

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Medical or Osteopathic Licensure

Rule Number(s): 4731-6-01, 4731-6-02, 4731-6-03, 4731-6-05, 4731-6-07, 4731-6-10, 4731-6-14, 4731-6-15, 4731-6-16, 4731-6-21, 4731-6-22, 4731-6-30, 4731-6-31, 4731-6-32, 4731-6-33, 4731-6-34, and 4731-6-35

Date: September 25, 2018

**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☒ Rescinded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.*

The rules in Chapter 4731-6, OAC, notify applicants and healthcare administrators of the process and procedures for physician (medical doctor or osteopathic doctor) application for licensure in Ohio. The proposed rules reflect statutory amendments made by H.B. 49 of the

132<sup>nd</sup> General Assembly. The proposed rules also reflect the Medical Board's on-going effort to ensure that its rules are clear and do not merely repeat statutory requirements.

**4731-1-01: Definitions** - Defines terms used in the chapter.

**4731-1-02: Preliminary education for medical and osteopathic licensure** – Notifies what documentation is required under Section 4731.09(A)(2) and (3) of the Ohio Revised Code. The language is amended to clarify that the applicant must hold a diploma or Educational Commission for Foreign Medical Graduates (“ECFMG”) certification, but no longer needs to submit the diploma or certification.

**4731-6-03: Eligibility for the medical and osteopathic examination** - This rule is proposed to be rescinded because the language is combined into proposed rule 4731-6-05.

**4731-6-05: Medical and osteopathic examination** – The language of the rule is modernized to confirm that the licensure examination is made up of all steps/levels of the United States Medical Licensing Examination (“USMLE”) or Comprehensive Osteopathic Medical Licensing Examination (“COMLEX-USA”). Attempt and time limits have been moved from current rule 4731-6-14 to this rule.

**4731-6-07: Passing average on examination** – Proposed to be rescinded as unnecessary.

**4731-6-10: Clinical competency examination** – Proposed to be rescinded as unnecessary.

**4731-6-14: Eligibility for licensure** – The proposed language updates the current rule and combines the contents of current rule 4731-6-16 to create one single rule outlining the acceptable examination sequences for licensure in Ohio. The amendment reflects that H.B. 49 of the 132<sup>nd</sup> General Assembly amended Chapter 4731., Ohio Revised Code, to consolidate all licensure paths into one section: that being Section 4731.09, Ohio Revised Code.

**4731-6-15: Eligibility for licensure of national board diplomates and medical council of Canada licentiates** - Is amended to remove sections of the Ohio Revised Code that have been repealed.

**4731-6-16: Eligibility for medical or osteopathic licensure by endorsement of licenses granted by other states** – This rule is proposed to be rescinded. H.B. 49 of the 132<sup>nd</sup> General Assembly amended Chapter 4731., Ohio Revised Code, to consolidate all licensure paths into Section 4731.09, Ohio Revised Code. The relevant provisions of the current rule have been combined into proposed rule 4731-6-14.

**4731-6-21: Application procedures for certificate to issuance; investigation** – The proposed amendment removes the reference to a “written application” since all applications

are now on-line and clarifies that an applicant must ensure that his/her Federation Credential Verification Service (“FCVS”) report is sent to the Medical Board.

**4731-6-22: Abandonment and withdrawal of medical and osteopathic licensure**

**applications** – The rule provides that an application that is incomplete within six month of receipt may be deemed “abandoned.” The proposed amendment adds language to make the rule applicable to all physician licensure types issued under Chapter 4731., Ohio Revised Code.

**4731-6-30: Training certificates** – The rule sets the standards and procedures for applying for a training certificate, which authorizes a physician who has completed medical school to participate in a graduate medical education program. The proposed amendment establishes procedure whereby the training certificate can be issued in a more timely manner, and clarifies that the issuance of an “acknowledgement letter” is permitted when the training certificate application is not complete. The amendment also reflects that pursuant to H.B. 523 the training certificate is now valid for up to three years instead of one year.

**4731-6-31: Limited preexamination registration and limited certificates** – This rule is applicable to a person who is not a U.S. citizen, but who has graduated from a recognized medical school and will practice medicine in a state-operated hospital under supervision of the medical staff until the next medical licensing examination. The proposed amendment updates the language to reflect current requirements, including a requirement for having passed the first two steps/levels of the appropriate licensing examination.

