

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Anesthesiologist Assistant Rules

Rule Number(s): 4731-24-01, 4731-24-02, and 4731-24-03, 4731-24-05

Date: January 11, 2019

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☐ Rescinded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.

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.

4731-24-01 – Definitions:

- The definition of the term “under the direct supervision and in the immediate presence of” is removed from Rule 4731-24-02 and added as paragraph (D) of this rule. The definitions are needed to clarify usage of terms in the Revised Code and the other rules in Chapter 4731-24 of the Administrative Code.

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4731-24-02 – Anesthesiologist assistants: supervision:

- The definition of “direct supervision and in the immediate presence of” is removed from paragraph (A)(1) and moved to Rule 4731-24-01.
- Language is amended to clarify the rule and to be consistent with LSC guidelines.
- The Medical Board’s website address is added to paragraph (C)(4).
- Paragraph designations are corrected.

4731-24-03 – Anesthesiologist assistants: enhanced supervision:

- Wording is amended to clarify, be consistent with LSC guidelines, and for ease of reading.

4731-24-05 – Military provisions related to certificate to practice as an anesthesiologist assistant:

- No changes are proposed.

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

4760.08 and 4760.19,

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, the rules do not implement a federal requirement.

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)?

Section 4760.09 of the Revised Code requires the Medical Board to adopt rules addressing the required written protocol and enhanced supervision under which the anesthesiologist assistant is authorized to practice. The rules notify the anesthesiologist, the anesthesiologist assistant, the public, and medical administrators of the standards and procedures. Section 5903.03 of the Revised Code requires the Medical Board to adopt rules regarding which military programs of training, military primary specialties, and lengths of service are substantially equivalent to or exceed the educational and experience requirements for each license that agency issues.

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

The success of the rules will be measured by clear language resulting in few inquiries as to their meaning and compliance with the provisions.

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.

The rules as proposed to be amended were submitted to the Medical Board's policy committee at a public meeting on October 10, 2018. The proposed amended rules were then sent via email on October 30, 2018 to interested parties. The interested parties included: officers of the Ohio Academy of Anesthesiologist Assistants, organizations and representatives who have standing requests for notice of Medical Board rule activity (including, but not limited to, the Ohio State Medical Association, the Ohio Hospital Association, lobbyists for health care matters such as for the Ohio Society of Anesthesiologists, and attorneys who represent interests and medical professionals before the Medical Board), and individuals who have a standing request for notice of Medical Board rule activity.

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

No comments were received.

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 rules are largely unchanged from the original wording adopted in 2003 and twice filed as "no change" rules. The rules were written following a process starting in 2001 that involved the input of an ad hoc committee made of a physician Medical Board member, anesthesiologists, and an anesthesiologist assistant who was also an educator of anesthesiologist assistants. The committee received much input from anesthesiologists, anesthesiologist assistants, and attorneys representing the interests of the Ohio Society of Anesthesiology (which was very supportive of the use of anesthesiologist assistants). Accordingly, the rules are based upon significant input of persons whose practice is either as an anesthesiologist or anesthesiologist assistant.

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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Alternative rules were not considered because the current rules are generally clear. The rules do not stray beyond the mandate of Section 4762.08, ORC. The proposed amendments are designed to improve upon the language, not change the underlying 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.

The rules are performance based. They set out the requirements but do not dictate how the requirements must be achieved.

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

The Medical Board is the only agency that has authority to regulate the practice of anesthesiologist assistants. The rules also strictly follow the mandate of Section 4762.08, ORC.

- 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.**

Medical Board staff who answer questions from licensees and the public concerning rules will answer questions in an objective manner. Medical Board investigators are trained to apply rules consistently.

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 made up of anesthesiologists and anesthesiologist assistants.

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

An anesthesiologist must be willing to allot time to engage in supervisory activities. An anesthesiologist assistant may not perform services not assigned by the supervising anesthesiologist.

- 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

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“representative business.” Please include the source for your information/estimated impact.

The average salary of an Ohio anesthesiologist is \$152.78 per hour or \$317,777 annually. See <https://www.ziprecruiter.com/Salaries/What-Is-the-Average-Anesthesiologist-Salary-by-State>. A dollar figure as to impact cannot be assigned, however. The amount of time the anesthesiologist will spend in supervision depends upon the number and types of surgeries participated in and the number of anesthesiologist assistants supervised. In addition, the purpose of employing anesthesiologist assistants is to free up the anesthesiologist from the most mundane aspects of the anesthesiology procedures so that he/she may perform the most technical aspects and provide anesthesiology services to more patients.

Anesthesiologist Assistants earn an average yearly salary of \$104,680. Salaries typically start from \$76,040 and go up to \$140,180. See <https://www.sokanu.com/careers/anesthesiologist-assistant/salary/ohio/>.

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

The rules are required by Sections 4762.08 and 5903.03, ORC. The language of the rules is tailored to conform to the mandates of the sections.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance for small businesses. The need for the safe provision of anesthesiology services doesn't change whether the setting is a small ambulatory surgical center or one of the world's largest hospitals. Appropriate provision of anesthesiology services is essential for patient safety.

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?

No paperwork is required to be submitted to the Medical Board.

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

The rules will be posted on the Medical Board's website. Medical Board staff is available to respond to inquiries. If needed, the Medical Board publishes guidance documents on rules.

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