

## Division 1

# Rules of Practice and Procedure

### **Notice of Proposed Rulemaking** **851-001-0000**

Prior to adoption, amendment or repeal of any rule, the Board of Nursing shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action.
- (2) By mailing a copy of the notice to persons on the Board of Nursing mailing list(s) established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule; and
- (3) In regard to rules adopted on or after January 1, 2006, at least 49 days before the effective date of the rule, the Board shall provide notice to the persons specified in ORS 183.335(15); and
- (4) By mailing or furnishing a copy of the notice to:
  - (a) The Associated Press;
  - (b) Associations, individuals and entities who have indicated an interest in the agency's rulemaking and have asked to be placed on the agency's mailing list(s); and
  - (c) The Capitol Press Room.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 678.335, 678.150**

### **Model Rules of Procedure** **851-001-0005**

- (1) The Model Rules for Contested Cases of the Attorney General under the Administrative Procedures Act in effect on January 1, 2006, and all amendments thereto are hereby adopted by reference as the rules of the State Board of Nursing. These rules shall be controlling except as otherwise required by statute or rule.
- (2) Nothing in these rules shall be deemed to deny a person, an applicant, licensee or certified nursing assistant an opportunity to request an appearance before the Board or its Executive Director or designated Board staff for an informal conference to discuss any matter administered by the Board. The Board shall notify the person, applicant, licensee or certified nursing assistant of the time and place of the informal conference. The Board or its Executive Director or designated Board staff may also schedule an informal conference and notify the person.
- (3) A request for an appearance before the Board to discuss an issue with the Board or a request to have an item placed on the Board's meeting agenda shall be made at least six (6) weeks prior to the Board meeting. The request shall include all supporting documents the requestor wishes the Board to review. Items shall be placed on the Board's agenda as time is available, at the discretion of the Board President.
- (4) Designated Board staff may require that an investigative interview be tape-recorded. To make this decision, the following factors will be considered:
  - (a) The seriousness of the complaint;
  - (b) The licensee or applicant's previous cooperation with the Board;
  - (c) The risk of harm to the public;
  - (d) Whether licensee or applicant is represented by an attorney;
  - (e) The availability of a second staff member to record the interview in writing;
  - (f) The likelihood that the case will result in a contested case hearing.
- (5) An order requiring discovery between a respondent and the Board will be limited to a list of witnesses to be called by the parties in their case in chief and the documents that the parties intend to introduce as exhibits at the contested case hearing during the presentation of their case in chief.
- (6) Contested case hearings are closed to members of the public who are not parties or representatives of the parties in the proceedings.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 183.341, 678.150**

**Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases  
851-001-0006**

In addition to the notice requirements under the Attorney General's Model Rules of Procedure adopted under OAR 851-001-0005, the notice to parties in contested cases may include the statement that an answer to the charges shall be required, and if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 851-001-0007 with the Notice.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 183.341, 678.150**

**Hearing Request and Answers: Consequences of Failure to Answer; Untimely Hearing Request  
851-001-0007**

- (1) A hearing request, and answer if required in the Notice, shall be made in writing to the Board by the party or by the party's authorized representative. To be considered timely, a request for hearing, and answer if required, must:
  - (a) Be in writing;
  - (b) Be received by the Board within 20 calendar days (60 calendar for notice of application denial for license or certificate) from the date the Notice was mailed.
- (2) An answer, if required in the Notice, shall include the following:
  - (a) An admission or denial of each factual matter in the Notice;
  - (b) A short and plain statement regarding each relevant affirmative defense the party may have;
  - (c) A short and plain statement identifying each legal issue the party may have.
- (3) A request for an extension in which to file an answer to the Notice shall be submitted in writing and must be received by the Board within 20 calendar days (60 calendar days for notice of application denial for license or certificate) from the date the Notice was mailed. Extensions shall be granted only upon a showing of good cause.
- (4) Amendments to answers must be submitted in writing and must be received by the Board no less than 21 days prior to the contested case hearing.
- (5) Except for good cause:
  - (a) Matters alleged in the Notice and not denied in the answer shall be presumed admitted;
  - (b) Failure to raise a particular defense or legal issue in the answer shall be considered a waiver of such defense or legal issue;
  - (c) New matters raised in the answer that were not alleged in the Notice (affirmative defenses) shall be presumed denied;
  - (d) Evidence shall not be taken on any issue not raised in the Notice and answer.
- (6) A hearing request and answer shall be deemed untimely if it is received by the Board after the close of business (4:30 p.m.) on or after the 20<sup>th</sup> calendar day from the date the Notice was mailed, and shall be deemed a default by the party. Unless the Board determines that the late filing was beyond the control of the party, the Board may issue a final order by default.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 183.341, 678.150**

