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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
11/16/2021 12:27 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendments to residency and internship in-person supervision requirements, procedural rules, AG model rule adoption

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/29/2021 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)

The current rule allows residency supervision to be conducted electronically only when geographic distance, weather or emergency would prohibit a face-to-face meeting between the resident and supervisor. The emergency provision has allowed electronic supervision to occur during the COVID-19 global pandemic emergency, which has enabled practitioners to develop proficiency in telehealth and telesupervision. In addition, allowing supervision to occur from a distance helps to facilitate the reduction of barriers to access in rural areas or for those who practice in specialty areas. This amendment also removes the requirement for in-person individual supervision as part of degree program internship. The Board finds that it is prudent to permanently allow all supervision of residents and interns to occur via live, synchronous confidential electronic communications. Supervisors and supervisees may still opt to utilize in-person supervision if this fits their needs. Regarding procedural rule amendments, OAR 858-020-0205 is limited to confidentiality and admissibility of mediation communications, which is only a part of the collaborative dispute resolution (DR) model rules and does not include other components like assessment for use of collaborative DR process, contents of an agreement to collaborate, and selection and procurement of a DR provider. That rule was adopted in 1999 and is outdated, based on a previous version of model rules that has since been revised. The amendment relocates model rule adoption next to other procedural rules where it makes more sense. It succinctly refers to the full range of AG model rules adopted, which is OAR Chapter 137, Divisions 1 through 5. Removing meeting notice distribution requirements eliminates unnecessary staff work and reduces unwanted multiple emails (listserv blasts) to stakeholders. The Board's meeting webpage and online Oregon Transparency Public Meetings website provide legally sufficient notice of public meetings.

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:

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. 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 do not result in any fiscal impact. The Board did not determine that an additional committee beyond the nine-member Board and its staff was necessary to develop the rule amendments.

RULES PROPOSED:

858-010-0005, 858-010-0013, 858-010-0036, 858-020-0205

AMEND: 858-010-0005

RULE SUMMARY: This amendment adopts by reference the Attorney General's (AG) Collaborative Dispute Resolution Model Rules, OAR Chapter 137, Division 5. It clarifies reference to the AG model rules for rulemaking and contested case hearings, and adopts the model rules for agency declaratory rulings and orders in other than contested case. It removes the requirement for the Board to distribute a notice of upcoming meetings to all applicants and licensees for all Board and Committee meetings scheduled.

CHANGES TO RULE:

858-010-0005

Board Duties and Procedure ¶¶

- (1) Board Meetings. The Board shall meet as necessary at a time and place specified by the Board and at such other times and places as specified by the chair of the Board, a majority of members of the Board or by the Governor. The time and place of all meetings shall be posted on the Board's website.¶¶
- (2) Board Members. Board members shall receive a per diem of \$75 a day for board meetings, conference attendance, presentations and Board committee meetings when acting in their official capacity.¶¶
- (3) Internal Organization. At the last meeting in each fiscal year, the first order of business shall be organizational matters, including election of Board chair and vice-chair and the assignment of standing responsibilities to Board members. The term of the chair, vice-chair or any standing assigned responsibility can be changed or terminated at any meeting where the proposal has been placed on the agenda and sent to the members one week in advance of the meeting, or by unanimous consent of the Board.¶¶
- (4) Chair and Vice Chair Responsibilities:¶¶
 - (a) The chair is authorized to take emergency action between Board meetings, subject to ratification by the Board. However, in the case of actions significant enough to normally require Board decisions, the chair shall first attempt to get authorization for such decisions from the Board members through telephone or email communication. All emergency actions of any kind shall be noted in the agenda for the next meeting and shall become the first order of business at that next meeting;¶¶
 - (b) The vice-chair shall perform the duties of the chair when the chair is unable to do so.¶¶
- (5) Board Communications. Only the Board chair shall write other than routine or form letters in the name of the

Board unless members are specifically authorized in a Board meeting to do so. The Board should approve in advance any correspondence that may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the chair may be required to take immediate action that shall be reviewed at the next meeting of the Board.¶

(6) Board Files. All Board files shall be assembled in the Board's official office. The Board administrator shall maintain the Board's files under the direction of the chair. The Board Administrator shall maintain a master record of any files that are checked out of the Board office by Board members. The Board Administrator shall be notified whenever any Board file is transferred from the possession of one person to another, and shall so note in the Board's records. Individuals who have in their possession documents or files pertaining to Board affairs are responsible for their protection and privacy.¶

