

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: Psychology Board FYR Six Rules for Amendment

Rule Number(s): Amend: 4732-1-03, 4732-2-01, 4732-3-01, 4732-7-01, 4732-15-01, 4732-17-01.

No Change: 4732-1-01, 4732-1-02, 4732-1-04, 4732-1-05, 4732-1-06, 4732-1-07, 4732-1-08, 4732-1-09, 4732-1-10, 4732-1-11, 4732-1-12, 4732-1-13, 4732-2-02, 4732-5-01, 4732-5-02, 4732-9-01, 4732-9-01.2, 4732-9-02, 4732-9-03, 4732-9-04, 4732-9-05, 4732-9-06, 4732-11-01, 4732-11-03, 4732-13-01, 4732-13-02, 4732-13-03, 4732-13-04, 4732-17-01.1; 4732-12-02; 4732-17-03; 4732-19-01; 4732-21-01

Date: August 6, 2019

Rule Type: 6 for Amendment; 33 No Change

✓ 5-Year Review

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

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

Proposed Amendments to Six (6) Rules

4732-1-03: Reiterates fees set in statutes 4721.14, 4732.142, 4732.15, 4732.151, and 4732.221 (except for the fee to retake a failed exam is set in rule at \$50) and sets forth process of payment. Proposed amendments to update process of making payment to delete reference to paying by mail (check) and to add sentence about payment by credit card in the eLicense portal.

4732-2-01: Sets forth requirements for CE compliance to maintain the license during biennial renewal. Proposed update by deleting (C)(3) because it is inaccurate and can confuse licensee—the section to be deleted outlines a process that is not provided by the Board (the Board does not accept petitions about CE coursework). The Ohio Psychological Association (OPA) and Ohio School Psychologists Association (OSPA) serve in that role, and ORC 4732.141 sets forth those processes and requirements.

4732-3-01: Contains definitions of terms used throughout OAC 4732. The proposed amendments would update the names of the national or regional accrediting agencies in (F) and would eliminate reference in (G)(3) which is a doctoral program accrediting entity that no longer exists as of 2017.

4732-7-01: Specifies requirements for licensure for psychologists licensed in other states and provinces. Proposed amendment to correct a reference to the statute under which licenses are issued.

4732-15-01: This rule reiterates prohibited titles found in statute, although it has a redundant and unnecessary paragraph. It is proposed to strike (C) because the specificity by naming prohibited titles “psychology associate” and “psychological associate” is unnecessary, as those titles are already prohibited in paragraph (A).

4732-17-01: This long chapter contains rules of professional conduct (ethical provisions for practice). Several amendments are proposed as updates and clarifications:

- Proposed amendments in (A) are for clarification that rules pertain to both the school psychologist license and the psychologist license.
- Proposed amendments in (B) Negligence: (2) (3) and (4) include clarifications and rewordings, and amendments to (7) are generally reordering the existing requirements for record keeping. One substantive amendment with adverse impact is in (7)(a)(i), which would require the licensee to obtain informed consent to treatment on a form signed by the client unless a signature is not feasible. This change is justifiable because clients have a right to clear informed consent prior to services and psychologists should be responsible for demonstrating that consent to specific services within specific parameters is documented.

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- Proposed amendments to (C): This rule was first promulgated in 2015 and paragraph (1) needs clarification reflecting feedback from a workgroup/community of psychologists. This rule deals with the longstanding prohibition against therapists making custody recommendations because it is a conflict of interest. The changes in paragraphs (a) through (f) are cosmetic and intended to clarify the meaning, although a substantive change in paragraph (e) would strike “In the absence of a preexisting relationship” because the community of psychologists has demonstrated to the Board that this is overburdensome and prevents psychologists from providing ethical evaluations and recommendations under certain circumstances. The Board sees this proposed amendment as clarifying and reducing regulation.
- The text in “(2) Multiple Relationships” is not new. It is relocated from current rule 4732-17-01 (E). This reorganization is proposed so that the Board’s prohibitions against dual sexual relationships is placed under the “Conflicts of Interest” rule. The workgroup of psychologists determined that this location is more intuitive. Note that rule (E) is therefore proposed to be struck.
- The next proposed amendments are in (C): Rules (7) and (8) contain updates that are overdue relative to internet, social media, and appropriate terms related to sex, gender and ethnicity. Each of these recommendations can from the workgroup.
- Proposed amendments in (D)(1) are as follows: Clarification by rewording in (c); and, proposed deletion of (e) because it is judged to be outdated and confusing to psychologists. This rule from the 1980’s attempts to describe a capitation program (most commonly associated with employee assistance programs), and it is unnecessary because the informed consent requirements are already outlined in (C)(4). This is one of several attempts to eliminate unnecessary or redundant rules.
- Proposed amendment to (D)(2): It is proposed to delete (b) because the prohibition is already addressed in (a).
- In the next sections, (E) Multiple relationships is struck because it is being moved to (C)(2). In the current (F), which is proposed to become (E), it is proposed to eliminate another rule (1)(e) because it is no longer reflective of current practices. It relates to risks that were present decades ago, when personnel assessments were frequently completed by sending testing through the mail.

