

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on **10/03/2013** by the  
Date prior to or same as filing date

**Oregon Medical Board**

**OAR Chapter 847**

Agency and Division

Administrative Rules Chapter Number

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to become effective **upon filing**. Rulemaking Notice was published in the **September 2013** Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

**Legislative updates to the Health Professionals' Services Program**

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

**ADOPT:**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**AMEND:** **OAR 847-065-0015; 847-065-0025; 847-065-0035; 847-065-0055; 847-065-0060; 847-065-0065**

**REPEAL:** **OAR 847-065-0015(t); 847-065-0025(t); 847-065-0035(t); 847-065-0055(t); 847-065-0060(t); 847-065-0065(t)**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: **ORS 676.185-676.200, 677.265**

Other Auth.:

Stats. Implemented: **ORS 676.185-676.200, 677.265**

**RULE SUMMARY**

**The rule amendments reflect changes made by 2013 House Bill 2124 regarding the Health Professionals' Services Program. Specifically, the rule amendments refer to the new statutory location for the definition of "substantial noncompliance," remove the term "successful completion" from the definitions and add the substantive information to the rule on Completion Requirements, clarify the purpose of the investigation into the licensee's practice that occurs prior to full enrollment in the program, clearly establish the ability for licensees to self-refer to the program, exempt enrolled licensees with solely a mental health disorder from random drug or alcohol testing unless otherwise required by the Board, require the Board to assess the licensee's compliance with the monitoring agreement to complete the program or the contractor to assess compliance if the licensee is self-referred, specify that civil commitments for mental illness are considered substantial noncompliance rather than all admissions for mental health treatment, and allow the Board to review reports from the program for substantial noncompliance rather than mandating investigation of all reports.**

**Kathleen Haley, Executive Director**

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

**OREGON ADMINISTRATIVE RULES**

**CHAPTER 847, DIVISION 065 – OREGON MEDICAL BOARD**

**PROPOSED RULES CHANGES**

**FINAL REVIEW – OCTOBER 2013**

The proposed rule amendments reflect changes made by 2013 House Bill 2124 regarding the Health Professionals' Services Program. Specifically, the rule amendments refer to the new statutory location for the definition of "substantial noncompliance," remove the term "successful completion" from the definitions and add the substantive information to the rule on Completion Requirements, clarify the purpose of the investigation into the licensee's practice that occurs prior to full enrollment in the program, clearly establish the ability for licensees to self-refer to the program, exempt enrolled licensees with solely a mental health disorder from random drug or alcohol testing unless otherwise required by the Board, require the Board to assess the licensee's compliance with the monitoring agreement to complete the program or the contractor to assess compliance if the licensee is self-referred, specify that civil commitments for mental illness are considered substantial noncompliance rather than all admissions for mental health treatment, and allow the Board to review reports from the program for substantial noncompliance rather than mandating investigation of all reports. *Temporarily adopted 8/1/13.*

**847-065-0015**

**Definitions**

The following definitions apply to OAR chapter 847, division 065, except as otherwise stated in the definition:

(1) "Assessment or evaluation" means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.

(2) "Board" means the Oregon Medical Board.

(3) "Business day" means Monday through Friday, except legal holidays as defined in ORS 187.010 (or ORS 187.020).

(4) "Contractor" means the entity that has contracted with the Division to conduct the HPSP.

(5) "Diagnosis" means the principal mental health or substance use diagnosis listed in the current Diagnostic Statistical Manual (DSM). The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment.

(6) "Division" means the Department of Human Services, Addictions and Mental Health Division.

(7) “DSM” means the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(8) “Federal regulations” means:

(a) As used in ORS [~~676.190(1)(f)(D)~~] **676.185(5)(d)**, a “positive toxicology test result as determined by federal regulations pertaining to drug testing” means a test result that meets or exceeds the cutoff concentrations shown in 49 CFR § 40.87 (2009); **and**

(b) As used in ORS 676.190**(5)(g)**[~~(4)(i)~~], requiring a “licensee to submit to random drug or alcohol testing in accordance with federal regulations” means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees’ unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee must have an equal chance of being tested each time selections are made, as described in 40 CFR § 199.105(c)(5) (2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 40 CFR § 199.105(c)(7) (2009).

