



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

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):

Ethical and professional conduct – orthotics, prosthetics, pedorthics

Rule Number(s): 4755-64-01

Date of Submission for CSI Review: 10/27/2021

Public Comment Period End Date: 11/12/2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ 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Rescinded/___ rules (FYR?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.

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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.

The rule establishes a set of expectations for ethical and professional conduct. When comparing the rule that governs the orthotics, prosthetics, and pedorthics licensees, there were some glaringly absent categories of behavior that were absent when compared to the other OTPTAT amendments. Examples include:

1. Prohibition on billing for services not provided.
2. Prohibition on falsifying and destroying records and requiring accurate records.
3. Prohibition on patient abandonment.
4. Updating the sexual conduct and harrassment provisions.
5. Requiring cooperation with the OTPTAT Board.

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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.**

ORC 4779.08

ORC 4779.28, 4779.29, 4779.30, 4779.99

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.

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 Board's purpose is public protection. In order to pursue that mission, there needs to be baseline set of ethical standards by which licensees can practice.

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

Successful compliance with ethical conduct and the ability to discipline those who do not live up to the standards.

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.

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 rules were sent out to the licensees for comment 8/24/2021-9/7/2021.

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

One comment:

Assuming the proposed Summary of Changes to the Ethical and Professional Conduct, as indicated, updates the orthotics, prosthetics, and pedorthics ethics rule additions line up with the rest of the OTPTAT professions and the language in House Bill 110, I would certainly support these changes.

Thank you for the opportunity to respond to these OP&P Rule Changes.

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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.

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?

The statute prescribes that this rule should be promulgated.

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 disciplinary process is well established through ORC 119 and court precedent.

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

Review of Codes of ethics from the other OTPTAT professions and other OPP rules.

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.

This rule will apply equally to all licensees.

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

All orthotics/prosthetics/pedorthotics license holders and the businesses for which the work.

Discipline could result in fines, remedial courses, suspension (time off work), or even revocation if the offense is serious enough.

The Board only receives a couple of cases in this profession per year.

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

The Board’s purpose is to uphold ethical behavior. This rule is the backbone of that mission.

Regulatory Flexibility

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

No. This rule is directed at individual license holders.

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?

First time offenses are taken into account as a factor when deciding discipline.

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

The Board and staff are available and ready to assist at anytime. Reachable on email, phone, and the website contains an abundance of information on rules and compliance.