



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information: Nathan T. Smith (Nathan.Smith@med.ohio.gov and 614-466-4341)

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

Rule Number(s): 4731-22-01 (new), 4731-22-01 (rescind), 4731-22-02 (rescind), 4731-22-03 (rescind), 4731-22-04 (rescind), 4731-22-06 (rescind), 4731-22-07 (rescind), and 4731-22-08 (rescind)

Date of Submission for CSI Review: 11/02/23

Public Comment Period End Date: 11/17/23

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ 7 rules (FYR? yes)

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

House Bill 33 (135th GA), effective October 3, 2023, included new laws that allow all Medical Board licensees, except training certificate holders (MD, DO, and DPM), and limited permit holders for respiratory care and dietetics, to place their license on retired status through an application process. The new statutes authorize the Medical Board to adopt rules to implement and enforce the statutes.

Because one of the retired license status laws (R.C. 4731.283) effectively supersedes the current emeritus registration rules for retired physicians and massage therapists, the proposed rules rescind all emeritus registration rules in OAC Chapter 4731-22. In addition, one new rule 4731-22-01 implementing the retired license statutes will replace the rescinded rules and provide definitions of the terms “active registration with the federal drug enforcement administration”, “retired”, and “licensee” in paragraph (A) of the new rule. Paragraph (B) states that licensees shall follow the statutory requirements for obtaining retired status. Also, paragraph (C) converts holders of current emeritus registration to retired status. The rules are as follows:

Rule 4731-22-01 Retired License Status – Proposed new rule

Rule 4731-22-01 Definitions. – Proposed to be rescinded

Rule 4731-22-02 Application. – Proposed to be rescinded

Rule 4731-22-03 Status of registrant. – Proposed to be rescinded

Rule 4731-22-04 Continuing education requirements. – Proposed to be rescinded

Rule 4731-22-06 Renewal cycle of fees. – Proposed to be rescinded

Rule 4731-22-07 Change to active status. – Proposed to be rescinded

Rule 4731-22-08 Cancellation of or refusal to issue an emeritus registration. – Proposed to be rescinded

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.

4731-22-01 (new):

Authorized by: 4730.07, 4730.141, 4731.05, 4731.283, 4759.05, 4759.064, 4760.062, 4760.19, 4761.03, 4761.062, 4762.062, 4762.19, 4774.062, 4774.11, 4778.072, and 4778.12.

Amplifies: 4730.141, 4731.283, 4759.064, 4760.062, 4761.062, 4762.062, 4774.062, and 4778.072.

4731-22-01 (rescind):

Authorized by: 4731.05

Amplifies: 4731.22, 4731.34

4731-22-02 (rescind):

Authorized by: 4731.05, 4731.15

Amplifies: 4731.15, 4731.281

4731-22-03 (rescind):

Authorized by: 4731.05

Amplifies: 4731.22, 4731.34

4731-22-04 (rescind):

Authorized by: 4731.05, 4731.15

Amplifies: 4731.22, 4731.281

4731-22-06 (rescind):

Authorized by: 4731.05

Amplifies: 4731.15, 4731.281

4731-22-07 (rescind):

Authorized by: 4731.05, 4731.15

Amplifies: 4731.15, 4731.22, 4731.222, 4731.281

4731-22-08 (rescind):

Authorized by: 4731.05, 4731.07, 4731.15

Amplifies: 4731.22, 4731.281

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 implements a federal requirement, but 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)?**

HB 33 authorized the Board to adopt rules to implement and enforce the new laws providing retired license status as an option for almost all Medical Board licensees that are retiring. New proposed rule 4731-22-01 implements the new laws with only the minimal regulations needed to implement the very detailed new retired license status statutes. This includes defining terms, directing licensees to follow the statutory requirements for obtaining retired license status, and converting holders of current emeritus registration to retired license status.

