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ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

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CHAPTER 855
BOARD OF PHARMACY

FILING CAPTION: New Division 102; Board Administration Rules

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CONTACT: Rachel Melvin
971-673-0001
pharmacy.rulemaking@bop.oregon.gov

800 NE Oregon St., Suite 150
Portland,OR 97232

Filed By:
Rachel Melvin
Rules Coordinator

RULES:
855-102-0010, 855-102-0015, 855-102-0020, 855-102-0030, 855-102-0040, 855-102-0045, 855-102-0050, 855-102-0055, 855-102-0060, 855-102-0100, 855-102-0105, 855-102-0110, 855-102-0125

ADOPT: 855-102-0010

RULE TITLE: Board Meetings

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing board meeting rule from OAR 855-010-0005 to OAR 855-102-0010.

RULE TEXT:
(1) Board meetings must be held not less than once every three months as designated by the board.
(2) The President of the board has the power to call special meetings, subject to ORS 689.185, when it may be deemed necessary or upon request of a majority of members.
(3) The board must hold an annual meeting each year for the election of officers, the reorganization of the board and the transaction of other business.

STATUTORY/OTHER AUTHORITY: ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 689.135, ORS 689.185

ADOPT: 855-102-0015

RULE TITLE: Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) Meetings

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule related to the administration and requirements of the Public Health and Pharmacy Formulary Advisory Committee (PHPFAC).

RULE TEXT:
(1) A PHPFAC meeting must be held not less than once every six months.
(2) The PHPFAC must periodically review the formulary and protocol compendium and recommend the revisions to the board for adoption by rule.
(3) The PHPFAC must recommend to the board, for adoption by rule, a formulary of drugs and devices from which a Pharmacist can prescribe and dispense to a patient pursuant to a diagnosis by a qualified healthcare practitioner or a protocol from which a Pharmacist can prescribe and dispense.

STATUTORY/OTHER AUTHORITY: ORS 689.649

STATUTES/OTHER IMPLEMENTED: ORS 689.645, ORS 689.649

ADOPT: 855-102-0020

RULE TITLE: Board and PHPFAC Member Compliance

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing rule OAR 855-010-0015 to OAR 855-102-0020 related to public records and public meetings law compliance requirements for board and PHPFAC members.

RULE TEXT:
Board members and PHPFAC members must comply with the requirements of all Oregon public records and public meeting laws.

STATUTORY/OTHER AUTHORITY: ORS 192.001, ORS 192.620

STATUTES/OTHER IMPLEMENTED: ORS 192.630

ADOPT: 855-102-0030

RULE TITLE: Board and PHPFAC Member Compensation

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates existing rule OAR 855-010-0016 to OAR 855-102-0030 related to board and PHPFAC member compensation.

RULE TEXT:

(1) A board member and Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) member of the Oregon Board of Pharmacy who is entitled to compensation under ORS 292.495 is eligible to receive an amount equal to the per diem amount paid to members of the Legislative Assembly under ORS 171.072 when engaged in the performance of official duties for each day or portion thereof.

(2) For the purpose of compensation, a board member or PHPFAC member is considered engaged in the performance of official duties when:

(a) The activity furthers the board's mission, such as attending a board meeting;

(b) Engaged in an activity at the request of the board chair or authorized by a vote of the board in advance of the activity; or

(c) Attending an authorized meeting.

(3) Except as otherwise provided by law, all members, including those employed in full-time public service, may receive actual and necessary travel or other expenses actually incurred in the performance of their official duties within the limits provided by law or by the Oregon Department of Administrative services under ORS 292.210, ORS 292.220, ORS 292.230, and ORS 292.250.

(4) A board member or PHPFAC member is not required to accept compensation or reimbursement of travel expenses while performing their official duties as a board or appointed committee member.

STATUTORY/OTHER AUTHORITY: ORS 689.115, ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 171.072, ORS 292.495, ORS 689.115, ORS 689.175, ORS 689.645, ORS 689.649

ADOPT: 855-102-0040

RULE TITLE: Adoption by Reference - General

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates existing rule from OAR 855-010-0021 to OAR 855-102-0040 related to standards adopted by reference.

RULE TEXT:

(1) The board adopts standards and other publications by reference, as necessary, through administrative rule. When a matter is included in a referenced publication that is in conflict with Oregon Revised Statutes or Oregon Administrative Rules, the statute or rule applies and the standard provision does not. All remaining parts or application of the standard remain in effect.

(2) All outside standards, statutes, rules and publications referred to in any rules adopted by the board are by those references made a part of those rules as though fully set forth. Copies are available for inspection in the office of the Board of Pharmacy.