(9) “Fitness to practice evaluation” means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee’s health practice.

(10) “Final enrollment” means a [~~self-referred~~] licensee has provided all documentation required by OAR 847-065-0035 and has met all eligibility requirements to participate in the HPSP.

(11) “Independent third-party evaluator” means an individual or center who is approved by the Board to evaluate, diagnose, and offer treatment options for substance use disorders and/or mental disorders.

(12) “Licensee” means a licensed physician, podiatric physician, physician assistant or acupuncturist who is licensed or certified by the Board.

(13) “Mental disorder” means a clinically significant syndrome identified in the current DSM that is associated with disability or with significantly increased risk of disability.

(14) “Monitoring agreement” means an individualized agreement between a licensee and the contractor that meets the requirements for a diversion agreement set by ORS 676.190.

(15) “Positive toxicology test result” means a test result that meets or exceeds the cutoff concentrations shown in 49 CFR 40.87 (2009), a test result that shows other drugs or alcohol, or a test result that fails to show the appropriate presence of a currently prescribed drug that is part of a treatment program related to a condition being monitored by HPSP.

(16) “Provisional enrollment” means temporary enrollment, pending verification that a licensee meets all program eligibility criteria.

(17) “Self-referred licensee” means a licensee who seeks to participate in the program without a referral from the Board.

(18) “Substance abuse” means a disorder related to the taking of a drug of abuse (including alcohol); to the side effects of a medication; and to a toxin exposure, including: substance use disorders (substance dependence and substance abuse) and substance-induced disorders (including but not limited to substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorders and mood disorders), as defined in DSM criteria.

(19) “Substantial non-compliance” means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee’s ability or willingness to participate in the HPSP. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS [676.190(1)(f)] **676.185(5)**. Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

~~[(20) “Successful completion” means that for the period of time deemed necessary by the contractor or the Board, the licensee has complied with the licensee’s monitoring agreement to the satisfaction of the contractor and/or the Board as appropriate.]~~

~~[(21)]~~ **(20)** “Toxicology testing” means urine testing or alternative chemical monitoring including blood, saliva, breath or hair as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

~~[(22)]~~ **(21)** “Treatment” means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder and/or mental disorder.

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265

## 847-065-0025

### Eligibility for Participation in Health Professionals' Services Program

- (1) Licensee must be evaluated by an independent third-party evaluator.
- (2) The evaluation must include a diagnosis of a substance use disorder and/or mental disorder with the appropriate diagnostic code from the DSM, and treatment options.
- (3) Licensee must provide a written statement agreeing to enter the HPSP and agreeing to abide by all rules established by the Board.
- (4) Licensee must enter into the "HPSP Monitoring Agreement."
- (5) The Board will ~~[perform a safe practice investigation for Board-referred licensees]~~ **determine whether a Board-referred licensee's practice has presented or presents a danger to the public.** The contractor will ~~[perform a safe practice investigation for self-referred licensees]~~ **determine whether a self-referred licensee's practice has presented or presents a danger to the public.**

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265

## 847-065-0035

### Procedure for Self- Referred Licensees

~~[Self-referred]~~ **Board** licensees may ~~[participate in]~~ **self-refer to** the HPSP ~~[as permitted by ORS 676.190(5)]~~.

- (1) Provisional Enrollment: To be provisionally enrolled in the program, a self-referred licensee must:
  - (a) Sign a written consent allowing disclosure and exchange of information among the contractor, the licensee's employer, independent third-party evaluators and treatment providers;
  - (b) Sign a written consent allowing disclosure and exchange of information among the contractor, the Board, the licensee's employer, independent third-party evaluators and treatment providers in the event the contractor determines the licensee to be in substantial non-compliance with his or her monitoring agreement as defined in OAR 847-065-0065;
  - (c) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by ~~[his or her]~~ **the** Board; and
  - (d) Agree to and sign a monitoring agreement.

