

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OBPT 10-2021
CHAPTER 848
OREGON BOARD OF PHYSICAL THERAPY

FILED
09/24/2021 3:10 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Clarifying that failure to comply with OHA OARs relating to COVID is grounds for discipline.

EFFECTIVE DATE: 09/24/2021 THROUGH 03/22/2022

AGENCY APPROVED DATE: 09/23/2021

CONTACT: Michelle Sigmund-Gaines 800 NE OREGON STREET, SUITE 407 Filed By:
971-673-0203 Suite 407 Michelle Sigmund-Gaines
OBPT.Exec@oregon.gov PORTLAND, OR 97232 Rules Coordinator

NEED FOR THE RULE(S):

Given the current pandemic, the Oregon Health Authority has implemented administrative rules, at the direction of the Governor, mandating certain compliance actions by healthcare workers including practitioners licensed by the Board of Physical Therapy. This temporary amendment clarifies the requirement for licensees to comply with these rules.

JUSTIFICATION OF TEMPORARY FILING:

Time is of the essence given the impact of the current pandemic. These rules were recently implemented via the temporary rulemaking process by the Oregon Health Authority and required immediate compliance actions by healthcare workers; the Board is taking this action to provide immediate clarification for licensees regarding compliance with this OARs.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Emails/OARs/other documents. Available on the OHA website as well as at the Board office.

AMEND: 848-045-0020

RULE SUMMARY: Amending rule to clarify that failure to comply with applicable Oregon Health Authority OARs relating to COVID is grounds for discipline.

CHANGES TO RULE:

848-045-0020
Grounds for Discipline of a Licensee ¶¶

- (1) The Board may impose a sanction as provided in 848-045-0010(1) on a licensee for illegal, unethical or unprofessional conduct. As used in this rule, "licensee" means a physical therapist or a physical therapist assistant, a temporary permit holder, a Compact Privilege holder and a person who was a licensee at the time the illegal, unethical or unprofessional conduct occurred regardless of whether the person's license has lapsed.¶¶
- (2) A licensee commits or engages in illegal, unethical or unprofessional conduct if the licensee:¶¶

- (a) Fails to disclose requested information, conceals material facts or provides false or materially misleading information on an application or during the application process for a temporary permit, license or renewal, or willfully makes a false statement on an application;¶¶
- (b) Is disciplined by another Oregon state licensing board or out-of-state licensing board for conduct which if committed in Oregon would be grounds for discipline under this rule;¶¶
- (c) Fails to disclose an active investigation by an Oregon or out-of-state health licensing authority within 10 working days licensee is first notified of the investigation, subject to the provision of ORS 688.160(6)(c).¶¶
- (d) Is convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2);¶¶
- (e) Is convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2), or fails to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;¶¶
- (f) Commits gross negligence or multiple acts of negligence in practice. The Board may take into account relevant factors and practices, including but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice physical therapy in this state, the current teachings at accredited physical therapy schools and relevant technical reports published in recognized physical therapy journals in determining the definition of gross negligence;¶¶
- (g) Practices physical therapy while under the influence of intoxicating liquors or under the influence of a controlled substance;¶¶
- (h) Has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety;¶¶
- (i) Violates the provisions of ORS 688.010 to 688.220 or any administrative rule, or violates or fails to comply with any order of the Board;¶¶
- (j) Acts in a manner contrary to the APTA Code of Ethics, or engages in any act involving moral turpitude, including, but not limited to fraud, deceit, dishonesty, harassment, violence, or illegal activity, subject to the provisions of ORS 670.280(3);¶¶
- (k) Unnecessarily exposes a patient's body to the view of the therapist or other persons;¶¶
- (l) Engages in a conversation with a patient that is not necessary for the provision of treatment and that is personally intrusive or otherwise inappropriate;¶¶
- (m) Commits or engages in any act of sexual misconduct involving a patient, including but not limited to any acts or statements of a sexual nature that do not contribute to appropriate physical therapy treatment;¶¶
- (n) Engages in any sexual conduct, including dating, with a patient, whether initiated by the patient or the licensee. For purposes of this subsection, "patient" includes any person who has not been discharged from that therapist's care;¶¶
- (o) Obtains or attempts to obtain any fee by fraud or misrepresentation, or makes a false or fraudulent claim for health care payment as provided in ORS 165.690 to 165.694;¶¶
- (p) Engages in exploitation of a patient, which includes but is not limited to the following:¶¶
 - (A) Failure to maintain an appropriate patient/therapist relationship;¶¶
 - (B) Obtaining or attempting to obtain compensation for physical therapy services that were not provided to the patient;¶¶
 - (C) Provides physical therapy services or participates in physical therapy services solely for reasons of personal or institutional financial gain;¶¶
 - (D) Provides physical therapy services under circumstances where there is no benefit to be obtained by the patient from such services;¶¶
 - (E) Accepting, soliciting or borrowing anything of more than nominal value from a patient or a member of the patient's family except for reasonable compensation for physical therapy services provided to the patient. Nominal value shall be determined in the context of the particular relationship and circumstances; or¶¶
 - (F) Influencing a patient or the patient's family to utilize, purchase or rent any equipment or products based on the