STATUTORY/OTHER AUTHORITY: ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 689.205

ADOPT: 855-102-0045

RULE TITLE: Adoption by Reference - Model Rules of Procedure

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates existing rule from OAR 855-001-0005 to OAR 855-102-0045 related to adoption by reference of the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act.

RULE TEXT:
Pursuant to the provisions of ORS 183.341, the Board of Pharmacy adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act effective 07/2019. These rules must be controlling except as otherwise required by statute or rule.
[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Pharmacy.]

STATUTORY/OTHER AUTHORITY: ORS 183.341

STATUTES/OTHER IMPLEMENTED: ORS 183.341, ORS 689.205

ADOPT: 855-102-0050

RULE TITLE: Coaching from Board Members and Staff

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing rule OAR 855-019-0125 to OAR 855-102-0050 related to examination coaching from board and staff.

RULE TEXT:

A board member or board staff must not:

(1) Discuss the contents of an examination, its preparation or use with any candidate or other person;

(2) Coach a candidate or any other person on materials that may be used in the examination; or

(3) Accept any fees for any act of assistance that would bear on the examination.

STATUTORY/OTHER AUTHORITY: ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 689.195

ADOPT: 855-102-0055

RULE TITLE: Board Compliance Director and Officers

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing rule from OAR 855-010-0035 to OAR 855-102-0055 related to requirements for Compliance Director and Officers. Revisions permit the Compliance Director and Compliance Officers to provide appropriate deadline extensions.

RULE TEXT:

The board's Compliance Director and Compliance Officers:

(1) Must be Pharmacists licensed in the State of Oregon; and

(2) Are authorized to provide appropriate deadline extensions.

STATUTORY/OTHER AUTHORITY: ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 689.195

ADOPT: 855-102-0060

RULE TITLE: License Verification

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule related to license verification on the board's website.

RULE TEXT:

For purposes of license verification, a person may rely upon the licensing information as it is displayed on the board's website that includes the issuance and expiration dates of any license issued by the board.

STATUTORY/OTHER AUTHORITY: ORS 689.151, ORS 689.490

STATUTES/OTHER IMPLEMENTED: ORS 689.151, ORS 689.205, ORS 689.490

ADOPT: 855-102-0100

RULE TITLE: State and National Criminal Background Checks for Licensure and Registration

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule revises and relocates existing rule from OAR 855-010-0100 to OAR 855-102-0100 related to state and national criminal background check requirements for licensure and registration.

RULE TEXT:

(1) The purpose of this rule is to provide for the reasonable screening of applicants for licensure and individuals subject to investigation by the board, in order to determine if they have a history of criminal behavior such that they are not fit to be granted or retain a license or registration issued by the board.

(2) "Subject individual" means a person from whom the board may require legible fingerprints for the purpose of a state or nationwide criminal records check and fitness determination. In this rule, subject individual means applicants for licensure or renewal of a license and individuals subject to an investigation by the board.

(3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170, ORS 181A.190, ORS 181A.195, ORS 670.280, ORS 676.303, OAR 125-007-0210, OAR 125-007-0220, OAR 125-007-0250, OAR 125-007-0260, OAR 125-007-0270, OAR 125-007-0300, OAR 125-007-0310, and OAR 125-007-0330.

(a) The board will request that the Oregon Department of State Police conduct a state and nationwide criminal records check, using fingerprint identification of subject individuals. The board may conduct state criminal records checks on subject individuals and any licensee through the Law Enforcement Data System maintained by the Oregon Department of State Police in accordance with rules adopted, and procedures established, by the Oregon Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with ORS Chapter 181A, OAR 257-010 and OAR 257-015 and applicable Oregon Department of State Police procedures.

(b) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military or criminal records.

(c) The board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.

(4) In making licensing fitness determinations subject to the requirements of ORS 670.280, the board will consider the following:

(a) The nature of any criminal record that reflects:

(A) Drug or alcohol offense;

(B) Felony;

(C) Misdemeanor;

(D) U.S. military or international crime;

(E) Offense involving fraud, theft, identity theft or other instance of dishonesty;

(F) Offense involving violation of federal importation or customs laws or rules;

(G) Offense requiring registration as a sex offender;

(H) Condition of parole, probation, or diversion program, or

(I) Unresolved arrest, charge, pending indictment or outstanding warrant.

