

OREGON STATE BAR
Legislative Proposal

RE: LC 450 - Mental and physical examinations of licensees

FROM: OSB Administrative Law Section

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1. PROBLEM PRESENTED

Professional licensing agencies are requiring mental and physical exams for its licensees without following the statutory requirements or proceeding on a reasonable basis. Those adversely affected do not have a speedy remedy, but must seek a limited, more costly, remedy in circuit court. Failure to comply with the agency requirement to submit to a mental or physical exam is a basis for license cancellation.

2. SOLUTION

This bill would amend ORS Chapter 183, including ORS 183.310 and ORS 183.430

This bill standardizes how agencies requiring mental and physical examinations of its licensees may proceed. The bill requires that an agency requiring the examination first issue an order that includes findings and the basis for the order pursuant to its organic statutes. The agency must promulgate rules that ensure these examinations are timely and are performed by qualified, impartial professionals. These rules must provide for the most cost-effective approach for obtaining an examination, if the licensee is to bear the costs. Before submitting to an examination, the licensee has a right to a contested case hearing. This bill does not affect the agency's ability to obtain an emergency suspension because of a serious danger to the public health or safety pursuant to ORS 183.430(2). The bill only applies to licensees. The bill does not apply to routine physical examinations that are generally required for licensees.

3. PUBLIC POLICY IMPLICATION

This proposal represents a compromise between those who believe current circuit court review is sufficient and those who believe that circuit court review is too time consuming and costly. The compromise requires agencies to provide an order stating its findings and basis for the order and then provide the licensee with access to a hearing at the agency level. This compromise retains agency authority in the matter and also avoids an expensive circuit court proceeding.