



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### MEMORANDUM

**TO:** Zachary Russell, Ohio Dental Board

**FROM:** Joseph Baker, Regulatory Policy Advocate

**DATE:** August 9, 2021

**RE:** **CSI Review – Enforcement; Hearings (OAC 4715-15-01, 4715-15-02, 4715-15-03, 4715-15-04, 4715-15-05, 4715-15-06, 4715-15-07, 4715-15-08, 4715-15-09, 4715-15-10, 4715-15-11, 4715-15-12, 4715-15-13, 4715-15-14, 4715-15-15, 4715-15-16, 4715-15-17, 4715-15-18, 4715-15-19, 4715-15-20, 4715-15-21, 4715-15-22, 4715-15-23, 4715-15-24, 4715-15-25, 4715-24-27, and 4715-15-28)**

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On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Board as provided for in ORC 107.54.

#### Analysis

This rule package contains twenty-seven no-change rules being proposed by the Ohio Dental Board (Board) as part of the statutory five-year review process. The rule package was submitted to the CSI Office on July 13, 2021, and the public comment period was held open through July 27, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 13, 2021.

The rules in this package set forth the processes for disciplinary hearings related to the practice of dentistry, the rights of participants to such a hearing, and related procedures.

OAC 4715-15-01, 4715-15-02, 4715-15-03, 4715-15-04, 4715-15-05, 4715-15-06, 4715-15-07, 4715-15-08, 4715-15-09, 4715-15-10, 4715-15-11, 4715-15-12, 4715-15-13, and 4715-15-14,

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establish procedures and policies related to the processes for disciplinary hearings regarding the practice of dentistry. These include establishing authority for the Board to take action against licensees for violations, establishing who may appear at disciplinary hearings, how hearing requests may be filed, setting the responsibilities for hearing examiners, allowing examiners to consolidate multiple hearings into one, prohibiting petitions to intervene in a hearing, allowing hearing continuances if certain conditions are met, requiring that motions be made in writing and defining when documents are formally filed, requiring that formal service be made personally, by mail, fax or electronic mail, describing the process for computing time limits on hearing processes, establishing notice requirements, permitting the request of transcripts at the requestor's expense, and requiring the Board to issue subpoenas to compel testimony at the written request of either party to the hearing. OAC 4715-15 describes the mileage reimbursements and witness fees that may be paid to hearing participants. OAC 4715-15-16 states that reports and recommendations must be issued within 30 days of the close of a hearing by the hearing examiner and issued to each representative of record.

OAC 4715-15-18, 4715-15-19, 4715-15-20, 4715-15-21, 4715-15-22, 4715-15-23, 4715-15-24, and 4715-15-25 state that the hearing examiner may require hearing parties to exchange information and identify witnesses for each party, permit the hearing examiner to schedule pre-hearing conferences or status conferences to discuss various factors and to order that the testimony of a witness be taken by deposition, require the examiner to admit evidence of any prior action taken by the Board against the respondent, allow the representatives of record to agree on facts before the examiner, specify the rights and responsibilities of witnesses participating in a hearing, and establish that conviction of guilt by a formal judicial body regarding the same alleged offense may serve as conclusive proof that the offense took place. OAC 4715-15-27 states that a hearing examiner may allow the broadcasting and photographing of administrative hearings if the examiner determines that such activities would not interfere with the proceedings, upon request. Lastly, OAC 4715-15-28 states that any disciplinary action taken by the Board that results in suspension from practice shall either lapse on its own terms or describe the process for reinstatement.

During early stakeholder outreach, the Board notified all parties registered to receive notification regarding rule changes that the rule would be considered at the June 9, 2021 Board meeting. No stakeholder comments were provided at that time or during the CSI public comment period.

The business community affected by the rules includes all individuals licensed, registered, or certified in the practice of dentistry in Ohio, as well as the employees and business of licensed dentists. The adverse impacts to business include potential disciplinary sanctions as well the costs and time of participating in hearings related to alleged violations that may lead to discipline. The costs of participating in such hearings and the potential disciplinary action that may result varies

based on the extent and circumstances of the violation(s). The Board states in the BIA that the adverse impact created by the rules is necessary to ensure that only competent and safe practitioners are permitted to practice dentistry in Ohio.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.