**Agency Representation at Hearings  
851-001-0008**

- (1) Subject to the approval of the Attorney General, an officer or employee of the Board is authorized to appear on behalf of the Board in Civil Penalty hearings under the following conditions:
  - (a) The Notice of Proposed Civil Penalty is \$2,900.00 or less;
  - (b) The issue for the contested case hearing is whether or not the licensee continued to

- practice nursing after the expiration of his/her license; and
- (c) The licensee is not represented by legal counsel at the hearing.
- (2) The agency representative may not make legal argument on behalf of the Board.
- (a) "Legal argument" includes arguments on:
- (A) The jurisdiction of the Board to hear the contested case;
  - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and
  - (C) The application of court precedent to the facts of the particular contested case proceeding.
- (b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:
- (A) The application of the statutes or rules to the facts in the contested case;
  - (B) Comparison of prior actions of the Board in handling similar situations;
  - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
  - (D) The admissibility of evidence;
  - (E) The correctness of procedures being followed in the contested case hearing.

**Stat. Auth: ORS 678.117, 678.128 678.150**

**Stats. Implemented: ORS 678.117, 678.128, 678.150**

### **Post Hearing Procedure**

#### **851-001-0010**

- (1) Following a hearing and the Board's decision to censure, reprimand, impose a civil penalty, place on probation, suspend, revoke or deny the nursing license of a Licensed Practical Nurse or Registered Nurse or Certified Registered Nurse Anesthetist, place a disciplinary sanction on the certificate of a Nurse Practitioner or place a disciplinary sanction on a nursing assistant, a copy of the Board's Findings of Fact, Conclusions of Law and Order shall be sent to the licensed nurse or nursing assistant whose license/certificate the Board has sanctioned.
- (2) Notice of the Board's disciplinary action shall be sent to the National Council State Boards of Nursing, Inc., the National Practitioner Data Bank and the Health Care Integrity and Protection Data Bank.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 183.341, 678.150**

### **Petition for Readmission**

#### **851-001-0015**

A licensee or certificate holder whose license or certificate has been revoked or who voluntarily surrendered the license or certificate in lieu of revocation may seek readmission under the following conditions:

- (1) The license or certificate has been revoked or surrendered for a minimum period of three years;
- (2) The licensee or certificate holder has documented evidence of reformation of the issues that originally brought the licensee or certificate holder to the Board's attention;
- (3) The licensee or certificate holder has made application to the Board for reinstatement of the license/certificate; and
- (4) The licensee or certificate holder agrees to additional education/training or other activities necessary to demonstrate competence at the level of licensure/certification for which the applicant is seeking readmission.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 183.341, 678.150**

### **Orders for an Evaluation to Determine Fitness to Practice**

#### **851-001-0020**

- (1) Pursuant to ORS 678.113, during the course of an investigation into the performance or

conduct of an applicant, certificate holder or licensee (Respondent), the Oregon State Board of Nursing may order mental health, physical condition or chemical dependency evaluations of the Respondent. The order will only be issued if the Board has a reasonable belief based upon the information available to the Board that the Respondent is unable to practice nursing with reasonable skill and safety to patients due to a mental health problem, physical condition, or chemical dependency.

