Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

Rule Contact Name and Contact Information:

Missy Anthony, Executive Director – missy.anthony@otptat.ohio.gov, 614-466-3474

Regulation/Package Title (a general description of the rules' substantive content):

OPP rules – discipline and enforcement

Rule Number(s): 4755-64-01, 64-02, 64-03, 64-04, 64-05

Date of Submission for CSI Review: 6/2/2020

Public Comment Period End Date: 6/15/2020

Rule Type/Number of Rules:

New/_X__ rules **No Change/____ rules (FYR? ___)**

Amended/____ rules (FYR? ___) **Rescinded/____ rules (FYR? ___)**

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

4755	64	01	Ethical and professional conduct	Replaces 4779-10-01	This rule defines the code of ethics for practicing orthotics, prosthetics, and pedorthics. It is the basis on which the Board may issue discipline. The bulk of this rule is the same as 4779-10-01. Language has been added to the rule to create a duty to report another licensee who is violating the practice act and to require certain offenses to be reported to the

					Board within 30 days (impairment, conviction of a felony, termination of revocation of a license, etc…) These two things are standard for the other professions licensed by the OTPTAT Board.
4755	64	02	Proper use of credentials	Replaces 4779-10-02	This rule makes rules on how a license holder shall use their credentials.
4755	64	03	Investigations	New rule	This is a new rule which describes the kinds of investigations which may be conducted by the OTPTAT Board. The language is consistent with the investigations rule from other sections.
4755	64	04	Denial and disciplinary procedures	New rule	This rule reflects the ability of the board to discipline a license consistent with the Chapter 119 process. This rule is consistent with a disciplinary rule for the other OTPTAT sections.
4755	64	05	Notice of change of name, place of employment, email, and mailing address	Replaces 4779-2-03	Requires licensees to update their contact information with the Board within 30 days of a change through the eLicense system. This language is consistent with other OTPTAT Board rules.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   ORC 4779.08, 4779.09, 4779.28, 4779.29, 4779.30, 4779.99,

4. **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?**
   No. Licensure is according to state law.

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

   Not applicable.

6. **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)?**

   State law (ORC 4779) requires the OTPTAT to license orthotics, prosthetics, and pedorthics. These rules give necessary details on how to comply with Ohio Revised Code 4779, including more details on appropriate conduct, how investigations are conducted, and how notice shall be given to the Board.

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

   Appropriate discipline which protects the public. Accurate contact information for license holders.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
   No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   Rules were posted to all license holders for orthotics, prosthetics, and pedorthics, as well as the Ohio O& P Association. Rules were reviewed by the Orthotics, Prosthetics, and Pedorthics Advisory Council.
10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

    No feedback was received on these rules.

11. **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?**

    None.

12. **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?**

    None. These rules provide more detail to amplify Ohio Revised Code.

13. **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.***

    No. These rules further clarify statute.

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

    These rules further clarify statute.

15. **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.**

    These rules maintain the current OPP Board standards that are currently in place, but are rewritten to fit the processes of the OTPTAT Board. New procedures are being written. Application instructions are available on the Board website and eLicense. The enforcement staff has been trained on the new license types and the ability to apply the practice act more uniformly will enhance consistency.

Adverse Impact to Business

16. **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; and**
    b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
    c. **Quantify the expected adverse impact from the regulation.**
        a. These rules impact all individuals licensed in Ohio to practice orthotics, prosthetics, and pedorthics and the business for which they work.
        b. These rules define ethics requirements, and fines of various levels, required continuing education, ethics classes, and license revocation are all possible penalties for violations.
        c. See above

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

    These rules amplify the ethical requirements in Ohio Revised Code chapter 4779.28.

Regulatory Flexibility

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

    No. Ohio law dictates the 119 hearing processes that the Board uses for discipline. The Board has a disciplinary matrix that takes into account mitigating factors to keep discipline consistent and allows for a variety of mechanisms to make reparations.

19. **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 Board has disciplinary guidelines that take into account first offenses when issuing discipline through enforcement.

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

    The OTPTAT Board website and social media strive to make Board business accessible and transparent. Anyone may reach the Board for assistance at any time via mail, email, phone, website, and social media.