



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Code of ethical conduct for physical therapists and physical therapist assistants

Rule Number(s): 4755-27-05

Date of Submission for CSI Review: 2/10/2020

Public Comment Period End Date: 2/24/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___X___ rules (FYR? _Y_)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

Please include the key provisions of the regulation as well as any proposed amendments.

This rule implements the physical therapy code of ethics, upon which a Board can issue discipline. The provisions include profession-specific guidelines for conduct as a physical therapist or physical therapist assistant. The changes include the following:

- Addition of "place the best interests of the patient over the interests of the physical therapist" in (A)(2).
- Addition of "based on current available evidence" to the requirement to conform to minimal standards of acceptable and prevailing physical therapy practice in (B).
- Addition of the "renewal jurisprudence module" to the list of things on which a license holder must not cheat.
- Addition of a legal guardian to the people who may provide informed consent in (B)(4).
- Clarification in (B)(7)(b) that conversations with a patient must not be "sexual in nature" rather than "sexually explicit."

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- Addition of new (B)(16) relative to minimal standard of care when providing pro bono service.
- Replacement of words such a "must" instead of "shall" to conform with current rule drafting standards and provide consistency throughout all rules.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authority: 4755.411

Amplifies: 4755.47

4. 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 federal requirement. Licensure is state specific.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. 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 core mission of the OTPTAT Board is to protect the public. The code of ethics is a key piece of the practice act that allows to perform this function. It provides the basis of action for almost all of our enforcement actions and allows us to keep dangerous practitioners from patients and to correct behavior that may be harmful to patients.

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

Ability to conduct enforcement and discipline. Administrative actions taken by the Board.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

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Development of the Regulation

9. 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 Board sent the rule out to all license holders via listserv and posted the rules to the website. Professional organizations also received the posting.

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

All comments were supportive. The fourth comment on the list was discussed by the Board, but no change was made. The feeling is that the situation described would be within the physical therapy plan of care and would not be considered a violation of the rule.

My name is Richard L. Canaly. I have been a PTA since 1986. License #00883. email address you have, rcanaly@hotmail.com. I strongly agree with the rules change from 1 through 7. Without question, a therapist should always act as a fiduciary and client advocate during their practice, first doing no harm and to maintain current standards as research would demonstrate via continuing education. I am currently semi retired having worked in various positions these past 33 years. Thank you.
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I am in favor of the proposed rule.

Hi - I'm in agreement with all of the rule changes included in the email you sent.
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My only comment as it pertains to the Code of Ethical Conduct is that as a pelvic therapist, it is often necessary to discuss matters pertaining to sexual intercourse with our clients because it is a part of their disability and/or functional limitation when experiencing a pelvic injury. I would hope that language would be present to protect specialists like myself and my staff from being in violation of an ethical code when performing an essential part of our job to take accurate patient history and provide patient education in the course of treating pelvic dysfunction. 1. Code of ethical conduct for physical therapists and physical therapist assistants: Clarification in (B)(7)(b) that conversations with a patient must not be "sexual in nature" rather than "sexually explicit."
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I am in favor of all components of all proposed changes in 4755-23-10 and 4755-27-05. Thank you for asking for public feedback. That inspires trust.
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11. 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?

None.

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- 12. 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 Board did consider its own disciplinary experiences and looked at the codes of ethics of other professions and of the American Physical Therapy Association.

- 13. 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.***

No. The process used for discipline is laid out by Chapter 119 of the Ohio Revised Code.

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

Examination of laws and rules and the policies of the American Physical Therapy Association.

- 15. 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 Board will notify license holders of the rule changes. The Board also administers examinations on laws and rules and changes will be included in the content.

Adverse Impact to Business

- 16. 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; and**
10,275 licensed physical therapists and 8,775 licensed physical therapist assistants and the businesses for which they work.
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and**
The Board may issue a warning, fine, suspend, revoke, required continuing education, and require ethics education for violations of this rule.
- 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.

To obtain a license, you must obtain the requisite amount of higher education, take and pass the National Physical Therapy Exam (\$485), take and pass the Ohio laws and rules

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exam (\$94.50), get a criminal background check done (\$47.25), and you may need to send verification of licensure from another state.

Fines as a result of violations of this rule may vary from \$25 to several thousand, depending on the violation and the severity.

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

This regulation fulfills the basic mission of the agency and public perception of protection.

Regulatory Flexibility

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

No. Every licensee must meet the same standard for providing care, regardless of setting.

19. 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?

The Board takes into account first time violations when issuing discipline. Our disciplinary guidelines often result in a warning for a first offense.

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

Anyone can call us, fax us, email us, visit us, and message us on facebook and receive a response during business hours and a reply by the next day.