



## PERMANENT ADMINISTRATIVE ORDER

### BLPCT 1-2019

CHAPTER 833

MENTAL HEALTH REGULATORY AGENCY

OREGON BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

**FILED**

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

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#### RULES:

833-001-0015, 833-020-0200, 833-070-0011, 833-075-0050, 833-075-0070, 833-075-0080, 833-100-0011, 833-100-0012, 833-100-0021, 833-110-0011, 833-110-0031

AMEND: 833-001-0015

RULE TITLE: Hearing Request and Answers; Consequences of Failure to Answer

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This 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

#### RULE TEXT:

(1) A hearing request must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued.

(2) If an answer is required, it must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued and must include the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(3) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer will be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) will be presumed to be denied by the agency; and

(d) Evidence will not be taken on any issue not raised in the notice and the answer.

(4) Contested case hearings are closed to the public.

(5) The Board's disciplinary and suspension cases brought under ORS 675.745 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 675.745, ORS 183.413, ORS 183.417

STATUTES/OTHER IMPLEMENTED: ORS 675.745, ORS 183.413, ORS 183.417

ADOPT: 833-020-0200

RULE TITLE: Temporary Practice Authorization

NOTICE FILED DATE: 10/08/2019

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

RULE TEXT:

- (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 Professional Counselor Authorization may be issued to applicants that possess a current, active license to practice professional counseling in good standing in another state based on a graduate degree.
  - (b) Temporary Marriage and Family Therapist Authorization may be issued to applicants that possess a current, active license practice marriage and family therapy in good standing in another state based on a graduate degree.
  - (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, regardless of an applicant's inability to qualify for temporary practice authorization.
- (4) All applicants must pass an Oregon law and rules examination pursuant to OAR 833-020-0081 before the authorization will be issued.
- (5) Current Information to the Board. An applicant or person who has been granted a temporary practice authorization must provide current contact information to the Board, and must notify the Board within 30 days if any information submitted on the application changes, including but not limited to:
  - (a) Public and mailing address;
  - (b) Telephone number;
  - (c) Electronic mail address;
  - (d) Change of name, which must be accompanied by acceptable identification and a copy of the legal document showing the name change;
  - (e) Character and fitness information, including complaints, disciplinary actions, employment investigations that lead to termination or resignation, and civil, criminal, or ethical charges;
  - (f) The status of the license to practice professional counseling or marriage and family therapy in another state; and
  - (g) The status of the spouse's term of service in Oregon.

STATUTORY/OTHER AUTHORITY: HB 3030 (2019), SB 688 (2019), ORS 675.785

STATUTES/OTHER IMPLEMENTED: HB 3030 (2019), SB 688 (2019), ORS 675.785

AMEND: 833-070-0011

RULE TITLE: Fees

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment establishes a new fee for temporary practice authorizations.

RULE TEXT:

Fees established by the Board of Licensed Professional Counselors and Therapists are as follows:

- (1) Application for licensure — \$175; applicants are also required to pay the actual cost to the Board to conduct a criminal background check.
- (2) Initial license — \$125.
- (3) Annual renewal of license:
  - (a) Active status license — \$165; or
  - (b) Inactive status license — \$100.
- (4) Restoration fees:
  - (a) Delinquent fee for late renewals — \$50;
  - (b) Reactivation of inactive status license — \$125.
- (5) Examination — Candidates will pay exam and exam administration fees to the prescribed examination providers.
- (6) Duplicate license or certificate of licensure — \$5.
- (7) Verification of licensure or examination scores for applicant or licensee to other licensing or certifying agencies — \$10.
- (8) Annual renewal of registration as intern in accordance with OAR 833-120-0011 — \$120.
- (9) Temporary Practice Authorization — \$505.

STATUTORY/OTHER AUTHORITY: ORS 675.785 - 675.835, 676.160 - 676.180

STATUTES/OTHER IMPLEMENTED: ORS 675.785 - 675.835

AMEND: 833-075-0050

RULE TITLE: Professional Disclosure Statement

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the rules regarding the professional disclosure statement.

