

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: State Board of Orthotics, Prosthetics, and Pedorthics (OPP)

Regulation/Package Title: 5-year rule review 2014-2015

Rule Number(s): 4779-9-01 – OPPCE Requirements (AMEND);

4779-12-01 – Fees (AMEND [Rescind/Replace]);

4779-11 series - Hearing Rules (RESCIND);

4779-13 series – Confidential Personal Information (NO CHANGE)

Date: 11.07.2014

**Rule Type:**

☐ New

☒ Amended

☒ 5-Year Review

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Regulatory Intent**

### **1. Please briefly describe the draft regulation in plain language.**

**Please include the key provisions of the regulation as well as any proposed amendments.**

#### **4779-9-01 – AMEND**

The rule language provides details to effectively administer the Continuing Education requirements established in the Practice Act at RC 4779.20. Division (D) of the rule, which was new language in an update processed in 2013 and is not being touched in this update, provides an opportunity for the Board to implement a Human Trafficking educational component to its mandatory CE requirements. The proposed amendment to Division (F) addresses a technical issue regarding compliance and enforcement that was brought to the Board's attention by OAG/HHS. It clarifies that any license suspension for non-compliance must be processed in accordance with standard disciplinary provisions.

#### **4779-12-01 – Fees – AMEND [RESCIND/REPLACE]**

The rule language establishes a fee schedule in accordance with the requirements of RC 4779.08, which directs the Board to establish by rule among other things fees and fines for license application and renewal, continuing education course and provider approval, and for violations of the Chapter. Basic license application fees and renewal fees have not changed since the Board began issuing licenses in FY2002. Application fees are \$125 for a full license, \$150 for a Temporary license, and \$300 for annual license renewal. The amended language would allow the Board some flexibility to re-calibrate fees as may be required in the biennial budgeting process but in a manner that requires notice to and involvement from the regulated constituency. Going into budget planning for FY16-17, the Board is projecting a shortfall of revenue vs. expense. The amended language would allow the Board in consultation with its licensed constituency, the Governor's office and the Office of Budget and Management to adjust fees as needed to maintain a budgetary balance between revenue and expense.

#### **4779-11 series – Hearing Rules – RESCIND**

The series sets forth procedural requirements for administrative hearings held by the Board. The rule series was developed and adopted in 2003 based on advice from the Office of the Attorney General of Ohio. It contains thirteen (13) rules covering matters such as representation, filing motions, granting continuances, witnesses, subpoenas, and other legal technical requirements. Administrative law procedural requirements are subject to change based on legislative enactment and case law development. Based on current advice from

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the Office of the Attorney General of Ohio, Health and Human Services Section, the rules are suggested as appropriate to RESCIND as no longer timely, relevant or complete; and to the extent they reference procedural requirements beyond the Board's enabling statute, they can also be seen as exceeding the Board's authority.

4779-13 (series) – Accessing Confidential Personal Information – NO CHANGE

The series contains the following rules:

- 4779-13-01 Definitions for language in rules governing access to confidential personal information.
- 4779-13-02 Procedures for accessing confidential personal information.
- 4779-13-03 Valid reasons for accessing confidential personal information.
- 4779-13-04 Confidentiality statutes.
- 4779-13-05 Restricting and logging access to confidential personal information in computerized personal information systems.

The rules were promulgated in year 2010 and were and are required for agency compliance primarily with RC 1347.15. Office of OAG/HHS has been consulted and has not reported any amendment or update required. These rules are mandated by RC 1347.15 and are in compliance with directives issued thereunder.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

The Board's rulemaking authority is provided by RC 4779.08 which states at Division (A):  
*The state board of orthotics, prosthetics, and pedorthics shall adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter ...*

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

NO.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules referenced in this action are focused on internal administrative issues for implementation of Chapter 4779 as a professional practice act for the regulated professions in the state of Ohio and do not reference any federal authorities.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Chapter 4779, Ohio Revised Code, establishes the Board for the general purpose of protecting the public who are consumers of these specialized, customized medical devices. The statute as implemented through the rules seeks to establish minimum standards of education, training and care for the allied healthcare professionals who deliver the services.

