circumstances. An applicant's failure to qualify for temporary practice authorization does not suffice for a refund.

(4) Information Changes. An applicant or person who has been granted a temporary practice authorization must notify the Board within 30 days if any information submitted on the application changes, including but not limited to:

(a) Contact information;

(b) Character and fitness information, including complaints, disciplinary actions, employment investigations that lead to termination or resignation, and civil, criminal, or ethical charges;

(c) The status of the license to practice psychology in another state; and

(d) The status of the spouse's term of service in Oregon.

Statutory/Other Authority: HB 3030 (2019), SB 688 (2019), ORS 675.110

Statutes/Other Implemented: HB 3030 (2019), SB 688 (2019), ORS 675.110

AMEND: 858-010-0060

RULE SUMMARY: This proposed amendment adds limited permits and temporary practice authorizations as subject to the rules regarding the maintenance and retention of psychological records.

CHANGES TO RULE:

858-010-0060

Psychological Records ¶

(1) Maintenance and retention of records. The psychologist or psychologist associate, or person granted a limited permit or temporary practice authorization, who is rendering professional services to an individual client or services billed to a third party payer, shall maintain professional records for a client for a minimum of seven years from the date of last service. The records shall include:¶

(a) The name of the client and other identifying information;¶

(b) The presenting problem(s) or purpose or diagnosis;¶

(c) The fee arrangement;¶

(d) The date and substance of each billed or service-count contact or service;¶

(e) Any test results or other evaluative results obtained and any basic test data from which they were derived;¶

(f) Notation and results of formal consults with other providers;¶

(g) A copy of all test or other evaluative reports prepared as part of the professional relationship;¶

(h) Any releases executed by the client;¶

(i) Any signed informed consents.¶

(2) Disposition in case of death or incapacity of the licensee. Psychologists and psychologist associates shall make necessary arrangements for maintenance of and access to client records to ensure confidentiality in case of death or incapacity of the licensee.¶

(3) Oregon licensees shall name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacity of the licensee or if the licensee is inactive or has resigned and the former client is unable to locate the licensee.¶

(4) A "qualified person" under this rule means an active or semi-active Oregon licensed psychologist.

Statutory/Other Authority: ORS 675.030, 675.040, 675.045, 675.050, 675.065, 675.110

Statutes/Other Implemented: ORS 675.030, 675.040, 675.045, 675.050, 675.065, 675.110

AMEND: 858-010-0061

RULE SUMMARY: This proposed amendment adds limited permits and temporary practice authorizations as subject to the Board's notification requirements, and adds a requirement to provide the Board with a current email address.

CHANGES TO RULE:

858-010-0061

Notification Requirements ¶

~~Licenses shall notify the Board in writing within 30 days of the following:¶~~

~~(1) Change of persons granted a limited permit or temporary practice authorization shall:¶~~

~~(1) Provide current contact information to the Board, including:¶~~

~~(a) Public and mailing address;¶~~

~~(2b) Change of telephone number; and¶~~

~~(c) Electronic mail address.¶~~

~~(3) Any name change. Licensees must inform the Board of any changes to contact information within 30 days of the change using a contact information change form provided by the Board.¶~~

~~(3) Submit a change of name form provided by the Board, accompanied by a copy of the legal document showing the name change, within 30 days of any name change.~~

Statutory/Other Authority: ORS 675.110

Statutes/Other Implemented: ORS 675.110

AMEND: 858-010-0075

RULE SUMMARY: The proposed amendment adds limited permits and temporary practice authorizations as subject to the Code of Professional Conduct.

CHANGES TO RULE:

858-010-0075

Code of Professional Conduct ¶

The Board adopts the American Psychological Association's (APA) "Ethical Principles of Psychologists and Code of Conduct," effective January 1, 2010 with amendment as of January 1, 2017, as the code of professional conduct applicable to all licensees, persons granted a limited permit or temporary practice authorization, residents, and applicants of the Board.¶

[Publications referenced are available at <http://www.apa.org/ethics/>]

Statutory/Other Authority: ORS 675.030, ORS 675.040, ORS 675.045, ORS 675.050, ORS 675.065, ORS 675.110

Statutes/Other Implemented: ORS 675.030, ORS 675.040, ORS 675.045, ORS 675.050, ORS 675.065, ORS 675.110

AMEND: 858-020-0025

RULE SUMMARY: The proposed amendment adds limited permits and temporary practice authorizations to the Board's complaint procedures.

