



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: State Board of Psychology

Rule Contact Name and Contact Information:

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

Psychology Board HB263, Training Flexibility, and Professional Conduct Correction

Rule Number(s): 4732-9-01, 4732-9-02, 4732-13-03, 4732-17-01

Date of Submission for CSI Review: 10/28/21

Public Comment Period End Date: 11/12/21

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR? N/A)

Amended/ 4 rules (FYR? No)

Rescinded/ 0 rules (FYR? N/A)

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.

Proposed Amendments

4732-9-01 Requirements for admission to the examination for a psychologist license.

This rule reiterates statutory requirements and sets forth specific educational and supervised training requirements for psychologist licensure. The rule contains reference to required “good moral character,” which is being deleted in response to a statutory change that eliminated “good moral character” from ORC 4732.10 (B)(2) in HB263 (133rd GA, effective October 9, 2021). There are also proposed changes in this rule to foster flexibility by allowing psychological training supervision to occur via distance communication (telepsychology). In addition, proposed changes would strike current (A) because it is no longer relevant and can be removed. The rule proposed to be struck was retained as written to account for training that was ongoing when we last updated the rules in 2015, and text says the rule is only relevant “if the training experience began prior to the effective date of this rule.” That was six (6) years ago, so any training that started prior to 2015 is no longer subject to falling under this rule.

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The other proposed amendments would allow for training supervision meetings to be conducted via real-time audiovisual communication. Instead of requiring supervision meetings to be in-person, the rule change would also allow them to be conducted virtually. There is no change to the amount of supervision required. The Board has been allowing virtual supervision to replace in-person supervision throughout the COVID emergency for obvious reasons, and issued a statement waiving the in-person supervision requirements through December 2021. Now, the Board and the training community seek to make that change permanent because virtual supervision has a track record and provides for more flexibility without compromising the supervision process. It is worth noting that many states are going in this direction. For example, Texas amended its requirements in early 2021.

4732-9-02 Requirements for admission to the examination for a school psychologist license.

This rule reiterates statutory requirements and sets forth specific educational and supervised training requirements for psychologist licensure. The rule contains reference to required “good moral character,” which is being deleted in response to a statutory change that eliminated “good moral character” from ORC 4732.10 (C)(3) in HB263 (133rd GA, effective October 9, 2021).

4732-13-03 Supervision definitions.

This rule contains definitions specific to the conduct of supervision for the training of psychologists. Amendments are proposed to definitions in this rule to account for and be parallel with the proposed changes to OAC 4732-9-01.

4732-17-01 Rules of Professional Conduct

This lengthy rule contains the standards against which license holders’ professional conduct is measured. The proposed amendment would serve as a correction, in that 4732-17-01 (C)(1)(c) was inadvertently left blank in the current published rule following our most recent filing of this rule in 2019. Apparently when the rule was last amended, the language intended for (C)(1)(c) was not appropriately uploaded, leaving a blank space. The proposed amendment contains the language that will correct/complete this rule—specifically, the rule would put license holders on notice of prevailing standards of care that custody recommendations may never be made in the context of a treatment relationship with an adult [this is already addressed properly in (C)(1)(b)] or a treatment relationship with a child [adding the language approved by a May 24, 2019 stakeholder workgroup to (C)(1)(c)]. The BIA that included reference to the stakeholder group that reached consensus on the

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amendment was submitted to CSI on August 6, 2019. Because the proposed amendment here was obviously left off the 2019 update by mistake, we are not reconvening a stakeholder group to reach consensus on it. The rule is a standard ethical provision that prohibits custody opinions from psychologists treating children because it is a clear conflict of interest.

- 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 4732.06

- 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.**

There are no federal requirements to exceed.

- 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)?**

These rules are integral to the State Board of Psychology's statutory mission to regulate the practice of psychology, including rules governing training supervision requirements for licensed supervisors and unlicensed psychology trainees. 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 will continue to review rules for continuation, amendment or rescission to clarify requirements and reduce confusion and redundancy.

- 7. 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 after receipt of correspondence from license holders involved in the pre-licensure training supervision of psychologists.

- 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.

