

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: Youth Concussion Assessment and Clearance

Rule Number(s): 4732-17-01.1

Date: July 31, 2015

Rule Type: New

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

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

This new rule is proposed because of requirements in HB487 of the 130th General Assembly, namely ORC 3707.511 (E)(4), and the Final Guidelines Report of the Ohio Youth Sports Concussion & Head Injury Return-to-Play Guidelines Committee (March 2015). The Committee Guidelines were required under ORC 3707.521. The Guidelines established by the Committee were developed with the intent of protecting Ohio's youth from the harmful effects associated with brain injuries sustained during athletic competition.

The law (ORC 3707.511) and the Guidelines require that the board adopt a rule establishing standards that are equal to or stronger than the guidelines developed by the Committee. The rules outline the specialty education and training required of psychologists in order to diagnosis and manage youth concussions and make determinations in coordination or consultation with a physician relative to return-to-play clearance.

Proposed New Rule:

Rule 4732-17-01.1 outlines definitions, education and training requirements, continuing education recommendations, and recommendations consistent with the final report of the Committee.

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

ORC 4732.06, ORC 3707.511 (E)(4), 3707.521 (E), and 3713.539 (E)(4)

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.

There are no federal requirements to exceed.

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 practice of psychology, like other healthcare professions, can be hazardous and harmful if not done competently. The public (Ohio's youth and their families) require protection from

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the harmful effects associated with brain injuries sustained during athletic competition. This rule must be adopted in accord with ORC 3707.511 (E)(4), 3707.521 (E), and 3313. 539 (E)(4) in order to establish the minimum education and training requirements for psychologists who assess and clear youth for post-concussion return-to-play. Clinical neuropsychology is at the forefront of concussion assessment and management, and this rule must be adopted to allow appropriately trained psychologists to continue to practice in this area.

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

Success will be measured by having clear rules written in plain language, by license holder compliance with the rule, and minimal questions from the regulated community.

Development of the Regulation

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

The critical stakeholders related to this rule were initially those professionals on the Ohio Youth Sports Concussion & Head Injury Return to Play Guidelines Committee through the Ohio Department of Health requested that the Ohio Board of Psychology provide testimony at its December 18, 2014 meeting. In accordance with Ohio's new youth sports concussion law including provisions established in Ohio Revised Code (ORC) Section 3707.521 (effective September 17, 2014), the Committee was charged with developing the Guidelines regarding concussions and head injuries sustained by youth participating in interscholastic and youth sports organization sporting events. The Guidelines outlined the (1) diagnosis and treatment of concussions; (2) the conditions under which an athlete may be granted clearance to return to practice or competition; and (3) the minimum education requirements necessary to qualify a physician or licensed health care professional (like psychologists) to assess and clear an athlete for return to practice or competition.

An interested parties meeting was held on June 12, 2015, and was attended by:

Dr. Denise Rabold, Member of the State Board
Dr. Chris Bailey, Director, Concussion Program, Case-University Hospitals
Dr. Tim Shea, Clinical Neuropsychologist, Ohio State
Michael Ranney, Executive, Ohio Psychological Association (OPA)
Dr. Bobbie Celeste, OPA Director of Professional Affairs
Roger Carroll, Principal Assistant Attorney General and Board Counsel
Dr. Ronald Ross, Executive Director

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

The Psychology Board stakeholder group participated in rule writing during a meeting on June 16, 2015. Consensus on the proposed rule was reached. The Psychology Board will approve the rule at its July 30, 2015 meeting.

The process began with The Ohio Youth Sports Concussion & Head Injury Return to Play Guidelines Committee (Committee) through the Ohio Department of Health published a Final Guidelines Report in March 2015 following receipt and review of extensive testimony by experts who routinely treat youth sports concussions and head injuries. ORC Sections 3313.539(E)(4), 3707.511(E)(4), and 3707.521(E), direct the Ohio Board of Psychology to adopt rules so that effective September 17, 2015, minimal education requirements are established for its licensees to conduct “assessments and clearances” as specified in the statutes. ORC Section 3707.521(E) indicates that if an agency seeks to have its licensees authorized to assess and clear youth athletes, the agency “establish standards that are equal to or stronger than the guidelines developed by the committee.”

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?

The Zurich Guidelines (The consensus statement on concussion in sport: The 4th international conference on concussion in sport held in Zurich, November 2012) are rooted in the science of brain-behavior relationships and became the lynchpin on which the Committee’s standards for youth concussion assessment and clearance were based.

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?

None. The governing statute ORC 3707.511 and the Guidelines of the Ohio Youth Sports Concussion & Head Injury Return-to-Play Guidelines Committee require that this rule be adopted. The specific provisions in the proposed rule mirror the Guidelines and are as strong as or stronger than the Guidelines developed by the committee. The education and training requirements in the rule are intended to limit youth concussion assessment and clearance to those psychologists who have specialty education and training and practice in accord with prevailing international guidelines and in coordination or consultation with a physician.

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

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The Board did not consider any performance-based regulations because the rule is mandated and requires adoption of minimum standards for psychologists who assess and clear youth athletes post-concussion.

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

Laws and rules related to minimum guidelines for youth concussion assessment and clearance are new to Ohio. There is nothing duplicative.

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 community of Ohio's clinical neuropsychologists is already aware of the new law and this rule-making process. The Board will disseminate the final rule via its list serve and via neuropsychology specialty list serves and forums. The Board will monitor progress with respect to the rule and report back to the regulated community.

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;

Specially educated and trained psychologists (i.e. clinical neuropsychologists with competence with youth concussion), numbering an estimated 150 out of the 3500 licensed psychologists in Ohio.

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

Time: Qualified neuropsychologists under this rule choose to undertake training at the pre-doctoral and post-doctoral level to specialize in neuropsychological practice with children. The time it takes to become competent in the assessment and management of youth concussions and other brain injuries is generally that time associated with the licensure process. This is not a rule that requires general psychologists to undertake additional education and study. This is a highly specialized area of psychological practice with strict standards for practice, generally and as outlined in the proposed rule.

Money: There are no additional costs incurred by general psychologists or by those psychologists who meet the requirements in the rule. Psychologists who wish to add

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specialty training post-licensure might incur costs associated with additional graduate education and continuing education and training.

Effort: Psychologists who wish to add specialty training post-licensure to be compliant with the rule would need to expend additional effort, but that is not a requirement of the rule.

Finances: There are no required additional expenditures in this rule. Continuing education in this specialty area is a recommendation and not a requirement.

c. Quantify the expected adverse impact from the regulation.

The adverse impact is negligible at most because those psychologists who are competent to conduct these assessments and clearances have selected clinical neuropsychology as a subspecialty.

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

This proposed rule is mandated and the adverse impact is of minimal to no consequence. Consistent with the Guidelines, the Psychology Board is recommending additional CE but not requiring it.

Regulatory Flexibility

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

No. In this case the proposed rule outlines what is required of psychologists who conduct youth concussion assessments and clearances pursuant to the Guidelines and ORC 3707.511.

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?

These rules do not involve waiver of paperwork violations.

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

The Board's website contains information about its laws and rules. The Board staff is comprised of 5 individuals available during business hours by phone and email. The Board has earned a reputation for being responsive and available, and the Executive Director's direct dial telephone number and email address are published on the Board's website.

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