**4731-6-32: Clinical research faculty certificates** – This rule is proposed to be rescinded as the statute, Section 4731.293, Ohio Revised Code, contains sufficient specificity and much of the rule’s wording is repetitive of the statute.

**4731-6-33: Special activity certificates** – The rule sets out the requirements for issuance of a special activity certificate. It is proposed to be amended by adding references at paragraph (B)(2) to two additional examinations that might be applicable to an applicant. Language that is repetitive of Section 4731.294, Ohio Revised Code, is removed.

**4731-6-34: Volunteer’s certificate** – The rule sets out the procedure for obtaining a volunteer’s certificate. The language is modernized and language that is repetitive of Section 4731.295, Ohio Revised Code, is removed.

**4731-6-35: Processing applications from service members, veterans, or spouse of service members or veterans** – The rule sets the process and procedures for the Medical Board’s processing of the specified applications. It is proposed to be amended by the deletion of

language concerning physician assistants as not being relevant for the administration of the rule.

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

The rules are authorized by Sections 4731.05, 4731.09, 4731.295, and 5903.04, Ohio Revised Code.

**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. No, the rules are not being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

**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 purpose of the rules is to clarify the requirements of licensure statutes in Chapter 4731., Ohio Revised Code.

**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 having rules written in plain language, few calls asking for interpretation of the rules, and compliance with the rules.

**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 proposed amendments to rule 4731-6-30, training certificates, are designed to expedite the issuing of a training certificate to a person who has graduated from medical school and wishes to enter a graduate medical education at a hospital in Ohio (normally referred to as

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internship or residency). The issuance of training certificates is delayed because medical school diplomas are not received until several weeks after graduation. Participation in a graduate medical education program usually starts on July 1 of each year. Current rule 4730-6-30 creates a mechanism whereby the applicant for a training certificate is issued an “acknowledgement letter,” which serves as authorization to engage in the program until such time as the medical school diploma is received and the training certificate can be issued. As a result, Medical Board staff has to handle each application twice (once to issue the acknowledgement letter and again to review the application before issuing the training certificate). The Medical Board arrived at the proposed language of 4731-6-30(C) and (D) in order to get the actual training certificate into the hands of the applicant and increase Medical Board efficiency. The proposed plan was discussed with the graduate medical education programs in Ohio to confirm that (a) each program verifies that the physician has received a diploma from a medical school prior to beginning practice at the hospital at which the program is based, and (b) to gauge the program’s comfort with the procedure proposed in 4730-6-30(C). The programs gave the requested assurance.

The total package of proposed amendments and rescissions were first discussed at a public meeting of the Medical Board’s Licensure Committee on January 10, 2018. After final work to hone the proposed language in 4731-6-30, the proposed rules were then circulated to interested parties on February 26, 2018. The interested parties included state physician associations, medical societies, attorneys representing respondents in administrative licensure matters before the Medical Board, and organizations and individuals who have requested notice of Medical Board rules activities. The recipients included, but are not limited to, the following: Academy of Medicine of Cincinnati, Ohio State Medical Association, Ohio Osteopathic Association, Ohio Hospital Association, Academy of Medicine of Cleveland and Northern Ohio, Ohio State University Medical School, Ohio Academy of Family Physicians, the Ohio Dermatology Association., and Cleveland Clinic Foundation.

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

The only comment received was from the combination of the American Osteopathic Association and the Ohio Osteopathic Association. Three amendments were suggested.

- (1) That Rule 4731-6-01(L) reference rule 4731-6-05 instead of the statute. This suggestion was not adopted as it is appropriate to reference the implementing statute.
- (2) That Rule 4731-6-05(C)(1) be clarified by the addition of the phrase “a member board of.” The suggested language was incorporated into proposed rule 4731-6-05(C)(1).

(3) That Rule 4731-6-30 be amended by adding, “or osteopathic medical school.” The suggested language was incorporated into proposed rule 4731-6-30(B)(1).

**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 Medical Board is unaware of any scientific data relevant to the proposed rules. The rules, which have been in effect for many years and were most recently reviewed and amended in 2017, reflect the wording of the Ohio Revised Code and generally accepted processes for medical licensure in the United States, including the requirement for passing a national examination relied upon to establish eligibility for licensure. The proposed amendments reflect statutory changes and the Medical Board’s on-going efforts to clarify and simplify its rules.