(7) Minutes and Agendas¶

(a) The minutes of a meeting shall be distributed to all Board members at least one week in advance of the next meeting; and¶

(b) The agenda shall be prepared by the Board chair or Board administrator and distributed to all Board members at least one week before each meeting. The agenda items shall include reports by the Board administrator, the chair and each Board member who has received a specific assignment at the previous meeting or has a report to make regarding standing assignments. If there is insufficient time to inform the Board chair, the Board administrator shall make additional scheduling at the direct request of Board members. The Board may at its discretion, revise the agenda or limit it to a particular topic under special circumstances. Reports may be added as an addendum to the minutes of any meeting; and.¶

~~(c) The agenda shall be distributed to all licensees and applicants for licensure.¶~~

~~(8) The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, printed and promulgated by the Attorney General shall be the rules of procedure before the Board under ORS 183.310 to 183.500~~ Board adopts the Attorney General's Model Rules of Procedure, OAR Chapter 137, Divisions 1 through 5, as its rules of procedure under the Administrative Procedure Act.

Statutory/Other Authority: ORS 675.010 - 675.150, ORS 36.224, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 675.110, ORS 675.130, ORS 675.100

AMEND: 858-010-0013

RULE SUMMARY: This amendment removes the requirement that individual supervision of internship experience that is part of a required degree program be conducted in-person.

CHANGES TO RULE:

858-010-0013

Internship ¶¶

(1) Applicants must successfully complete an organized internship as part of the degree program required in OAR 858-010-0010 or 858-010-0015.¶¶

(2) The internship must include at least 1,500 hours of supervised experience and be completed within twenty-four months.¶¶

(3) The internship program must meet the following requirements:¶¶

(a) The internship must have a written statement or brochure describing the goals and content of the internship, stating clear expectations and quality of student work, and made available to prospective interns.¶¶

(b) A psychologist licensed by the appropriate state or provincial licensing authority must be clearly designated as responsible for the integrity and quality of the internship program.¶¶

(c) Interns must use titles indicating their training status.¶¶

(d) The internship must be designed to provide a planned sequence of training experiences focusing on breadth and quality of training. Supervision and training related to ethics must be ongoing.¶¶

(e) At least twenty-five percent of the internship experience must be in direct client contact providing assessment and intervention services.¶¶

(f) For every 40 hours of internship experience, the student must receive:¶¶

(A) At least 2 hours of regularly scheduled, formal, ~~face-to-face in person~~ one-on-one individual supervision that addresses the direct psychological services provided by the intern; and¶¶

(B) At least 2 hours of other learning activities such as case conferences, seminars on applied issues, conducting co-therapy with a staff person including discussion of the case, and group supervision.¶¶

(34) Supervision of the internship experience.¶¶

(a) The internship setting must have two or more psychologists available as supervisors, at least one of whom is licensed as a psychologist.¶¶

(b) The internship experience must be supervised by the person(s) responsible for the assigned casework.¶¶

(c) At least seventy-five percent of the supervision must be by a licensed psychologist with two years post-license experience.

Statutory/Other Authority: ORS 675.010 - 675.150

Statutes/Other Implemented: ORS 675.030, 675.110

RULE SUMMARY: This amendment allows individual and group residency supervision to be conducted electronically.

CHANGES TO RULE:

858-010-0036

Post-Doctoral Supervised Work Experience ¶¶

(1) Policy. One year of post-doctoral supervised work experience is required for licensure. The required work experience must take place after the doctorate degree is conferred.¶¶

(a) One year of supervised work experience is defined as 1,500 hours of psychological services performed over a period not less than twelve months.¶¶

(b) Psychological services are defined as direct psychological services to an individual or group; diagnosis and assessment; completing documentation related to services provided; client needs meetings and consultation; psychological testing; research related to client services; report writing; and receiving formal training including workshops and conferences.¶¶

(c) For the purposes of licensure, psychological services do not include business development; credentialing activities; marketing; purchasing; creating forms; administrative billing or other business management activities.¶¶

(d) A person with a doctoral degree in psychology who is employed at an "exempt site" pursuant to ORS 675.090(f) may practice psychology without a license for no more than 24 months from the time they begin practicing at an exempt site. The 24-month time limit does not restart if the person ceases practicing and then begins again, and does not reset if the person begins working at a different exempt site. The person may not use any title incorporating the word "psychologist."¶¶

(2) The following shall be used by the Board to define supervised work experience.¶¶