RULE TEXT:

(1) To be approved by the Board, the professional disclosure statement (PDS) shall include the following information required by this section and ORS 675.755:

(a) The name, address and telephone number of the business;

(b) Philosophy and approach to counseling or marriage and family therapy, including reference to any codes of standards or ethics to which the licensee subscribes;

(c) A statement indicating adherence to the Oregon Licensing Board's Code of Ethics set forth in OAR chapter 833, division 100;

(d) A bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(A) To expect that a licensee or person granted a temporary practice authorization has met the minimum qualifications of training and experience required by state law;

(B) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee or person granted a temporary practice authorization;

(C) To obtain a copy of the Code of Ethics;

(D) To report complaints to the Board;

(E) To be informed of the cost of professional services before receiving the services;

(F) To be assured of privacy and confidentiality while receiving services as defined by rule or law. Licensees and temporary practitioners must include an explanation of each exception to confidentiality;

(G) To be free from being the object of discrimination on any basis listed in the Code of Ethics while receiving services.

(e) Formal education and training, title of highest relevant degree earned, school granting degree, and major coursework;

(f) Oregon licensure requirements for continuing education and supervision, as well as any significant post-degree work relating to professional practice;

(g) The standard fee for service, including discounted rates or sliding scale and a statement that no fees will be charged and no additional fee will be added to another set fee such as a hospital room daily charge;

(h) A statement indicating the following: "Additional information about this counselor or therapist is available on the Board's website: [www.oregon.gov/obl/pct](http://www.oregon.gov/obl/pct)"; and

(i) The Board's name, address, telephone number, and email address.

(2) Prior to providing services, licensees and persons granted a temporary practice authorization must provide each client with a professional disclosure statement consistent with the content and in a format as specified in section (1).

When providing disclosure statements via electronic communication, licensees and temporary practitioners must ensure a means of documenting confirmation of receipt and acknowledgement of the PDS.

(3) Licensees and persons granted a temporary practice authorization must make a reasonable effort to assist the client to understand the information presented in the disclosure statement.

(4) The professional disclosure statement must be accessible to people with disabilities.

(5) Requests for exemptions to the professional disclosure statement and informed consent distribution requirements must be submitted in writing to the Board. The Board may grant written exemptions to:

(a) Applicants for licensure not practicing professional counseling or marriage and family therapy in Oregon, except those seeking registration as an intern;

(b) Licensees on inactive status or not practicing professional counseling or marriage and family therapy in Oregon;

- (c) Licensees and temporary practitioners providing crisis response; and
- (d) Licensees and temporary practitioners who have submitted a written request and can satisfy the Board that there is good cause to be exempt from specific requirements.
- (6) If the licensee or person granted a temporary practice authorization fails to provide the statement, the licensee or temporary practitioner may not charge the client a fee for services.
- (7) Whenever a licensee or person granted a temporary practice authorization changes a professional disclosure statement, the new statement must be presented to the Board for approval.

STATUTORY/OTHER AUTHORITY: ORS 675.785

STATUTES/OTHER IMPLEMENTED: ORS 675.785, ORS 675.755

AMEND: 833-075-0070

RULE TITLE: Client Records

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the Board's requirements for maintenance and disclosure of client records.

RULE TEXT:

(1) A licensed professional counselor, licensed marriage family therapist, registered intern, or person granted a temporary practice authorization must:

(a) Maintain client records for each client for a minimum of seven years from the date of last service;

(b) Ensure that client records are legible;

(c) Keep records in a secure, safe, and retrievable condition; and

(d) Notify the Board if client records have been destroyed or lost.

(2) At a minimum, client records should be recorded concurrently with the services provided and must include:

(a) A formal or informal assessment of the client;

(b) Counseling goals or objectives; and

(c) Progress notes of therapy or counseling sessions.

(3) Licensees, interns, and temporary practitioners must disclose to the Board and its agents any client records that the Board and its agents consider germane to a disciplinary proceeding.

(4) Licensees, interns, and temporary practitioners do not withhold records under their control that are requested by the client solely because payment has not been received for services.

STATUTORY/OTHER AUTHORITY: ORS 675.705 - 675.835

STATUTES/OTHER IMPLEMENTED: ORS 675.705 - 675.835



AMEND: 833-075-0080

RULE TITLE: Custodian of Record

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the Board's requirements for custodian of record.

