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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 833
MENTAL HEALTH REGULATORY AGENCY
OREGON BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

FILED
02/26/2025 8:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Repeals sanction schedule and adds incremental violation provision for continued practice following license/registration lapse.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/26/2025 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 Board determined that the sanction schedule- which was adopted to encourage timely renewal and prevent licensees and registrants from practicing unlicensed following license or registration lapse- did not result in the intended deterrent effect and reduced the Board's flexibility to consider unusual circumstances or negotiate stipulations. The new proposed language supports the Board's original desire for consistency and transparency in sanctions that involve the same type of conduct while allowing greater flexibility to ensure equitable administration of discipline.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR Chapter 833 and ORS Chapter 675 are available on the OBLPCT website at <https://www.oregon.gov/OBLPCT/Pages/LawsRules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule amendment is not expected to affect racial equity in the state. The Board is pursuing changes that add consistency and transparency but also flexibility in holding licensee and registrants responsible for their actions that negatively impact Oregon clients of behavioral health services.

FISCAL AND ECONOMIC IMPACT:

None expected.

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. Businesses are not subject to this rule. The Board will absorb any minimal costs required to implement these changes within its current staffing levels and budgeted resources.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not explicitly involved.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed amendments are uncomplicated, do not result in fiscal impact, and were openly discussed during the February 7, 2025 public session board meeting where members of the public were invited to address the Board during a public forum. The Board did not determine that an additional committee beyond the eight-member Board and its staff was necessary to develop the rules.

RULES PROPOSED:

833-050-0131, 833-075-0020

AMEND: 833-050-0131

RULE SUMMARY: Removes the schedule that sets forth minimum disciplinary action the Board will take when a former registered associate allows their registration to lapse and continues to practice unregistered in violation of the law. Adds a provision that the Board may treat each 90-day increment of unlicensed practice (or any part thereof) as a separate violation for purposes of imposing a sanction.

CHANGES TO RULE:

833-050-0131

Associate Registration Renewal ¶¶

(1) A registered associate must renew registration annually each year following initial registration. Annual renewal is due by the first day of the month of initial registration to be considered timely.¶¶

(2) Registration renewal requires the registered associate to submit an application for registration renewal in a form and manner prescribed by the Board, which must include the renewal fee, complete and truthful responses to all of the questions regarding character and fitness, clinical supervised experience, registrant's current information and status, and any other questions.¶¶

(3) Late Renewal. A registered associate may renew a registration after the first day of the month but within the renewal month by, in addition to completing the requirement in section (2) above, submitting to the Board the required delinquent fee. If these are not timely submitted, then the associate registration will be expired. Expired registered associates must reapply pursuant to OAR 833-020-0071 in order to practice as a registered associate or be considered for licensure.¶¶

(4) Renewal may be denied if any of the conditions of the plan are not being met.¶¶

(5) Registered associates must renew registration annually until being granted a license or the expiration or denial of associate registration.¶¶

(6) ~~When a former registered associate who has allowed their registration to lapse, and continues to practice professional counseling or marriage and family therapy unregistered in violation of ORS 675.825(1)(d), is subject to disciplinary action, to include but not limited to the following sanctions:¶¶~~

~~(a) If the person practices during the period of 1-30 days following registration lapse: \$100 civil penalty and assessment of costs of the disciplinary process (if any);¶¶~~

~~(b) If the person practices during the period of 31-60 days following registration lapse: \$250 civil penalty and assessment of costs of the disciplinary process (if any);¶¶~~

~~(c) If the person practices during the period of 61-90 days following registration lapse: \$500 civil penalty, reprimand, and assessment of costs of the disciplinary process (if any);¶¶~~

(d) In addition to section (c), for each additional 30-day period in which the person practices following 91 days of registration lapse, the Board shall assess an additional \$250 civil penalty and assess the costs of the disciplinary process (if any) in violation of ORS 675.825(1)(d), the Board may treat each 90-day increment of unlicensed practice (or any part thereof) as a separate violation for purposes of imposing a sanction pursuant to ORS 675.745(4).

Statutory/Other Authority: ORS 675.785 - 675.835, 676.160 - 676.180

Statutes/Other Implemented: ORS 675.785 - 675.835

AMEND: 833-075-0020

RULE SUMMARY: Removes the schedule that sets forth minimum disciplinary action the Board will take when a former licensee allows their license to lapse and continues to practice unlicensed in violation of the law. Adds a provision that the Board may treat each 90-day increment of unlicensed practice (or any part thereof) as a separate violation for purposes of imposing a sanction.

CHANGES TO RULE:

833-075-0020

License Renewal/Late Renewal ¶¶

(1) Before the Board will renew a license, a licensee must, no more than 45 days before or during the renewal month:¶¶

(a) Submit an application for renewal in a form and manner prescribed by the Board, which must include complete and truthful responses to all questions regarding continuing education, character and fitness, licensee's current information and status, and any other questions, and a sworn statement that there is no reason for denial of renewal;¶¶

(b) Pay the appropriate renewal fee;¶¶

(c) Submit continuing education information detailing compliance with the requirements, if applicable; and¶¶

(d) Complete the required healthcare workforce data survey and pay the fee established by the Oregon Health Authority pursuant to ORS 676.410.¶¶

(2) Late Renewal. A licensee may renew a license in the month following the renewal month by, in addition to completing the requirements of section (1) above, submitting to the Board the required delinquent fee. If these are not timely submitted, then the license shall lapse.¶¶

(3) The licensee holds the burden of proof of submission of the items required for renewal. Failure to receive a courtesy reminder from the Board shall not relieve a licensee of the renewal requirements and consequences.¶¶

(4) The Board shall have discretion to waive the delinquent fee in cases of documented hardship.¶¶

(5) ~~When a former licensee who has allowed their license to lapse, and continues to practice professional counseling or marriage and family therapy unlicensed in violation of ORS 675.825(1)(d), is subject to disciplinary action, to include but not limited to the following sanctions:¶¶~~

~~(a) If the person practices during the period of 1-30 days following license lapse: \$250 civil penalty and assessment of costs of the disciplinary process (if any);¶¶~~

~~(b) If the person practices during the period of 31-60 days following license lapse: \$500 civil penalty and assessment of costs of the disciplinary process (if any);¶¶~~

~~(c) If the person practices during the period of 61-90 days following license lapse: \$1,000 civil penalty, reprimand, and assessment of costs of the disciplinary process (if any);¶¶~~

~~(d) In addition to section (c), for each additional 30-day period in which the person practices following 91 days of license lapse, the Board shall assess an additional \$500 civil penalty and assess the costs of the disciplinary process (if any) in violation of ORS 675.825(1)(d), the Board may treat each 90-day increment of unlicensed practice (or any part thereof) as a separate violation for purposes of imposing a sanction pursuant to ORS 675.745(4).~~

Statutory/Other Authority: ORS 675.785 - 675.835, ORS 676.410

Statutes/Other Implemented: ORS 675.785 - 675.835, ORS 676.410