**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 Medical Board did not consider alternatives. The rules were just reviewed in 2017 and reflect the provisions of the Ohio Revised Code and generally accepted procedures for medical licensure.

**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 as performance based as possible. For example, rule 4731-6-05 implements the requirement that the applicant have passed an examination prescribed in rules. The proposed rule specifies the two approved examinations, but provides alternative means should the applicant not be able to meet the attempt and time limits.

**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 licenses physicians.

**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.**

Notice of the amended and rescinded rules will be sent to medical associations and interested parties, included in the enews sent to all Medical Board licensees, and posted on the Medical Board’s website. Information will also be sent to the Federation of State Medical Boards,

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which is a repository of information on all fifty states' licensure requirements. Medical Board staff will be available to address questions that may arise. Medical Board staff will be trained to apply the requirements consistently when reviewing application materials.

### **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 identified business community is made up of persons seeking physician licensure in Ohio.

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

The nature of the adverse impact is the application fee, FCVS fee, examination fee, and, for a foreign medical school graduate, the ECFMG certificate fee.

**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.*

**For 2019, the following information concerning the USMLE Steps 1 and 2** was obtained from the National Board of Medical Examiner's website:

<https://www.nbme.org/students/examfees.html>

2019 Fees Effective Dates for 2019 Fees

Step 1 \$630\*

Three month eligibility periods beginning November 1, 2018 - January 31, 2019 and ending October 1, 2019 - December 31, 2019

Step 2 CK \$630\*

Step 1 and 2CK \$70

Eligibility Period Extension (requests received starting January 1, 2019)

Step 2 CS \$1,290

For completed applications received starting January 1, 2019.

FLEX: There is no cost as this examination must have been taken in the past.



**For 219, the following information concerning the USMLE Step 3** was obtained from the Federation of State Medical Boards website: <http://www.fsmb.org/step-3>

2019 Step 3 \$875

**For 2019, the following information concerning the COMLEX-USA Level 1** was obtained from the National Board of Osteopathic Medical Examiners website:

JULY 2018-JUNE 2019

COMLEX-USA Level 1 \$660 (<https://www.nbome.org/exams-assessments/comlex-usa/comlex-usa-level-1/registration-scheduling/>)

COMLEX-USA Level 2-CE \$660 (<https://www.nbome.org/exams-assessments/comlex-usa/comlex-usa-level-2-ce/registration-scheduling/>)

COMLEX-USA Level 2-PE \$1,295 (<https://www.nbome.org/exams-assessments/comlex-usa/comlex-usa-level-2-pe/registration-scheduling/>)

COMLEX-USA Level 3 \$875 (<https://www.nbome.org/exams-assessments/comlex-usa/comlex-usa-level-3/registration-scheduling/>)

FCVS fee: Minimum of \$100 (<https://www.fsmb.org/fcvs/cost-and-fees/>)

ECFMG certificate: \$125.00 (<https://www.fsmb.org/fcvs/cost-and-fees/>)

### **Application fees**

Full M.D. or D.O. licensure: \$309 (See Section 4731.09, ORC)

Training certificate: \$130 (See Section 4731.291, ORC)

Pre-examination registration permit to engage in limited practice: \$100 (See Section 4731.292, ORC)

Clinical Research Faculty Certificate: \$375 (See Section 4731.293, ORC)

Special Activity Certificate: \$125 (See Section 4731.294, ORC)

Volunteer's Certificate: no fee (See Section 4731.295, ORC)

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

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All application fees are required by statute. Physicians literally hold a person's health and life in their hands. The examinations are the nationally accepted means of establishing that the applicant is minimally competent to provide medical services as a physician. The FCVS and ECGME certification provide a means of verifying the applicant's credentials and education, especially medical education received in a foreign country.

### **Regulatory Flexibility**

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

Physicians provide medical services that are complex and which impact the health and safety of patients. The public safety requirements relevant to these rules require consistency in their application to all licensees to facilitate minimal competency and are not amenable to exemptions or alternative means of compliance for small businesses.

**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?**

Not submitting required documents or making other paperwork violations does not result in a fine or penalty, but may result in denial of an application or abandonment of an application because the information required to establish eligibility has not been submitted.

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

Medical Board staff members are available to respond to applicant questions. Moreover, licensure staff members maintain communication with the medical schools and graduate medical education training programs located in Ohio.