- (2) The Board delegates to the Program Executive the authority to select a health care professional to conduct the evaluation. Within ten calendar days from the issuance of the Order, the Board's Program Executive for Professional Services (hereafter Program Executive) shall select the health care professional to conduct the evaluation.
- (3) Following selection of the health care professional, the Program Executive will provide the health care professional the following information:
  - (a) A copy of the Order for Evaluation.
  - (b) A letter from the Program Executive, identifying the areas to be assessed and evaluated, to include a set of written questions for the evaluator's response, to include whether Respondent is diagnosed with a mental disorder, physical condition, or chemical dependency, resulting in an impaired ability to practice nursing with reasonable skill and safety to patients or other health care providers.
  - (c) Other documents, as determined by the Program Executive, to include any questions submitted by Respondent.
- (4) Respondent shall sign a written release in a form acceptable to the Program Executive within three days from the date the Program Executive selects the health care professional to conduct the evaluation, thereby allowing the health care professional to speak directly to Board staff throughout the evaluation process.
- (5) The health care professional shall produce a written assessment and evaluation, providing a duplicate copy simultaneously to both the Board and the Respondent, unless the health care professional has a good faith belief that providing a copy of the report to the Respondent may be injurious to the Respondent's mental or physical health.
- (6) The Respondent shall pay for costs associated with complying with the Board's Order for Evaluation, to include paying the health care professional in a timely manner to ensure that the Board receives the report of assessment and evaluation by the specified due date.
- (7) If the health assessment and evaluation is a mental health evaluation that offers a diagnosis of mental disorders, the evaluation shall follow the guidelines of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association. The health care professional shall indicate in the written assessment and evaluation the information relied upon that formed the basis for the findings and conclusions in the report.
- (8) If the health assessment is a substance abuse or dependence evaluation that offers a diagnosis of substance abuse or substance dependence, the evaluator shall follow professionally accepted guidelines for the evaluation which may include the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association or ASAM criteria published by the American Society of Addiction Medicine. The health care professional shall indicate in the written assessment and evaluation the information relied upon that formed the basis for the finding and conclusions in the report.
- (9) If the health assessment is a physical health evaluation that offers a diagnosis of a physical condition, the evaluator shall follow the professionally recognized standard of care to arrive at a diagnosis and shall indicate both the diagnosis and the information relied on to make the diagnosis in a written report to the Board.
- (10) It is conduct derogatory to the standards of nursing for a Respondent to:
  - (a) Violate any provision of this rule.
  - (b) Fail to undergo a Board ordered evaluation within the time specified by the terms of this Order.
  - (c) Fail to cooperate with any effort by the Board to secure a copy of the written assessment/evaluation prepared by the examining health care professional.

**Stat. Auth: ORS 678.113, 678.150**

**Stats. Implemented: ORS 678.113**

**Social Security Numbers**

**851-001-0030**

- (1) The Board will not issue or renew a license or certificate unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to agency and is in the record.
- (2) If an applicant has not been issued a social security number by the United States Social Security Administration, the Board will accept a written statement from the applicant to fulfill the requirements of section (1). The applicant may submit a written statement on the form provided by the Board or by written statement. The written statement submitted must:
  - (a) Be signed by the applicant;
  - (b) Attest to the fact that no social security number has been issued to the applicant by the United States Social Security Administration;
  - (c) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6250.
- (3) The applicant must provide the Board with their social security number within 30 days of obtaining it if it is received subsequent to submitting their renewal application and while the license or certificate is active.

**Stat. Auth: ORS 678.150**

**Stats. Implemented: ORS 678.150, 25.785**

**851-001-0000, 0005 amended 4/13/06**

**851-001-0005 amended 9/16/04**

**851-001-0030 adopted, 851-001-0005, 006, 0007, 0015, 0020 amended 4/15/04**

**851-001-0020 adopted 11/21/02**

**851-001-0005 amended 4/12/02**

**851-001-0015 adopted 4/12/02**

**851-001-0008 adopted 6/20/02**