(2) Final Enrollment: To move from provisional enrollment to final enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the contractor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the contractor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the contractor.

(3) Once a self-referred licensee seeks enrollment in the HPSP, failure to complete final enrollment may constitute substantial non-compliance and may be reported to the Board.

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265

## **847-065-0055**

### **Licensee Responsibilities**

All licensees must:

(1) Agree to report any arrest for or conviction of a misdemeanor or felony crime to the contractor within three business days after the licensee is arrested or convicted of the crime;

[and]

(2) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified in the monitoring agreement; [-]

(3) Abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the contractor and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(4) Report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours to contractor;

(5) Participate in a treatment plan approved by a third-party evaluator or treatment provider;

(6) Limit practice as required by the contractor or the Board;

(7) Cooperate with supervised monitoring of practice;

(8) Participate in a follow-up evaluation, when necessary, of licensee's fitness to practice;

(9) Submit to random drug or alcohol testing, **unless the licensee is diagnosed with solely a mental health disorder and the Board does not otherwise require the licensee to submit to random drug and alcohol testing;**

(10) Report at least weekly to the contractor regarding the licensee's compliance with the monitoring agreement;

(11) Report applications for licensure in other states, changes in employment and changes in practice setting to the contractor;

(12) Agree to be responsible for the cost of evaluations, toxicology testing, treatment and monitoring;

(13) Report to the contractor any investigations or disciplinary action by any state, or state or federal agency, including Oregon;

(14) Participate in required meetings according to the treatment plan; and

(15) Maintain current license status and/or report any changes in license status.

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265

## **847-065-0060**

### **Completion Requirements**

(1) The time spent participating in a monitored program before transferring from the Health Professionals Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of monitored practice.

(2) The licensee will remain enrolled in the program for a minimum of two consecutive years.

**(3) The Board-referred licensee must have complied with the licensee's monitoring agreement to the satisfaction of the Board. The self-referred licensee must have complied with the licensee's monitoring agreement to the satisfaction of the contractor.**

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265



**847-065-0065**

**Substantial Non-Compliance Criteria**

(1) The contractor will report substantial non-compliance with a diversion agreement to the Board within one business day after the contractor learns of the substantial non-compliance, including but not limited to information that a licensee:

- (a) Engaged in criminal behavior;
- (b) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;
- (c) Was impaired in a health care setting in the course of the licensee's employment;
- (d) Received a positive toxicology test result;
- (e) Violated a restriction on the license's practice imposed by the contractor or the Board;
- (f) Was [~~admitted to the hospital~~] **civily committed** for mental illness [~~or adjudged to be mentally incompetent~~];
- (g) Entered into a diversion agreement, but failed to participate in the HPSP;
- (h) Was referred to the HPSP, but failed to enroll in the HPSP;
- (i) Forged, tampered **with**, or modified a prescription;
- (j) Violated any rules of prescriptive authority;
- (k) Violated any provisions of OAR 847-065-0055;
- [~~(4)~~] **(L)** Violated any terms of the diversion agreement; or
- (m) Failed to complete the monitored practice requirements as stated in OAR 847-065-0060.

(2) The Board **will review reports from the program.** [~~upon being notified of a licensee's substantial non-compliance, will investigate and determine the appropriate sanction.~~

~~(3) In order to investigate a report of substantial non-compliance, the~~ **The** Board may request the contractor to provide the licensee's complete record, and the contractor must send these records to the Board as long as a valid release of information is in place.

**(3) If the Board finds that a licensee is substantially noncompliant with a diversion agreement, the Board may investigate and determine the appropriate sanction.**

Stat. Auth.: ORS 676.185–676.200 & 677.265

Stats. Implemented: ORS 676.185–676.200 & 677.265