“No Change” Proposed for Thirty-three (33) Rules

- 4732-1-01 Board meetings; miscellaneous forms of public notice.
- 4732-1-02 Application for licensure.
- 4732-1-04 Entrance examiner.
- 4732-1-05 License certificate and card.
- 4732-1-06 Biennial registration.
- 4732-1-07 Board hearings on rules: methods of public notice.
- 4732-1-08 Personal information systems.
- 4732-1-09 Definitions.
- 4732-1-10 Procedures for accessing confidential personal information.
- 4732-1-11 Valid reasons for accessing confidential person information.
- 4732-1-12 Confidentiality statutes.
- 4732-1-13 Restricting and logging access to confidential personal information.
- 4732-2-02 Procedures for recording, filing, and reporting continuing education.
- 4732-5-01 Psychological procedures which create a serious hazard to mental health.
- 4732-5-02 Exemptions from licensure requirements.
- 4732-9-01 Requirements for admission to the examination for a psychologist license.
- 4732-9-01.2 Requirements for degrees earned from institutions outside of the U.S.
- 4732-9-02 Requirements for admission to the examination for a school psychologist license.
- 4732-9-03 Computation and attainment of experience.
- 4732-9-04 Criminal records check.
- 4732-9-05 Consideration of military experience, education, training and term of service.
- 4732-9-06 Temporary license for military spouse.
- 4732-11-01 Licensure examinations.
- 4732-11-03 School psychology and psychology examination committees.
- 4732-13-01 Psychologist and school psychologist scope of supervision.
- 4732-13-02 Purposes of supervision.
- 4732-13-03 Supervision definitions.
- 4732-13-04 Requirements pertaining to supervision.
- 4732-17-01.1 Youth sports concussion assessment and clearance.
- 4732-17-02 Research ethics and safeguards.
- 4732-17-03 Bases and procedures for disciplinary actions.
- 4732-19-01 Enforcement and discipline.
- 4732-21-01 Independent rules.

The purpose of the Board’s rules spans a range from mandated rules to comply with statewide requirements (e.g., handling confidential information, criminal background checks) to highly specific rules governing licensure, supervision, and professional conduct.

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Although several of the No Change rules have been judged to not cause adverse impact, they are nevertheless included in this filing to put all rules before CSI: 4732-1-01, 4732-1-04, 4732-1-07, 4732-1-09, 4732-1-10, 4732-1-11, 4732-1-12, 4732-1-13, 4732-19-01; 4732-21-01.

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

ORC 4732.06; 4732.14; 4732.221

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)?

These rules are integral to the Board's statutory mission to regulate the practice of psychology, including rules governing fees, definitions, academic requirements, and professional conduct. As long as the profession of psychology is regulated secondary to the inherent risks of harm and the public's right to safe and competent services, the Board and its stakeholders will continue to review rules for continuation, amendment or rescission to clarify requirements and reduce confusion and redundancy.

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

These regulations will be deemed to have successful outcomes if they are clear to the reader and additional significant resources are not required. To assist in this, the rules were reviewed and recommended to the full Board by a workgroup inclusive of representatives of the major professional stakeholder groups, including the Ohio Psychological Association, the Association of Black Psychologists, and the Ohio School Psychologists Association. This partnership provides a public forum for the regulated community to shape rules on the front end for clarity and relevance to the day-to-day work of Ohio's psychologists.

