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## OREGON STATE PHARMACY ASSOCIATION

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September 25, 2023

Ian Doyle  
President  
Oregon Board of Pharmacy  
800 NE Oregon St., Suite 150  
Portland, OR 97232

Dear Ian and Board of Pharmacy members,

We write today with grave concerns about a rule that was passed last month. Per [OAR 137-001-0070](#) the Oregon State Pharmacy Association is formally requesting a **repeal** to rule 855-115-0150 for Prohibited Practices, that state “Pharmacists Must Not: Diagnose.”

### **Prohibited Practices**

Pharmacists must not:

(1) Engage in the dispensing, distribution or delivery of drugs unless working for a registered Drug Outlet pharmacy.

(2) Possess personally or store drugs other than in a registered Drug Outlet pharmacy except for those

drugs legally prescribed for the personal use of the Pharmacist or when the Pharmacist possesses or

stores the drugs in the usual course of business and within the Pharmacist’s scope of practice.

### **(3) Diagnose.**

(4) Engage in any form of discrimination, harassment, intimidation, or assault.

(5) Permit any Intern, Certified Oregon Pharmacy Technician or Pharmacy Technician to perform any

task in which the supervising Pharmacist is not trained or qualified to perform.

(6) Permit any non-licensed pharmacy personnel to perform any function that constitutes the practice of pharmacy as defined in ORS 689 or the assistance of the practice of pharmacy. Non-licensed personnel may only perform functions permitted by the Pharmacist providing supervision.

Statutory/Other Authority: ORS 689.205

828 Statutes/Other Implemented: ORS 689.155

[Oregon Secretary of State Administrative Rules](#)

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### **Rapid rule changes are leading to patient harm**

The Board's rapid rule changes and vague definitions have led to general confusion and an inability to be certain about what is expected of licensees. We have expressed concerns in public comments, along with meetings held with the Executive Director and his staff. Board staff continues to send an outlandishly large volume of rules into rulemaking hearings. We recognize some are sent for comment only, but **the high volume of rules makes it virtually impossible for anyone to fully review, digest, and provide thoughtful feedback in the limited amount of time given, let alone assure compliance.**

The most recent Board agenda contained proposed rules that were difficult to decipher. Rather than a straight-forward red line comparison, a confusing new division was created; even text formatting became a hindrance when comparing the changes to the previous rule version. This matters. Members of the public deserve ease and clarity when unraveling revisions to the rules.

The August Board packet was 386 pages long, yet contained a change to accepted standards regarding a pharmacist's ability to diagnose. **"Pharmacists Must Not;" diagnose on page 218, line 816, will create harm to patients. If implemented, it will create a substantial barrier in rural areas of Oregon.**

Pharmacists are proficient in utilizing diagnostic information in their practice. They routinely interpret laboratory values, such as blood glucose levels for patients with diabetes or international normalized ratios (INRs) for patients on anticoagulants. These values guide professional decision making for timely medication adjustments and ensure patient safety. They have long used CLIA-waived point of care tests as valuable decision support tools. For instance, a pharmacist can quickly rule out a bacterial or viral infection, helping guide whether antibiotics or antivirals are necessary, preventing unnecessary drug use.

The value of point-of-care tests was clearly established during the COVID-19 pandemic. A recent [study](#) quantifying the contributions of pharmacists during the pandemic found that pharmacists across the country "conducted >42 million COVID-19 tests". Authors estimate that pharmacists "averted >1 million deaths, >8 million hospitalizations, and \$450 billion in health care costs." The FDA recognized the capability of pharmacists during the pandemic and have allowed for them to dispense Paxlovid upon a "diagnosis of COVID-19." Now, the Board has revoked the state protocol on the grounds that pharmacists cannot diagnose. As a result, patients are not able to get immediate treatment at a pharmacy because they need to make a doctor's appointment to get a prescription.

Perhaps one of the greatest disruptions to care is the conflict in rule and statute. In order for pharmacists to participate in the Oregon Board of Pharmacy [PrEP protocol](#), enacted in 2022, they are required to conduct and interpret lab tests for HIV, Syphilis/Treponemal, Chlamydia/Gonorrhea, Hepatitis B, and renal function. By prohibiting the ability of pharmacists



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to diagnose, patients will lose access to services they are reliant upon, and current law will not be implemented.

During the Board of Pharmacy meetings, board members verbally request public comments, so they have support on the optimal way to address staff-led rule proposals. It is not realistic to expect the public to be able read through 300+ page documents and make verbal or written comments in the short amount of time currently allowed. If there are no public comments due to the aforementioned reason, we are deeply concerned that Board members are pressured to approve the rules without discussion and perhaps a limited understanding. The Board members must be empowered to guide the staff on rules, not the reverse order.

Transparency is lacking in rule adoption. Board members are not prompted to discuss rules publicly, thus the public cannot understand their intent. During the latest rule hearing, there were serious concerns around proposed rules with Counseling and with Compounding that took the focus away from identifying the problem in the obscure new section: "Diagnose".

**Previously the rules comported with ORS Chapter 689** *"pursuant to a diagnosis by a health care practitioner who has prescriptive authority and is qualified to make the diagnosis."* Our view is that a change to this language was not required, and with no discussion from the Board about the need for this change, our licensees are left to question what changes are required to stay compliant.

Thank you for reading this letter and considering our request. Please reach out to us with questions or if you need any further information in order to assist us with our concerns.

Sincerely,  
Brian Mayo  
Executive Director

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