



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 858
MENTAL HEALTH REGULATORY AGENCY
OREGON BOARD OF PSYCHOLOGY

FILED
01/24/2020 11:39 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Failure to comply with a Board order or agreement; non-qualifying continuing education.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/25/2020 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: 02/25/2020

TIME: 10:00 AM

OFFICER: LaRee Felton

ADDRESS:

First Floor, Small Conference Room
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NEED FOR THE RULE(S):

The Board determined to set a uniform standard that licensees will not be allowed to reactivate or renew their license if they do not complete the terms of a Board order or agreement. Licensees should not be allowed to begin or continue to practice psychology if they fail to fulfill the mandates that result from a Board sanction, including but not limited to terms of probation such as supervised practice, continuing education, and payment of civil penalties due. To avoid confusion, the Board found that it should clarify that programs completed to fulfill the terms of a Board order or agreement do not qualify towards the continuing education requirements for licensure renewal or reinstatement. Licensees should not be allowed to "double dip" and use education that is mandated to address an area of concern to also satisfy their ongoing education required to maintain their license.

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>.

FISCAL AND ECONOMIC IMPACT:

Sanctioned licensees who do not comply with the terms of a board order or agreement will be impacted because these individuals will not be able to practice psychology in Oregon when their license is not renewed or reactivated. This is

difficult to predict but is expected to be infrequent.

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, except for sanctioned licensees as described above. Small businesses are not subject to this rule.

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 proposed amendments are uncomplicated and address specific concerns of the Board. 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:

858-020-0045, 858-040-0036

AMEND: 858-020-0045

RULE SUMMARY: The proposed amendment adds a provision that the Board will not approve any license renewal or request to reactivate a license from inactive status to active or semi-active status if the licensee is not in compliance with one or more terms of any Board order or agreement.

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 an initial license, limited permit, or temporary practice authorization if the person has a complaint under investigation until the complaint has been resolved.¶¶

(8) Licensees, applicants, and persons granted a limited permit or temporary practice authorization must comply with the terms of all Board orders and agreements.¶¶

(a) Failure to comply with one or more terms of a Board order or agreement constitutes a violation of ORS 675.070(2)(h) and is grounds for disciplinary action.¶¶

(b) The Board will not approve any license renewal or request to reactivate a license from inactive status to active or semi-active status if the licensee is not in compliance with one or more terms of any Board order or agreement.

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

Statutes/Other Implemented: ORS 675.110

AMEND: 858-040-0036

RULE SUMMARY: The proposed amendment specifies that programs completed to fulfil the terms of a Board order or agreement do NOT qualify towards the continuing education requirements for licensure renewal or reinstatement.

CHANGES TO RULE:

858-040-0036

Programs Which Do Not Qualify for Continuing Education Credit ¶¶

- (1) Marketing; investments; and practice building strategies.¶¶
- (2) Yoga; therapeutic massage;¶¶
- (3) Non-Clinical administrative staff meetings;¶¶
- (4) Word processing computer skills;¶¶
- (5) Therapies which are not widely recognized as within the scope of practice of psychology, through research or scientifically demonstrated clinical effectiveness.¶¶
- (6) Programs that are completed to fulfil the terms of a Board order or agreement do not qualify towards the continuing education requirements for licensure renewal or reinstatement.

Statutory/Other Authority: ORS 675.110

Statutes/Other Implemented: ORS 675.110(14)