

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Counselor, Social Worker, & Marriage and Family Therapist Board

Regulation/Package Title: 2015 Updates

Rule Number(s): 4757-3-01; 3-2;5-02; 5-03; 5-04; 5-13; 9-01; 9-02; 9-03; 9-06; 13-02; 13-03;
15-02; 17-01;19-06; 21-03; 25-1, 25-02; 25-04; 25-05

Date: November 25, 2015

Rule Type:

New

X 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☐ Rescinded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.

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.

The proposed new regulations and amendments include the removal of an exception related to the violation of sexual boundaries, additional rules regarding the use of social media and technology, a definition of counseling in the Social Work scope of practice, revision of Marriage and Family Therapy educational practices, elimination of Clinical Resident status, alignment of education and practice requirements, prohibition on “friending” clients, as well

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as other minor modification to other rules. See attached Rule draft with changes noted.

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

ORC 119.03

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.

Not applicable.

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

Not applicable.

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)?

The new rules mainly address the use of social media technologies. Given the popularity of such tools, there is growing interest in the use of these in the mental health field. To ensure the public is protected, rules must be established to provide guidance to licensees.

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

No specific outputs as such are anticipated. The outcomes most measurable relate to complaints based on social media and related technology. Licensees should have a better understanding of the potential issues related to the use of social media. Such cases should be easier to investigate once clear rules are in place.

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.

All licensees were invited to comment on the proposed rule changes. The draft rules were posted to the Board web site. All licensees were notified via the Board listserv, as well as through Twitter and Facebook. The Agency received comments from approximately eleven commenters when the draft rules were originally published to the Board web site in August 2015. Most comments were in response to a rule change regarding policies for Internet and

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social media searches. The Board has eliminated those specific references for additional evaluation over the next eighteen months.

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

The proposed rules have been discussed in public Professional Standards Committee meetings. Additional comments were sought from licensees by posting the proposed changes to the web site and notifying all licensees. As noted above, the Board elected to revise the proposed rule regarding Internet and social media searches. This decision was partially based on feedback from licensees, as well as Board member discussions.

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?

No scientific data were used. The proposed rules relate to the application of rules to the therapist-client relationship. Outcomes are generally positive, but based largely on the subjective assessment of the patient.

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?

The majority of proposed amendments are clarifications. Additionally, the Board is removing a significant burden for licensees who are seeking to become a Licensed Professional Clinical Counselor (LPCC). The Board is discontinuing use of the Clinical Resident designation. Doing so will reduce compliance burdens for persons working toward an LPCC by eliminating the requirement to register a supervisor with the Board.

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.

As noted in #10, the rule changes are relatively minor. Nonetheless, the nature of the work of the Board's licensees is such that certain regulations must be specific and directive, for example, clearing prohibiting a licensee from having a personal relationship with a client. Where possible, the Board does use a performance-based regulation. For example, the Board does not dictate the form of disclosures to clients.

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

The Board reviewed existing laws and rules to ensure no other provisions in the law duplicated the proposed new and amended rules.

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.

Any changes will be communicated to licensees via the Board newsletter and social media such as Facebook and Twitter. Board staff who conduct ethics trainings will include rules changes in future trainings. Given the modest nature of the changes, no implementation issues are anticipated.

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;

All licensees and future licensees of the CSWMFT Board.

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

Licensees should not incur any costs related to following the proposed rule changes. No modifications to forms and documents should be necessary. No additional training is imposed.

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.

Licensees will have to invest some time in reviewing the rule changes to ensure they are familiar with the content. This is a responsibility of any professional with a State-issued license.

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

There is no adverse impact on the business community. The new rules and amendments impose few if any costs of compliance.

Regulatory Flexibility

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

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An exemption is not necessary for small businesses. The rules relate to ethical conduct of individual licensees. Properly following the rules should not be a financial burden as no additional training or similar costs should be incurred.

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 proposed new and amended rules in this filing involve little to no paperwork. In general, the Board does not impose fines. Generally, a caution is provided in lieu of other discipline provided the violation is very minor.

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

The Board provides resources via the web site as well as access to staff to assist any parties with compliance with laws and rules governing the professions regulated by the Board.