CHANGES TO RULE:

858-020-0025

Complaints on Which the Board Can Act ¶

Any complaint submitted to the Board must be specific as to the conduct upon which the complaint is based and why this conduct is cause for a complaint. The Board will review and accept for consideration complaints that might affect the licensure of psychologists and psychologist associates who are already licensed or are ~~candidates for licensure, or applicants for licensure, complaints concerning persons applying for or granted a limited permit or temporary practice authorization, or complaints~~ that concern the possible practice of psychology by non-psychologists or unlicensed psychologists. A complaint concerning a licensed psychologist associate or psychologist resident may be regarded as a complaint against the supervisor. A complaint will be rejected if it does not allege a violation for which the Board has the grounds to impose sanctions pursuant to ORS 675.070. If authorized by ORS 676.160 to 676.180, a complaint may be referred to appropriate individuals or groups with the consent of the complainant.

Statutory/Other Authority: ORS 675.070

Statutes/Other Implemented: ORS 675.070(2)

AMEND: 858-020-0045

RULE SUMMARY: The proposed amendment adds limited permits and temporary practice authorizations to the Board's notice and investigation procedures.

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~~ initial license, limited permit, or temporary practice authorization if the person has a complaint under investigation until the complaint has been resolved.¶¶
- (8) Licensees ~~and applicants~~, applicants, and persons granted a limited permit or temporary practice authorization 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, ORS 675.110, ORS 675.070

Statutes/Other Implemented: ORS 675.110

AMEND: 858-020-0075

RULE SUMMARY: The proposed amendment modifies the contested case hearing procedures by adding an exemption to requirements of OAR 137-003-0655(7), which require an agency to give written notice to the administrative law judge 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.

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 days of the mailing of the notice.¶¶

(3) Failure to request a hearing within 30 days of the mailing 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.¶¶

(8) The Board's disciplinary and suspension cases brought under ORS 675.070 are exempt from the requirements of OAR 137-003-0655(7), which requires an agency to give written notice to the administrative law judge 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 183.425(12), 183.425(2), 675.110 ORS 675.110, ORS 183.425(1)

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

AMEND: 858-030-0005

RULE SUMMARY: This proposed amendment establishes a new fee for temporary practice authorizations and updates some references.

CHANGES TO RULE:

858-030-0005

Application, Examination and Licensing Fees ¶

(1) Application: \$325¶

(2) Jurisprudence Examination: \$155¶

(3) License Fees¶

(a) The license renewal fee for an active psychologist and psychologist associate shall be calculated on an annual amount of \$390 and paid on a biennial amount of \$780.¶

(b) The license renewal fee for a semi-active psychologist and psychologist associate shall be calculated on an annual amount of \$195 and paid on a biennial amount of \$390.¶

(c) The license renewal fee for an inactive psychologist and psychologist associate shall be calculated on an annual amount of \$52.50 and paid on a biennial amount of \$105.¶

(d) The Board shall renew licenses on a biennial birth month renewal schedule.¶

(e) The Board shall impose a delinquency fee of \$210 for licenses renewed within thirty days after the stated due date.¶

(f) The Board shall have discretion to waive the delinquency fee in documented hardship cases.¶

(4) Limited Permit: \$120¶

(5) Temporary Practice Authorization: \$900¶

(6) Miscellaneous Fees. Most materials and information are available through the Board website at www.oregon.gov/ebpepsychology or may be purchased in accordance with ORS 192.440(2)324.¶

(a) Certified verification of licensure: \$5¶

(b) Certified transfer of application information: \$20¶

(c) Student loan deferment letter: \$5¶

(d) Duplicating request: \$2.50 for the first five copies; \$.25 for each copy thereafter¶

(e) Laws and administrative rules: \$5¶

(f) Electronic file of mailing labels: \$35¶

(g) Application packet, including laws and administrative rules: \$10¶

(h) Duplicate wall display certificate of licensure: \$12¶

(i) Certified duplicate license: \$10¶

(j) Cumulative disciplinary report: \$7.50

Statutory/Other Authority: ORS 675.110, ORS 675.115

Statutes/Other Implemented: ORS 675.110, ORS 675.115