Ohio | Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: State Medical Board of Ohio

Rule Contact Name and Contact Information:

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

Hearings rules 4731-13

Rule Number(s): 4731-13-01, 4731-13-02, 4731-13-03 amended 1/5/21, 4731-13-04, 4731-13-05, 4731-13-06, 4731-13-07, 4731-13-07.1, 4731-13-08, 4731-13-09, 4731-13-10, 4731-13-11, 4731-13-12, 4731-13-13, 4731-13-14, 4731-13-15, 4731-13-16, 4731-13-17, 4731-13-18, 4731-13-20, 4731-13-20.1, 4731-13-21, 4731-13-22, 4731-13-23, 4731-13-24, 4731-13-25, 4731-13-26, 4731-13-27, 4731-13-28, 4731-13-30, 4731-13-31, 4731-13-32, 4731-13-33, 4731-13-34, 4731-13-35, and 4731-13-36.

Date of Submission for CSI Review: 10/23/20; 1/5/21

Public Comment Period End Date: 11/6/20; 1/22/21

Rule Type/Number of Rules:

New/___ rules
No Change/___X_ rules (FYR? ___)
Amended/__X_ rules (FYR? ___)
Rescinded/__ _ rules (FYR?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.

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.

4731-13-01 Representatives; Appearances

The rules sets forth definitions and requirements for respondents to represent themselves or have attorney representatives in hearings under Chapter 119 of the Revised Code.

- The rule is proposed to be amended to clarify required information in an attorney withdrawal notice in paragraph (F).

4731-13-02 Filing request for hearing.

The rule establishes the requirements for a respondent to file a request for hearing.
• No change proposed.

4731-13-03 Authority and duties of hearing examiners
The rule establishes the authority and duties of the hearing examiners for the State Medical Board of Ohio.
• No change proposed. **Update: Proposed amendment to add paragraph (J) to allow for hearings to be conducted via live, real-time video upon the motion of a party or the hearing examiner.**

4731-13-04 Consolidation

The rule establishes that either party may consolidate two or more hearings into a single hearing.
• No change proposed.

4731-13-05 Intervention

The rule states that petitions to intervene shall not be permitted.
• No change proposed.

4731-13-06 Continuance of hearing

The rule sets for the requirements for either party to request a continuance of a scheduled hearing.
• Amendment to paragraph (A) to correct a typographical error.

4731-13-07 Motions

The rule sets forth requirements for filing motions.
• An amendment is proposed to add "pdf" to attachments for clarification.

4731-13-07.1 Form and page limitations for briefs and memoranda.

The rule sets forth requirements for filing briefs and memoranda.
• Amendments are proposed to correct a typographical error and to clarify in paragraph (B) that memoranda filed in contravention of the rule will be permitted but pages beyond fifteen will not be considered.

4731-13-08 Filing

The rule sets forth filing requirements.
• An amendment is proposed to add a filing option through an electronic filing system

4731-13-09 Service

The rule sets forth service requirements for filing documents in hearings before the State Medical Board.
• An amendment is proposed to add an option for filing through an electronic filing system.

4731-13-10 Computation and extension of time.

The rule sets forth requirements for requesting extensions and establishes how dates will be calculated.
• No change proposed.

4731-13-11 Notice of hearings.

The rule establishes how notices of hearing dates, times and locations will be provided to the parties.
• No change proposed.

4731-13-12 Transcripts

The rule establishes procedures regarding transcripts of hearings.
• No change proposed.

4731-13-13 Subpoenas for purposes of hearing

The rule sets forth the requirements the parties and the Board must follow when requesting subpoenas for witnesses or documents for use at hearings.
• An amendment is proposed regarding the date of compliance.

4731-13-14 Mileage reimbursement and witness fees

The rule sets forth requirements for payment of mileage reimbursement and fees for witnesses.
• No change proposed.

4731-13-15 Reports and recommendations

The rule sets forth detail regarding hearing examiner reports and recommendations, filing objections, and the parties' requests to address the Board when considering the report and recommendation.
• An amendment to paragraph (G) is proposed to require a request to address the Board to be made at least seven days prior to the Board meeting.

4731-13-16 Reinstatement or restoration of certificate

The rule provides detail for requirements when a disciplinary action results in a suspension from practice.
• An amendment is proposed to correct a typographical error in paragraph (B).

4731-13-17 Settlements, dismissals, and voluntary surrenders
The rule establishes requirements for settling or dismissing matters before the Board.

- An amendment is proposed in paragraph (C) to accurately reflect the timing of the signature by the enforcement attorney or assigned assistant attorney general.

4731-13-18 Exchange of documents and witness lists

The rule establishes timeframes and requirements for the parties to exchange documents to be used at the hearing and witness lists.
• No change proposed.

4731-13-20 Depositions in lieu of live testimony

The rule sets forth the conditions under which testimony may be taken by deposition in lieu of live testimony.
• No change proposed.