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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 Board solicited feedback from psychologists in the training community to gauge appropriateness of updating 4732-9-01 and 4732-13-03 to allow for supervision to be conducted virtually via synchronous audiovisual communication vs. insisting that a minimum amount of supervision be conducted in-person (what the current rule requires). Feedback was overwhelming that the training of psychologists would not suffer if the in-person supervision requirement were eliminated. In fact, feedback from license holders indicates that the flexibility, convenience, and efficiency of supervision has been enhanced by virtual options during the COVID-19 crisis and that the option should be permanent. Correspondence in support of these changes was received from nearly twenty (20) psychologist stakeholders in academic and clinical service settings.

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

In August 2021 a preliminary call for comment was announced by email blast in anticipation of this proposed rule filing—a request for positions in support of and in opposition to allowing supervision via telepsychology. The Board received approximately sixteen (16) letters (some of them were co-signed) from Ohio psychologists in support of amending rules to allow for training supervision via distance technology. The letters are consistent in their rationale and justification that “virtual” supervision, first embraced to foster mandatory social distancing and public health strategies, has rapidly become an efficient and standard part of the graduate education of psychologists. For example, an excerpt from a letter received from psychology professors/clinical training directors in Ohio provide summaries of the issues found in all letters:

“In the past year and a half telesupervision has not only allowed our clinic to continue operating as a vital training site for our clinical psychology PhD students, it has enhanced multiple aspects of the supervision we offer. In addition, telesupervision has streamlined access to supervisors for our clinicians and has allowed me to employ supervisors who in the past have been too far away for our students to travel to. Of note, feedback from our students regarding telesupervision has been overwhelmingly positive, with many urging me to continue the practice in the months and years to come. Having now developed well established policies and procedures for safe, HIPAA compliant telesupervision, a return to

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the former rule would be a step backward in our mission to train effective clinical psychologists. It is my hope that a permanent rule change would allow my staff and I to develop a blend of in-person and tele supervision options that best meet the needs of our students and, as a result, provide the best possible benefit to our clients....”

“I am writing this letter to express my strong support for making telesupervision permanently allowed in the state of Ohio. Telesupervision has been an extremely useful tool for our center and I believe the use of telesupervision helps prepare our students for the future.”

“I would argue that tele-supervision via digital platforms such as Zoom are just as effective as in-person supervision... we now are all well accustomed to the use of synchronous face-to-face platforms such as Zoom to communicate; we have been able to hold meaningful conversations with supervisees about client needs, case conceptualization, intervention skills, supervisee adjustment, and supervisee professional development...”

“When the COVID-19 pandemic shut down our university, we were able to successfully transition to a training clinic that provided teleservices consistent with state law and with guidance from APA so that we continued to meet standards of accreditation. Most of our supervisors, who are predominantly core faculty in our training program, found that the switch to telesupervision did not harm the supervisory relationship and did not diminish the quality of supervision (the one exception encountered technical difficulties). In fact, in some ways supervision was enhanced; supervisors found the ease with which they could readily access session videos and review them with their supervisees to be a major benefit. For example, the HIPAA-compliant technology used to record sessions was the same that could be used in supervision and could be easily reviewed (including with transcripts) and easily marked for points in the tapes to focus on during supervision.”

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?

N/A. The support for rule amendments is not measurable, although it reflects the professional judgment and experience of members of Ohio’s psychology training community.

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 deletion of “good moral character” as a licensure requirement is not optional. The Board considered leaving the supervision rules as-is, although the opinion in the training

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community is strong in support of the amendments. In addition, Board members involved in the training of psychologists share the view that there should not be a requirement that supervision take place only in-person.

- 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 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.

- 14. 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.

- 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.**

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

- 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**

Licensed psychologists who conduct training supervision (approximately 500) and who do psychotherapy with adults and/or children involved in domestic relations litigation.

- b. Identify the nature of all adverse impact (e.g., 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.

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Money: This package does not contain rules specifying fees charged by the Board for various services and processes and complying with these rules per se do not involve the expenditure of money.

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.

\$0

17. 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 working under regulations that are clear and as flexible as possible while maintaining health a safety. 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 not 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

18. 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.

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?

These rules do not involve waiver of paperwork violations.

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

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.

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