direct or indirect financial interests of the licensee rather than on the therapeutic value to the patient. A licensee who owns or has a direct financial interest in an equipment or supply company must disclose the interest if the licensee sells or rents the equipment or product or recommends the purchase or rental of the equipment or product to the patient.¶

(q) Knowingly makes a false entry or false alteration in a patient record;¶

(r) Engages in deceptive consumer practices, including but not limited to:¶

(A) Using, disseminating or publishing any advertising matter, promotional literature, testimonial, claim or guarantee that is false, misleading or deceptive;¶

(B) Practicing under a false, misleading or deceptive name, impersonating another licensee or fraudulently using or permitting the use of a license number in any way;¶

(C) Making a representation as to the licensee's skill or the efficacy or value of a treatment that the licensee knows or should know is false or misleading; or¶

(s) Practices physical therapy with a lapsed license;¶

(t) Employs, aids, abets or permits any unlicensed person or person with a lapsed license to practice physical therapy, or aids or causes another person, directly or indirectly, to violate ORS 688.010 to 688.240 or OAR 848;¶

(u) Fails to report in writing to employer that licensee provided physical therapy services while unlicensed or with a lapsed license or fails to provide a copy to the Board of such report;¶

(v) Fails to cooperate with the Board, which includes but is not limited to the following:¶

(A) Failure to respond fully and truthfully to a question or request for information from the Board;¶

(B) Failure to provide information or documents to the Board within the time specified by the Board;¶

(C) Failure to appear and provide information at an interview requested by the Board;¶

(D) Failure to timely produce and temporarily surrender custody of an original patient record requested by the Board and which is in the possession or under the control of the licensee, or failure to produce all portions of the patient record requested;¶

(E) Deceiving or attempting to deceive the Board regarding any matter, including by altering or destroying any record or document; or¶

(F) Failure to comply with the terms, conditions and recommendations of a Confidential Advisory Letter as issued by the Board;¶

(w) Interferes with or uses threats or harassment to delay or obstruct any person in providing information or evidence to the Board in any matter, investigation, contested case proceeding or other legal action instituted by the Board;¶

(x) Discharges an employee based primarily on the employee's attempt to comply or aid in the compliance with Board rules;¶

(y) Fails to notify the Board of another licensee's conduct which reasonably appears to be illegal, unethical or unprofessional as provided for in ORS 688.010 to 688.240 or any Board rule. Notice must occur without undue delay, but in no event later than 10 days after the reporting licensee learns of the conduct;¶

(z) Fails to notify the appropriate licensing board of any conduct by another licensed medical provider when the licensee has reasonable cause to believe that the medical provider has engaged in prohibited or unprofessional conduct. Notice must occur without undue delay, but in no event later than 10 days after the reporting licensee learns of the conduct. As used in this subparagraph, "prohibited conduct" means a criminal act against a patient or a criminal act that creates a risk of harm to a patient and "unprofessional conduct" means conduct unbecoming a medical provider or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the medical provider's profession or conduct that endangers the health, safety or welfare of a patient; or¶

(aa) Fails to notify the Board of a change in the licensee's name, address, contact telephone number, email address or place of employment or business as required by OAR 848-005-0030.¶

(bb) Failing to comply with Oregon Health Authority's rules requiring masks, face coverings or face shields, including OAR 333-019-1011 and OAR 333-019-1015, if applicable.¶

(cc) Failing to comply with Oregon Health Authority's rules requiring vaccinations, including OAR 333-019-1010

and OAR 333-019-1030.

Statutory/Other Authority: ORS 688.140, 688.160, 688.210, ORS 688.240

Statutes/Other Implemented: ORS 688.140, 688.145, 688.220, 688.235