



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Missy Anthony, Occupational Therapy, Physical Therapy, and Athletic Trainers Board

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: May 6, 2020

RE: **CSI Review – Code of Ethical Conduct for Physical Therapists and Physical Therapist Assistants (OAC 4755-27-05)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) office under Ohio Revised Code (ORC) section 107.54, the CSI office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI office's comments to the Board as provided for in ORC 107.54.

Analysis

This rule package contains one amended rule submitted by the Occupational Therapy, Physical Therapy, and Athletic Trainers Board (Board) as part of the statutorily required five-year review process. The package was submitted to CSI on February 10, 2020, and the public comment period was held open through February 24, 2020. Sixteen comments were received during that time and the Board provided its response on April 28, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI office on February 10, 2020.

The rule implements the physical therapy code of ethics for physical therapists and physical therapist assistants, including standards for ethical integrity and conduct, and cooperation with investigations by the Board. Proposed changes to the rule include an addition to require that licensees place the best interests of the patient over the interests of themselves, requiring that conforming to minimal standards of acceptable practice is based on currently available evidence, clarifying that a licensee must not cheat on the renewal jurisprudence module, adding legal guardian as a person who may provide informed consent, changing the prohibition on conversations with

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patients that are “sexually explicit” to “sexual in nature,” and adding a requirement that licensees providing pro bono service provide care according to the minimal standards of acceptable and prevailing practice. Additionally, the Board changed “licensee” to “license holder” and “shall” to “must” throughout the rule.

As part of early stakeholder outreach, the Board solicited feedback from all license holders and their professional organizations. Four comments received were supportive of the proposed changes, and one comment from a pelvic therapist expressed concern about the prohibition on conversations that are “sexual in nature,” because she often needs to discuss such matters with clients as part of their care. The Board noted that those circumstances would fall within the physical therapy plan of care, which is provided as an exception in the rule.

Sixteen comments were received during the CSI public comment period. Most of the commenters suggested clarifying that conversations with patients must not be sexual in nature but the language should not preclude licensees from discussing and answering appropriate, specific questions as they pertain to a patient’s treatment. The Board determined that the concerns about conversations that are sexual in nature reflected a misunderstanding of the changed language. The Board also stated that many commenters were satisfied with the change after it provided clarification to them in reply.

The rule impacts licensed Ohio physical therapists and physical therapist assistants, and the businesses for which they work. The Board may require continuing education or ethics education, suspend or revoke a license, or issue a warning or fine of up to several thousand dollars for violating the code of ethics. The Board asserted that its core mission is to protect the public, and that this rule is important to allow it to keep dangerous practitioners from patients and to correct harmful behavior.

Recommendations

For the reasons described above, the CSI office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI office recommends that the Occupational Therapy, Physical Therapy, and Athletic Trainers Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.