4731-13-20.1 Electronic testimony

The rule sets for the conditions under which testimony may be taken telephonically or via video.
• No change proposed.

4731-13-21 Prior action by the state medical board

This rule establishes that the hearing examiner shall admit evidence of any prior action entered by the board against the respondent.
• No change proposed.

4731-13-22 Stipulation of facts

The rule states that parties may agree on any or all facts involved in proceedings before the hearing examiner.
• No change proposed.

4731-13-23 Witnesses

The rule establishes requirements and rights of witnesses appearing before the hearing examiner in a board hearing.
• No change proposed.

4731-13-24 Conviction of a crime

The rule states that a certified copy of a plea of guilt or judicial finding of guilt is conclusive proof of the commission of all elements of the crime.

• No change proposed.

4731-13-25 Evidence

The rule establishes how the hearing examiner will determine admissibility of evidence.
• No change proposed.

4731-13-26 Broadcasting and photographing administrative hearings

The rule sets forth the conditions under which hearings may be broadcast or participants photographed.
• No change proposed.

4731-13-27 Sexual misconduct evidence

The rule sets forth requirements related to sexual misconduct evidence.
• No change proposed.

4731-13-28 Supervision of hearing examiners

The rule sets forth the supervision structure for the board's hearing examiners.
• No change proposed.

4731-13-30 Prehearing conference

The rule sets forth details regarding prehearing conferences.
• No change proposed.

4731-13-31 Transcripts of prior testimony

This rule sets the requirements for use of transcripts of prior testimony.
• No change proposed.

4731-13-32 Prior statements of the respondent

The rule states that prior statements of the respondent shall not be excluded on the basis of hearsay.
• No change proposed.

4731-13-33 "Physicians' Desk Reference"

The rule states that the Board and hearing examiners may use the Physicians Desk Reference for information regarding FDA approved labeling for dangerous drugs.
• An amendment is proposed to allow usage of the US National Library of Medicine at medlineplus.gov

4731-13-34 Ex parte communication

The rule sets forth requirements and prohibitions related to ex parte communication with the board members and hearing examiners.
No change proposed.

4731-13-35 Severability

The rule provides clarification regarding the applicability of the rules.
• No change proposed.

4731-13-36 Disciplinary actions

The rule sets forth definitions of all the disciplinary actions available to the Board.
• No change proposed.

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.**

Statutory authority: 4730.07, 4731.05, 4759.05, 4760.19, 4761.03, 4762.19, 4774.11, 4778.12

Amplifying statutes: 119.06, 119.07, 119.08, 119.09, 119.094, 4730.25, 4731.05, 4731.22, 4731.23, 4759.07, 4760.13, 4761.09, 4762.13, 4774.13, 4778.14

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.**

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 rules provide detail and clarity for licensees, applicants, and their legal counsel participating in matters before the Board and its hearing examiners.

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

The success of these regulations is measured in licensees, applicants and their legal counsel being aware of and complying with the rule requirements, which allow for the efficient running of hearings before the Board's hearing examiners.

7. **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.

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.

Interested parties that have requested notification of proposed rule changes, including the Ohio Academy of Family Physicians, Ohio State Medical Association, Cleveland Clinic Foundation, Ohio Osteopathic Association, Ohio Foot and Ankle Association, were notified via email on 8/26/20.

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

The Board received no external comments. The Board received comments from its staff and assigned Assistant Attorneys General.

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?**

The proposed rules are not amenable to scientific data.

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?

Amendments are proposed to modernize the rules to allow for an electronic filing system and other modifications that more accurately reflect current processes.

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.***

The proposed rules are performance based.

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

The rules are tailored to only apply to hearings before the State Medical Board of Ohio. The rules are in line with the requirements of Chapter 119 of the Revised Code.

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 rule will be posted on the Medical Board's website. Medical Board staff members are available by telephone and e-mail to answer questions.

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

The business community impacted is composed of medical board applicants and licensees who have received a notice of opportunity for hearing from the Board.

Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); Individuals who receive disciplinary orders from the Board are subject to fines, license revocation or suspension, and conditions for reinstatement or probation, such as taking remedial courses.

and

b.

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.

Medical Board licensees and applicants involved in hearings before the Board may be required to engage in significant time to present their defense and the individuals may choose to hire attorneys or medical experts at their own expense.

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

The rules provide clear, concise information on the requirements for licensees and applicants appearing before the Board and its hearing examiners. The rules in this format are a helpful resource for individuals preparing for and participating in hearings before the Board.

Regulatory Flexibility

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

No. All respondents are subject to the same rules related to hearings before the Board. Due process requires all individuals to be treated equally with respect to the hearing rules.

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? This is not applicable to these rules, as the rules apply after the Board has initiated formal action.

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

Board staff is available to answer questions regarding the rules. The rules are posted and are available on the Board's website.