RULE TEXT:

(1) A licensee, registered intern, or person granted a temporary practice authorization must:

- (a) Arrange for the maintenance of and access to client records that ensure the client's right to confidentiality and access to records in the event of the death or incapacity of the practitioner;
- (b) Register with the Board the name and contact information of a custodian of record that will have case files and can make necessary referrals in the event the practitioner becomes incapacitated or dies; and
- (c) Notify the Board of changes of the custodian of record.

(2) If the practitioner is an employee of an organization, the organization may be named as the custodian of record.

(3) The Board will not release the name of the custodian of record except in the following cases:

- (a) The death or incapacity of the practitioner; or
- (b) When a client is unable to locate the practitioner.

(4) A custodian of record under this rule must be a licensed mental health professional licensed under Oregon law, a licensed medical professional, a health care or mental health organization, an attorney, a school, or a medical records company.

STATUTORY/OTHER AUTHORITY: ORS 675.705 - 675.835

STATUTES/OTHER IMPLEMENTED: ORS 675.705 - 675.835

AMEND: 833-100-0011

RULE TITLE: General Purpose and Scope

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the Code of Professional Conduct (ethics).

RULE TEXT:

(1) The Board adopts the 2014 American Counseling Association (ACA) Code of Ethics as the code of professional conduct.

(2) The ACA code constitutes the standards against which the required professional conduct of professional counselors and marriage and family therapists is measured. It has as its goal the welfare and protection of the individuals and groups with whom counselors and therapists work. This Code applies to the conduct of all licensees, registered interns, persons granted temporary practice authorization, and applicants, including the applicant's conduct during the period of education, training, and employment which is required for licensure. Violation of the provisions of this Code of Ethics will be considered unprofessional or unethical conduct and is sufficient reason for disciplinary action, including, but not limited to, denial of licensure or authorization.

STATUTORY/OTHER AUTHORITY: ORS 675.785 - 675.835, ORS 676.160 - 676.180

STATUTES/OTHER IMPLEMENTED: ORS 675.785 - 675.835

AMEND: 833-100-0012

RULE TITLE: Preamble

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the Code of Professional Conduct (ethics, preamble).

RULE TEXT:

Licensees, interns, persons granted temporary practice authorization, and applicants must:

- (1) Accept the obligation to conform to higher standards of conduct in the capacity of a counseling professional. The private conduct of a licensee is a personal matter to the degree that it does not compromise the fulfillment of professional responsibilities.
- (2) Respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.
- (3) Correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the person's qualifications, services, or products. Advertisements must not be false, fraudulent, or misleading to the public. Testimonials from current clients are not solicited for advertising or other purposes due to the client's vulnerability to undue influence.
- (4) Not engage in any conduct likely to deceive or defraud the public or the Board, or participate in, condone, or become associated with dishonesty, fraud, deceit, or misrepresentation.

STATUTORY/OTHER AUTHORITY: ORS 675.785 - 675.835, ORS 676.160 - 676.180

STATUTES/OTHER IMPLEMENTED: ORS 675.785 - 675.835

AMEND: 833-100-0021

RULE TITLE: Responsibility

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the Code of Professional Conduct (ethics, responsibility).

RULE TEXT:

Licensees, interns, persons granted temporary practice authorization, and applicants must:

- (1) Abide by the Code of Ethics and all applicable statutes and administrative rules regulating the practice of counseling or therapy or any other applicable laws, including, but not limited to, the reporting of abuse of children or vulnerable adults.
- (2) Report to the Board within 30 days any civil lawsuit brought against the licensee, intern, temporary practitioner, or applicant that relates in any way to the licensee, intern, temporary practitioner, or applicant's professional conduct and notifies the Board of any disciplinary action or loss of a mental health professional or state license, certification, or registration.
- (3) File a complaint with the Board within 10 days when the licensee, intern, temporary practitioner, or applicant has reason to believe that another licensee, intern, temporary practitioner, or applicant is or has been engaged in conduct that violates law or rules adopted by the Board. This requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other counselor or therapist. In that case, the client-therapist confidentiality supersedes the licensee or intern's requirement to report the other therapist. However, this does not relieve a licensee or intern from the duty to file any reports required by law concerning abuse of children or vulnerable adults.
- (4) Not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intended to harm a counselor/therapist rather than to protect clients or the public.