Because R.C. 4731.283, the retired license status law for physicians and massage therapists, effectively supersedes the emeritus registration rules for physicians and massage therapists, the Board is also proposing to rescind all of the emeritus registration rules. Proposed new rule 4731-22-01 converts emeritus registration holders to retired license status to preserve all the benefits of emeritus registration under the new title of retired license status.

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

The success of the regulations will be measured by the ability of all Medical Board licensees, not just physicians and massage therapists, to choose retired status for their license as an alternative to just letting their license expire. Also, the success of the regulations will be measured by licensee compliance with the rule and minimal questions from licensees as to the meaning of the plain language of the rules.

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 proposed rules were distributed for the initial circulation and written comment as follows: (1) posted on the Medical Board website on September 14, 2023; (2) circulated to associations and other interested parties (including, but not limited to Ohio State Medical Association, Ohio Osteopathic Association, Ohio Association of Physician Assistants, Ohio Academy of Nutrition and Dietetics, and Ohio Society for Respiratory Care) via email on September 15, 2023; and (3) sent by email to all Medical Board licensees on September 25, 2023 in the Medical Board's September eNews which included a link to the proposed rules posted on the Board website. The comments were due on or before September 29, 2023.

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

During the initial circulation comment period, the Medical Board received comments from William Clegg and the Ohio Academy of Nutrition and Dietetics (OAND). Both comments were positive. OAND also noted that the statutory fee was expensive and could deter some dietitians from seeking to pursue retired status. Because the comments were positive and/or related to a matter beyond the rules (the statutory fee), these comments did not require changes to the proposed rules.

- 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 Medical Board did not use scientific data because the proposed rules simply implement new statutes that give Medical Board licensees who are retiring the ability to put their license in retired status an alternative option to letting their license expire.

- 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

Because the Medical Board's proposed rules implement the new laws for retired status for Medical Board licensees, the Medical Board did not consider alternative regulations.

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

The Board's proposed rules implement the recently passed retired license status laws so there are no preexisting rules. Because one of those laws (R.C. 4731.283) effectively supersedes the emeritus registration rules for physicians and massage therapists, the Board proposes to rescind all the emeritus registration rules to avoid duplication. Emeritus registration holders are proposed to be converted to retired license status under proposed new rule 4731-22-01.

14. 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 rules will be posted on the Medical Board's website; information concerning the rules will be included in materials emailed to licensees; and notices will be sent to associations, individuals, and groups. Medical Board staff members are available by telephone and email to answer questions. In addition, Medical Board staff members also give presentations to groups, associations, and advisory councils on regulations affecting relevant licensee types.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The rules do not mandate any action as a retiring Medical Board licensee could just let their license expire. However, if a licensee wants to receive retired license status, they may submit an application for retired status.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

The nature of the adverse impact is that retired license status is only available to Medical Board licensees. If a Medical Board licensee with an active license chooses to apply for the optional retired license status, the applicant must complete and submit an application and pay the statutory fee which is equal to the current restoration fee for that license type. The Medical Board may take disciplinary action including a monetary fine against a licensee on retired status or an applicant for violations of the retired status statutes or rule.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No.

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

The proposed rules allow for an honorable and dignified retirement for Medical Board licensees. The decision to obtain this retired license status is optional and a retiring licensee still retains the option of simply letting their license expire.

Regulatory Flexibility

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

Because the rules do not mandate any action or activity, there are no exemptions or alternative means of compliance for small businesses. It is a licensee's choice whether to apply for and obtain retired license status.

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?

Due process requires the Medical Board to consistently apply its rules so that all licensees are treated equally.

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

In addition to resources on the Medical Board website, Medical Board staff members are available by telephone and email to answer questions.

4731-22-01

Retired License Status.

(A) For purposes of this chapter:

(1) “Active registration with the federal drug enforcement administration” means any active registration with the federal drug enforcement administration in any state.

(2) “Licensee” means a person holding an active license with the Medical Board under Chapters 4730., 4731., 4759., 4760., 4761., 4762., 4774., or 4778. of the Revised Code except physician training certificate holders or limited permit holders in dietetics or respiratory care.