(a) Unless licensed under or exempted from ORS 675.010 to 675.150, in order to practice psychology in Oregon, a person must be in a Board approved Resident Supervision Contract.¶¶

(iA) Post-doctoral supervised work experience completed prior to August 1, 2018 under exemption from ORS 675.010 to 675.150 but not in a Board approved Resident Supervision Contract may qualify towards the one year of post-doctoral supervised work experience required for licensure.¶¶

(iiB) Effective for post-doctoral supervised work experience completed in Oregon on or after August 1, 2018, the experience must be completed in a Board approved Resident Supervision Contract to qualify for licensure. Experience that is not completed under a Board approved Resident Supervision Contract shall not qualify towards the one year of post-doctoral supervised work experience required for licensure.¶¶

(b) Work experience completed in Oregon must be performed under the supervision of an Oregon licensed psychologist who has been licensed for at least two years in Oregon or in a jurisdiction with licensing standards comparable to Oregon.¶¶

(c) To receive supervised work experience credit from other jurisdictions, the experience must be a formal arrangement under the supervision of a psychologist who has been licensed for at least two years in a jurisdiction with licensing standards comparable to Oregon.¶¶

(d) The supervisor is not required to be working on-site with the resident.¶¶

(e) Frequency:¶¶

(A) If a resident works 1-20 hours in a week, the resident must receive at least one hour of individual ~~face-to-face~~one-on-one supervision during that week.¶¶

(B) If a resident works more than 20 hours in a week, the resident must receive at least two hours of supervision during that week. One hour must be individual and one hour may be group supervision. Group supervision must be:¶¶

(i) A formal and on-going group of at least three mental health professionals;¶¶

(ii) Facilitated by a licensed psychologist; and¶¶

(iii) Approved by the resident's supervisor.¶¶

(C) On a non-routine basis, in the absence of the primary supervisor, individual one-on-one supervision hours may be delayed up to 14 days to accommodate vacations, illness, travel or inclement weather.¶¶

(D) ~~Non-routine individual~~Individual and group supervision may occur by electronic means when geographical distance, weather or emergency prohibit a face-to-face meeting must be conducted:¶¶

(i) In-person in a professional setting; or¶¶

(ii) Through live, synchronous confidential electronic communications.¶¶

(E) If a resident's work in a particular week does not comply with these requirements, then it may not be counted towards the supervised work experience requirement.¶¶

(3) Candidates for licensure shall be eligible to enter into a Resident Supervision Contract as described in subsection (2)(a) of this rule.¶¶