[ORC Section 4779.08](#) requires (“shall adopt rules”) the Board to develop and implement rule language to carry out the chapter’s purposes, including all the subjects covered in this rule review.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

These rules do not implement, modify or expand any programmatic initiative or benefit and thus the proposed changes will not result in any quantifiable outcome-oriented data. The rescission of the 4779-11 series will result in a net decrease in the number of rules promulgated by the Board and subject to revision or review.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

**If applicable, please include the date and medium by which the stakeholders were initially contacted.**

At the September 2014 meeting of the Board, Association representative Dianne Farabi was in attendance and included in discussion about rule review and budgetary issues. In September and October 2014 the agency posted information on its website and invited discussion and input by email blast to its stakeholders and licensed constituency. Announcements are issued to **licensees, employers and other stakeholders as maintained on the Board's Stakeholders Distribution List, which includes representatives of Ohio and National professional trade associations and credentialing partners.** The documents listed all the rules pending review with short descriptions, and included a "Stakeholder response form" to assist in providing feedback relevant to the rule review process and the particular requirements of ORC 107.52. Information regarding the pending review was also noted with invitations to review and respond in the Board's newsletters issued subsequent to the June and September 2014 meetings.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

➤ *No substantial input has been received to date; the Association reportedly conducted a survey of its membership addressing certain questions regarding support for the Board and continued funding initiatives, yielding a fairly low response ratio with opinion evenly divided on the fee increase question.*

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

N/A

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

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From an administrative perspective, this is basic language largely governing the administrative operations of the Board. One of the proposed changes in the package allows the Board flexibility in setting license fee schedules in order to address budgetary issues appropriately and within expected parameters. The agency is seeking further authority from the legislature to “close the gap” in licensing/registration requirements.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

**Performance-based regulations define *the required outcome*, but don’t dictate the process the regulated stakeholders must use to achieve compliance.**

Not applicable to these rules.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Information publication, stakeholder notification, review by OAG/HHS.

**13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The only rule being proposed for “implementation” in this review is the Fee rule, 4779-12-01. Fees are assessed uniformly during license application submission and renewal processes. Anticipating implementation of a new eLicense database system, fee amounts for fee types will be programmed into the automated system to assure unbiased, accountable, and even application of requirements.

### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The impacted business community is identified as applicants for licensure, current constituent licensees, and their employers.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The rule allows the Board to consider increases in fees as follows (fees have not been adjusted since being established in FY2002)

	<b><u>Current Fee</u></b>	<b><u>Proposed maximum fee</u></b>
Full license application	\$125	\$200
Temporary license application	\$150	\$200
License renewal (annual)	\$300	\$500
Reinstatement/late renewal fee	\$300 + \$150	\$250
OPPCE late filing	\$150	\$250
Replace license card	\$5	\$ 25
Replace wall certificate	\$10	\$ 50
Upgrade LO-TEMP, LP-TEMP, LPED-TEMP or LPO-TEMP to full	\$ - 0 -	\$200
Upgrade LP or LO to LPO	\$ - 0 -	\$200
Certified license verification	\$ -0-	\$ 50
License issuance	\$ - 0 -	\$300
Name Change in Database	\$ - 0 -	\$ 50
Review/approval of OPPCE activity	\$ - 0 -	\$ 50
Fines for violation of chapter	\$ - 0 -	\$500

Fee Waiver language: The board may grant waivers of the fee requirements listed in this chapter in cases of undue hardship including, but not limited to, natural disasters and acts of terrorism. Waivers may also be granted to veterans and active military personnel and their spouses.

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**c. Quantify the expected adverse impact from the regulation.**

**The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative *business*.” Please include the source for your information/estimated impact.**

Answer same as for (b) above.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The Board is required per legislative and executive policy to take appropriate actions to balance its expenses and revenues to maintain an appropriate standing in the 4K90 rotary fund. In addition, the regulated community sought state licensure when the O&P leadership in the state advocated passage of the Practice Act in the 123<sup>rd</sup> General Assembly. It is common knowledge that fees and funding are part of that package.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. Chapter 4779 does not provide for licensing/regulation of the business entity itself per se; it only provides for licensing of individual practitioners. No distinction is or can be fairly drawn between individual practitioners based on the relative size of the business in which they are employed.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The agency considers licensees’ requests for relief from late payment or late filing penalties on a case by case basis, and as reflected in the Board’s minutes, such requests are often granted on a one-time basis for good cause shown. In addition, the general orientation of the Board is to seek cooperative compliance. Other rule language establishes a mechanism to minimize the incidence of first-time paperwork violation and to provide for an informal remediation protocol. See [OAC 4779-9-03 OPPCE accrual deficiency and remediation](#)

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**18. What resources are available to assist small businesses with compliance of the regulation?**

Board office staff offer assistance as needed upon contact and request.