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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

09/22/2021 8:58 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Pain management and suicide risk continuing education requirements and failure to comply.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/26/2021 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

House Bill 2078 (pain management) and House Bill 2315 (suicide risk) passed during the 2021 Legislative Session, imposing new continuing education requirements on professional licensing board licensees, including the Board of Psychology. The Board must now amend its rules to carry out these new mandates. The Board also determined it needed to clarify that failure to comply with CE requirements is considered unprofessional conduct, as the rules do not currently specify this.

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>. Information about new legislation passed in 2021 can be found on the Oregon State Legislature's website at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2078> (HB 2078) and <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2315> (HB 2315).

FISCAL AND ECONOMIC IMPACT:

Minimal or none. This does not increase the total 40 credits of continuing education required for licensees. Licensees may complete the Oregon Pain Management Commission's free one-hour course, "Changing the Conversation About Pain," to comply with the one-hour pain management training every two years. It is unclear whether cost of suicide risk training is more or less than other four hours of trainings licensees may have otherwise completed.

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. 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 legislative mandates and 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:

858-040-0015, 858-040-0055, 858-040-0070

AMEND: 858-040-0015

RULE SUMMARY: This amendment changes Board licensees' requirements for pain management continuing education from a one-time mandate for new licensees to a one-credit ongoing requirement for all licensees, and adds a new requirement for licensees to complete four credits of continuing education dedicated to the topic of suicide risk assessment, treatment, and management.

CHANGES TO RULE:

858-040-0015

Basic Requirements ¶

(1) Licensees must earn at least 40 continuing education credits during the period between license renewals.

Continuing education credit must be reported as follows:¶

(a) Licensees must submit a Renewal Notice and Reporting Affidavit to the Board office with the fee on or before the due date printed on the notice.¶

(b) An unsigned or incomplete Renewal Notice and Reporting Affidavit shall be returned to the licensee.¶

(2) New Licensees. There is no continuing education reporting required for individuals licensed twelve months or less on their first renewal date.¶

(3) All active and semi-active licensees must complete ~~four hours~~ the following minimum requirements in each reporting period:¶

~~(a) Four credits of professional ethics and/or Oregon State laws and regulations related to the practice of psychology in each reporting period.~~¶

~~(4b) All active and semi-active licensees must complete a minimum of seven hours~~ One credit of continuing education dedicated to the topic of pain management. ~~This is a one-time requirement.~~¶

~~(a) One hour must be a course~~ one-hour web-based Pain Management Module provided by the Oregon Pain Management Commission.¶

~~(b) The pain management requirement must be reported within twenty-four months of the first Renewal Notice and Affidavit.~~¶

~~(5) All active and semi-active licensees must complete four hours~~ satisfies this requirement.¶

~~(c) Four credits of continuing education dedicated to the topic of cultural competency; and~~¶

~~(d) Effective July 1, 2022: Two credits of continuing education dedicated to the topic of cultural competency in each reporting period~~ suicide risk assessment, treatment, and management.¶

(64) No continuing education reporting is required for licensees requesting a change from active or semi-active to inactive status.¶

(75) No continuing education reporting is required for inactive licensees.¶

(86) The Board may grant exemptions in whole or in part from continuing education requirements, including extension of deadlines, in documented hardship cases.

Statutory/Other Authority: ORS 675.110

Statutes/Other Implemented: ORS 675.110(14)

AMEND: 858-040-0055

RULE SUMMARY: This makes conforming amendments to implement the change in requirement for pain management continuing education.

CHANGES TO RULE:

858-040-0055

Credit Hours Granted ¶

(1) Credit shall be given for actual hours attended.¶

(2) Credit shall be given for no more than 20 hours of continuing education for home study and study group hours combined in each reporting period. This limitation is temporarily suspended for renewals that are due between March 31, 2020 and July 31, 2022.¶

(3) An instructor, discussion leader, or speaker shall be given two hours of credit for preparation for each hour of presentation time, and one hour of credit for each hour of presentation time.¶

(4) Credit shall be given for no more than 20 hours of continuing education for service as an instructor, discussion leader, or speaker and published material combined in each reporting period.¶

(5) One hour of continuing education credit shall be given for reading 100 book pages or four peer-reviewed articles. Credit shall be given for no more than four hours (400 book pages or 16 articles) of reading in each reporting period. No more than two hours of reading may be used to fulfill the professional ethics continuing education requirement, and no more than two hours of reading may be used to fulfill the one-time pain management continuing education requirement.

Statutory/Other Authority: ORS 675.110

Statutes/Other Implemented: ORS 675.110(14)

AMEND: 858-040-0070

RULE SUMMARY: This amendment clarifies that licensees' failure to comply with continuing education requirements is considered unprofessional conduct.

CHANGES TO RULE:

858-040-0070

Failure to Comply ¶

- (1) A Renewal Notice and Reporting Affidavit shall be deemed timely if it is postmarked by the stated due date of the reporting year. Burden of proof of mailing is on the licensee.¶
- (2) A licensee whose Renewal Notice and Reporting Affidavit is not postmarked by stated due date shall pay a delinquent fee.¶
- (3) An individual whose license has lapsed for failure to submit a complete Renewal Notice and Reporting Affidavit and delinquent fee within 30 days after the due date must re-apply for licensure.¶
- (4) Failure to comply ~~or misrepresentation of compliance with any provision of OAR Chapter 858, Division 40, or misrepresentation of compliance, constitutes unprofessional conduct per ORS 675.070(2)(d) and (h) and is~~ grounds for disciplinary action.¶
- (5) An individual whose license has been revoked for noncompliance of continuing education requirements must re-apply for licensure.¶
- (6) A licensee selected for the continuing education random audit who responds after the stated due date is subject to disciplinary action, to include but not limited to the following sanction:¶
 - (a) Up to 30 days late: \$200 delinquent fee.¶
 - (b) Up to 60 days late: \$300 delinquent fee.¶
 - (c) Failure to respond after 60 days late: \$500 delinquent fee and the licensee's license will be suspended until the licensee provides a complete response documenting the licensee's compliance with the continuing education requirements.¶
- (7) A licensee selected for the continuing education random audit whose hours are deficient, including a licensee's failure to submit complete documentation, is subject to disciplinary action, to include but not limited to the following sanction:¶
 - (a) Deficiency of 1 to 10 hours: \$250 fine.¶
 - (b) Deficiency of 11 to 20 hours: \$500 fine.¶
 - (c) Deficiency of 21 to 30 hours: \$750 fine.¶
 - (d) Deficiency of 31 to 40 hours: \$1000 fine.¶
 - (e) A licensee found to be deficient will be given 30 days to complete the deficient hours. Hours made up may not be double counted towards a subsequent reporting period.¶
 - (A) If the licensee fails to complete the deficient hours within 30 days, an additional \$250 fine will be assessed, and licensee may be subject to further disciplinary action.¶
 - (B) If the licensee fails to complete the deficient hours within 90 days, the licensee's license will be suspended for a minimum of 60 days.

Statutory/Other Authority: ORS 675.110

Statutes/Other Implemented: ORS 675.110(3)~~(4), (13), (14), (15)~~