(3) “Retired” means that a licensee of the board has retired from the practice of the licensed profession in this state and is not practicing that licensed profession in this state under any circumstances.

(B) To obtain retired license status, a licensee shall file the appropriate application with the board that complies with all requirements in section 4730.141, 4731.283, 4759.064, 4760.062, 4761.062, 4762.062, 4774.062, or 4778.072 of the Revised Code. This includes an attestation that the licensee has retired voluntarily from practice in the licensed profession and, if applicable, that the licensee does not hold an active registration with the federal drug enforcement administration.

(C) Any person holding current emeritus registration status before October 3, 2023, shall automatically be converted to retired license status on that date. Those persons shall comply with the requirements in divisions (C) and (D) of section 4731.283 of the Revised Code to maintain the retired license status. To reactivate a license after it has been converted to retired status, those persons shall comply with the requirements in divisions (E) and (F) of section 4731.283 of the Revised Code for reactivating a license placed in retired status.

4731-22-01

Definitions.

As used in Chapter 4731-22 of the Administrative Code:

- (A) "Active" is a status that means an individual may perform acts that would constitute the practice of medicine requiring a license.
- (B) "Board" means the state medical board of Ohio.
- (C) "Registrant" means an individual who holds an emeritus registration.
- (D) "Retired" is a status that means an individual has no active license in Ohio.

4731-22-02

Application.

- (A) Any practitioner duly licensed to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, massage therapy, or cosmetic therapy in this state for at least ten years who declares that he or she is retired and no longer in active practice in Ohio may apply to the board for emeritus registration.
- (B) The practitioner may do so by indicating on his or her biennial registration form or in written correspondence to the board the wish to apply for emeritus status and including the following information:
 - (1) He or she is in fact retired as that term is defined in rule 4731-22-01 of the Administrative Code and is no longer in active practice in Ohio; and
 - (2) He or she has not been the subject of disciplinary action in Ohio resulting in the revocation, suspension, probation, reprimand, or any other limitation of the practitioner's license to practice.

4731-22-03

Status of registrant.

The emeritus registration is not a license to engage in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery. Emeritus registrants shall not engage in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery. Emeritus registrants may refer to themselves as doctor, if previously licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, but may not hold themselves out to others as actively engaged in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery.

TO BE RESCINDED

*** DRAFT - NOT YET FILED ***

4731-22-04

Continuing education requirements.

The continuing medical education requirements of Chapter 4731. of the Revised Code and agency-level 4731 of the Administrative Code are not applicable to emeritus registration.

TO BE RESCINDED

*** DRAFT - NOT YET FILED ***

4731-22-06

Renewal cycle of fees.

Being registered as emeritus will not subject an individual to the annual renewal cycle or renewal fees.

4731-22-07

Change to active status.

(A) A registrant may apply to change to active status by completing the following:

- (1) If the application is received no more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a reinstatement application.
- (2) If the application is received more than two years after the date the registrant's Ohio license expired, the registrant shall have submitted a restoration application.

(B) The reinstatement or restoration application shall include all of the following.

- (1) Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.
- (2) Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code if the registrant is a physician or pursuant to section 4731.15 of the Revised Code if the registrant is a massage therapist.
- (3) Submission of any other information required by the board.

(C) In the event the holder of an emeritus certificate applies for restoration after two years from the date the registrant's Ohio license expired or if the registrant has not engaged in practice for more than two years, the board may require the applicant to demonstrate present fitness to practice pursuant to section 4731.222 of the Revised Code.

TO BE RESCINDED

*** DRAFT - NOT YET FILED ***

4731-22-08

Cancellation of or refusal to issue an emeritus registration.

The board may refuse to issue or may cancel a registrant's emeritus registration for acts or conduct that the secretary and supervising member deem to be a violation of any provision of Chapter 4731. of the Revised Code or this chapter of the Administrative Code. The decision to refuse to issue or to cancel a registrant's emeritus registration is not subject to hearing rights or appeal under Chapter 119. of the Revised Code.