Development of the Regulation

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

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The Board reviewed each rule in OAC 4732 for its FYR filing, in response to the recommendations of a workgroup, which met on May 24, 2019. Workgroup participants:

Kate Borges, Board Member

Dr. Doug Cole, Board Member

Ann Brennan, Executive Director, Ohio School Psychologist Association

Dr. Sarah Greenwell, Cincinnati Children's Hospital Medical Center

Dr. David Hayes, Ohio Psychological Association Liaison to the Board

Glenn Karr, Attorney-at-law

Dr. Susan Kenford, DCT, Director of Clinical Training, Xavier University

Carolyn Knauss, Board Investigator

Michael Ranney, Executive Director, Ohio Psychological Association

Dr. Suzette Speight, Director of Clinical Training, University of Akron

Dr. Brad Hedges, Board President

Dr. Ron Ross, Executive Director

Roger Carroll, AAG, Board Counsel

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

The stakeholder group studied the rule language and the context in which they were originally proposed and promulgated, and current practices, and ultimately there was unanimous consensus that the six (6) rules should be changed. The No Change rules were, by consensus, recommended to continue. Specific recommendations for changes were also received from several psychologists who replied to an initial call for comments prior to the Workgroup process. To prepare for the FYR process, the Board sent a call for comments to license holders on April 4, 2019 seeking feedback on the current rules. Feedback received was taken to the workgroup and rule amendments were proposed. This added a new call for comments on current rule language to solicit areas to study in advance of the workgroup process and Board action.

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?

N/A

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 questions before the Board and the workgroup related to the FYR requirement-- attempting to make necessary corrections for more clear and consistent regulations, and to

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avoid trying to fix what is not broken (according to the community of psychologists and the workgroup). All proposed changes have been made within the context of the existing regulations, which are generally familiar to Ohio's psychologists in the current structure as organized in OAC 4732.

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

The Board did not consider any performance-based regulations in this package because either the rules are mandated and/or the rules are not conducive to a performance-based approach to regulation.

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

Chapter 4732 of the Administrative Code contains the only regulations in Ohio granting an agency authority to govern the practice of psychology and the practice of school psychology outside of school settings.

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.

In this package, the primary implementation strategy will be to notify all license holders of the changes via our email list serve, eLicense Ohio instructions, website, and through the Ohio Psychological Association and Ohio School Psychologists Association. Changes to the rules of professional conduct will be highlighted to assist license holders and the Board to appreciate how to apply the changes to day-to-day practice.

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;**
Licensed psychologists and school psychologists (approximately 3,500 individuals).
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Time & Effort: Like any healthcare regulatory board, these rules exist for the purpose of public safety and to provide license holders with minimum requirements for applications, renewals, and ethical practice. License holders and applicants would be expected to expend some degree of effort to review rules changes and apply them to day-to-day professional practice. This package and a companion package of "No Change" rules include requirements for initial applications and biennial license

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renewal, both of which require a modest expenditure of effort to meet legal requirements.

Money: This package contains fees charged by the Board for various services and processes. Fees are generally set in statute and are reiterated in 4732-1-03.

c. Quantify the expected adverse impact from the regulation.

Taken as a whole, the Board's rules (including a companion package of "No Change" rules, certainly require financial participation for the purpose of earning and maintaining the license. Becoming a psychologist requires compliance with substantial supervised training and experience. Law and rules require the completion of 3,600 hours of supervised training for psychologist licensure, and 3 years of full-time experience post-master's degree internship for the school psychologist license.

The eLicense Ohio system has made the application and renewal process more efficient for license holders and Board employees. The fee for the initial application, oral exam, and initial license is \$300. Biennial renewal fee is currently \$360 and will be \$365 effective July 2020 (set in statute).

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

Ohio needs well-trained psychologists and school psychologists. Proposed updates the 4732-17-01 will help foster compliance with prevailing standards of care and to protect the rights of clients and other persons (these proposed amendments are no so much seen as affecting time or money, but effort and compliance with the requirements to practice psychology in a competent and ethical manner).

Regulatory Flexibility

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

No. The public looks to the Board to ensure that reasonable steps are taken to review the education, training, experience, and criminal histories of prospective license holders.

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?

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The Board's website contains information about each of the rules at issue. 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.