STATUTORY/OTHER AUTHORITY: ORS 675.785 - 675.835, ORS 676.160 - 676.180

STATUTES/OTHER IMPLEMENTED: ORS 675.785 - 675.835

AMEND: 833-110-0011

RULE TITLE: Response to Complaints

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations to the Board's complaint investigation procedures.

RULE TEXT:

(1) The Board will review and accept for consideration a complaint filed by any person, group of persons, or the Board on its own action that is specific as to the conduct upon which the complaint is based. 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 675.745 or 675.825.

(2) A complaint that a licensee, registered intern, temporary practitioner, or applicant is incompetent or has committed an act or acts in violation of the law or rules adopted by the Board including the Code of Ethics will be considered a complaint of professional misconduct. A complaint that an unlicensed person has practiced or used a title in violation of ORS 675.825 will be considered a complaint of unlicensed practice.

(3) The Board will make forms available to the public and encourage complainants to use the Board's investigation request form. If a complaint is first made in verbal form, or does not contain information substantially equivalent to the Board's form, then the Board's representative may require the complainant to use the Board's form to initiate an investigation. If the complainant is a client or former client of the respondent, then the complainant should sign a release form allowing the Board and its legal counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in dismissal of the complaint.

(4) Upon receipt of a valid complaint, a complaint file will be opened. A preliminary investigation or review will be conducted to determine if additional investigation and the assignment of additional investigators is necessary, or whether to file a report with the Board recommending the complaint be dismissed without further action. If additional investigation is deemed necessary, then the subject of the complaint will be notified that he/she is under investigation and provided with general information regarding the allegations being investigated. Notification may request a written response.

(5) Failure to cooperate with Board representatives during an investigation constitutes unprofessional conduct which may subject a licensee, intern, temporary practitioner, or applicant to disciplinary action. Cooperation includes:

(a) Submitting client records to the Board's representative, with or without a signed release by the client, for a full investigation of the allegations;

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

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

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

(6) The Board may delay approving a licensure application or issuing an intern registration, temporary practice authorization, or license until a complaint has been resolved.

(7) The investigator shall collect evidence and interview witnesses. At the conclusion of the investigation, a report will be filed with the Board in accordance with the timelines and procedures outlined in ORS 676.160–676.180. The report will clearly set forth the issues on which the Board should consider possible action.

(8) The Board will maintain written procedures for handling complaints, which will be available through the Board office.

(9) Complaint and information gathered by investigation into licensee or applicant competency or conduct will be kept confidential in accordance with ORS 676.160–676.180.

(10) Licensees, interns, temporary practitioners, and applicants must comply with the terms of all Board Orders and Agreements. Failure to comply constitutes a violation of ORS 675.745(1)(f) and is grounds for disciplinary action.

STATUTORY/OTHER AUTHORITY: ORS 675.785 - 675.835, ORS 676.160 - 676.180

STATUTES/OTHER IMPLEMENTED: ORS 675.785 - 675.835

AMEND: 833-110-0031

RULE TITLE: Statements to the Board

NOTICE FILED DATE: 10/08/2019

RULE SUMMARY: This amendment adds temporary practice authorizations as subject to the requirements for statements to the Board.

RULE TEXT:

(1) Licensees, interns, temporary practitioners, and applicants must not make omissions or false, misleading or deceptive statements on any correspondence or form submitted to the Board.

(2) Licensure or temporary practice authorization applicants and renewing licensees and interns must respond completely and truthfully to all of the Board's character and fitness questions. Failure to disclose an arrest or conviction is a violation of ORS 675.825(1)(a) and may result in disciplinary action by the Board.

STATUTORY/OTHER AUTHORITY: ORS 675.705 – 675.835

STATUTES/OTHER IMPLEMENTED: ORS 675.745, ORS 675.785, ORS 675.825