- (a) The Board has discretion to approve or reject a proposed Resident Supervision Contract or to rescind a previously approved contract. Resident status shall begin the date the Board approves the Resident Supervision Contract.¶¶
- (b) Duration. The resident status is a transitional step toward licensure and is not intended as a means to avoid licensure. A Resident Supervision Contract shall be effective for a period not to exceed two years from the date of Board approval. The Board may extend the contract beyond two years for good cause upon a written request from the resident and the supervisor prior to the expiration of the contract. Failure to receive a courtesy reminder notice from the Board shall not relieve the resident of the responsibility to timely request an extension.¶¶
- (c) Termination of a Resident Supervision Contract will be granted by the Board at the written request of the supervisor or the resident. The termination shall be effective at the time the Board approves the request in writing, or on the date indicated by the supervisor in the final residency evaluation, whichever is later.¶¶
- (d) If the supervisor is to be paid for supervision payment must be in the form of a per-hour fee.¶¶
- (e) Supervision of more than three residents concurrently shall require prior approval by the Board.¶¶
- (4) Resident's Responsibilities. The resident's conduct must conform to the following standards:¶¶
- (a) Title. The resident must be designated at all times by the title "psychologist resident." All signed materials, letterhead, business cards, telephone directory listings, internet postings, brochures, insurance billing and any other public or private representation must include the individual's title as "psychologist resident" and the supervisor's name and designation "supervisor."¶¶
- (b) Scope of Practice. The resident will only offer services in those areas that the supervisor is competent.¶¶
- (c) Nature of Supervision. The resident must obtain frequent and regular supervision meetings throughout the duration of the Resident Supervision Contract. The resident must provide the supervisor with a periodic evaluation of all cases and psychological activities in which the resident is engaged. The resident's practice must comply with Oregon laws and administrative rules.¶¶
- (d) Confidentiality. The resident must advise all clients orally and in their informed consent policy that the supervisor may have access to all information and material relevant to the client's case.¶¶
- (e) Promptly communicate to the Board any significant interruption or expected termination of the Resident Supervision Contract.¶¶
- (f) The resident must discuss with their supervisor the Supervisor Evaluation Report at the conclusion or termination of the Resident Supervision Contract.¶¶
- (g) The resident must submit to the Board a Record of Supervised Hours form within 30 days of the conclusion or termination of the Resident Supervision Contract.¶¶
- (5) The supervisor's responsibilities are:¶¶
- (a) Review, supervise and evaluate representative and problem cases with attention to diagnostic evaluation, treatment planning, ongoing case management, emergency intervention, recordkeeping and termination;¶¶
- (b) Countersign all psychological reports and professional correspondence produced by the resident; and ensure that letterhead, business cards, telephone directory listings, internet postings, brochures, insurance billing and any other public or private representation includes the appropriate title of "psychologist resident" or "psychologist associate resident" and the supervisor's name and designation as "supervisor." Client progress notes do not need to be co-signed by the supervisor.¶¶
- (c) Review with the resident, Oregon laws and administrative rules related to the practice of psychology, including the current APA "Ethical Principles of Psychologists and Code of Conduct," professional relationships and referrals, protection of records, billing practices, recordkeeping and report writing;¶¶
- (d) Assist the psychologist resident in developing a plan to prepare for the national written exam and the Oregon jurisprudence examination;¶¶
- (e) Promptly communicate to the Board any professional or ethical concerns regarding the resident's conduct or performance;¶¶
- (f) Notify the Board within fourteen days and explain any significant interruption or expected termination of the Resident Supervision Contract;¶¶
- (g) Ensure that the resident has access to supervision by telephone to discuss urgent matters, if the supervisor is unavailable during a period not to exceed fourteen days;¶¶
- (h) Create and maintain for at least three years a record of hours of supervision and notes for each supervision session contemporaneously as supervision occurs, and provide it to the Board within fourteen days of request;¶¶
- (i) Provide the Board with an interim Resident Evaluation Report upon request; and¶¶
- (j) Provide the Board with a final Resident Evaluation Report within 30 days of the conclusion or termination of the Resident Supervision Contract.¶¶
- (6) Associate Supervisor. Any individual supervision of the resident by a person other than the primary supervisor must be identified in the Resident Contract and approved by the Board.¶¶
- (a) The associate supervisor is responsible for providing supervision as described in section (5) of this rule in the event that the primary supervisor is unavailable for any reason; and¶¶

(b) The associate supervisor is responsible for reporting professional or ethical concerns regarding the resident's conduct or performance to the primary supervisor and the Board.

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

REPEAL: 858-020-0205

RULE SUMMARY: This repeals OAR 858-020-0205, which is replaced by an adoption by reference of the Attorney General's Collaborative Dispute Resolution Model Rules in OAR 858-010-0005.

CHANGES TO RULE:

~~858-020-0205~~

~~Confidentiality and Inadmissibility of Mediation Communications~~

- ~~(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.¶~~
- ~~(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.¶~~
- ~~(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.¶~~
- ~~(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.¶~~
- ~~(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:¶~~
- ~~(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or¶~~
- ~~(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;¶~~
- ~~(c) Mediation in which the only parties are public bodies;¶~~
- ~~(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;¶~~
- ~~(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or¶~~
- ~~(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:¶~~
- ~~(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or¶~~
- ~~(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or¶~~
- ~~(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.¶~~
- ~~(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]¶~~
- ~~(9) Exceptions to Confidentiality and Inadmissibility.¶~~
- ~~(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.¶~~
- ~~(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.¶~~
- ~~(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation~~

communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.¶¶

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.¶¶

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.¶¶

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.¶¶

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.¶¶

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.¶¶

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.¶¶

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.¶¶

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:¶¶

(A) A request for mediation; or¶¶

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or¶¶

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or¶¶

(D) A strike notice submitted to the Employment Relations Board.¶¶

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.¶¶

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:¶¶

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or¶¶

(B) Attorney work product prepared in anticipation of litigation or for trial; or¶¶

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or¶¶

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or¶¶

(E) Settlement concepts or proposals, shared with the mediator or other parties.¶¶

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.¶¶

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 30.402 or state or federal law requires the terms to be confidential.¶

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).¶

~~(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.¶~~

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Statutory/Other Authority: ORS 36.224

Statutes/Other Implemented: ORS 36.224, 36.228, 36.230, 36.232