(b) Intervening circumstances relevant to the responsibilities and circumstances of the license or registration. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(c) The facts that support the conviction or indictment, or that indicate the making of a false statement;
(d) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's license or registration; and
(e) Any false statement or omission made to the board regarding the individual's criminal history.
(f) Any refusal to submit or consent to a criminal record check including a refusal to provide fingerprint identification;
(g) Any other pertinent information obtained as part of an investigation.
(h) The board must evaluate a crime or offense on the basis of the law of the jurisdiction in which the crime or offense occurred.
(i) Under no circumstances must an applicant be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 and ORS 419A.262.
(j) Under no circumstances must an applicant be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.
(5) Criminal offender information is confidential. Dissemination of information received under this rule may only be made to people with a demonstrated and legitimate need to know the information. When the information is part of the investigation of an applicant or licensee, it is confidential pursuant to ORS 676.175. Any fingerprint cards used to conduct a check must be destroyed by either the Federal Bureau of Investigation or the Oregon Department of State Police as specified in ORS 181A.195.
(6) The board will permit the subject individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.
(7) If an applicant, licensee or registrant is denied a license, they are entitled to a contested case hearing pursuant to ORS chapter 183.
(8) A challenge to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process.
(9) Request for re-evaluation following correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation or other agency reporting information to the board, the board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.
(10) The applicant or licensee must pay a criminal records check fee for the actual cost of acquiring and furnishing the criminal offender information.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, ORS 676.303, ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 181A.170, ORS 181A.195, ORS 181A.215, ORS 676.175, ORS 676.303

ADOPT: 855-102-0105

RULE TITLE: State and National Criminal Background Checks for Employees, Volunteers and Employment Applicants

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing rule OAR 855-010-0110 to OAR 855-102-0105 related to state and national criminal background checks for employees, volunteers and employment applicants.

RULE TEXT:

(1) The board requires a criminal records check and fitness determination for board employees, volunteers or applicants for employment with the board.

(2) Criminal records checks and fitness determinations are conducted pursuant to ORS 181A.170, ORS 181A.190, ORS 181A.195, ORS 670.280, ORS 676.303, OAR 125-007-0210, OAR 125-007-0220, OAR 125-007-0250, OAR 125-007-0260, OAR 125-007-0270, OAR 125-007-0300, OAR 125-007-0310 and OAR 125-007-0330.

(a) To complete the criminal records check and fitness determination, the board may require additional information from the employee, volunteer or applicant, such as, but not limited to, proof of identity or additional criminal, judicial or other background information.

(b) If the employee, volunteer or applicant has potentially disqualifying criminal offender information, the board will consider factors listed in ORS 181A.195 before making a fitness determination.

(c) An approved fitness determination does not guarantee employment.

(d) An incomplete fitness determination does not entitle the employee, volunteer or applicant the right to appeal under OAR 125-007-0300.

(3) Pursuant to ORS 181A.195, and OAR 125-007-0310, information obtained in the criminal records check is confidential and will not be disseminated by the board except to persons with a demonstrated and legitimate need to know the information.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, ORS 676.303, ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 181A.170, ORS 181A.195, ORS 676.303

ADOPT: 855-102-0110

RULE TITLE: Criminal Background Checks – Costs

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates existing rule OAR 855-010-0120 to OAR 855-102-0110 related to the costs associated with criminal background checks for applicants and licensees.

RULE TEXT:

The applicant or licensee must pay the board the cost of acquiring and furnishing the criminal offender information. The amount will not exceed the cost to the board to obtain such information on behalf of the applicant or licensee, including fees charged to the board by the Oregon Department of State Police and the Federal Bureau of Investigation.

STATUTORY/OTHER AUTHORITY: ORS 676.303, ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 181A.195, ORS 676.303, ORS 689.207

ADOPT: 855-102-0125

RULE TITLE: Notice of Proposed Rule

NOTICE FILED DATE: 06/15/2023

RULE SUMMARY: New rule relocates and revises existing rule from OAR 855-001-0000 to OAR 855-102-0125 related to notice of proposed rule.

RULE TEXT:

(1) Prior to the permanent adoption, amendment, or repeal of any rule, the State Board of Pharmacy must give notice of its intended action as required in ORS 183.335;

(2) The board will notify and provide a reasonable opportunity for interested persons to be notified of the agency's proposed action in the following ways:

(a) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(b) To persons who have requested notice pursuant to ORS 183.335(8) at least 28 days before the effective date;

(c) To persons specified in ORS 183.335(15) at least 49 days before the effective date; and

(d) To persons or organizations the board's Executive Director determines, pursuant to ORS 183.335, are interested persons in the subject matter of the proposed rule, or would be likely to notify interested persons of the proposal:

(A) Oregon State Pharmacy Association; and

(B) Oregon Society of Health System Pharmacists.

STATUTORY/OTHER AUTHORITY: ORS 689.205

STATUTES/OTHER IMPLEMENTED: ORS 183.335, ORS 183.341