



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Kimberly Anderson, State Medical Board of Ohio

**FROM:** Ethan Wittkorn, Regulatory Policy Advocate

**DATE:** April 2, 2021

**RE:** CSI Review – Hearing Rules (OAC 4731-13-01, 4731-13-02, 4731-13-03, 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)

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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 State Medical Board of Ohio (Board) rule package consists of 10 amended and 25 no change rules. It was submitted to the CSI Office on October 23, 2020, and the public comment period was open through November 6, 2020. The Board submitted updated rules to CSI and held a second public comment period from January 5, 2021, to January 22, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 5, 2021.

The proposed rules cover policies and procedures regarding Board hearings. Amendments have been proposed to the rules to allow filings to be made electronically, require requests to address the Board be made seven days prior to the meeting rather than five, allow the use of the US National Library of Medicine as a reference for hearing examiners, correct typographical errors, update references,

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and add clarifying language.

During the period of early stakeholder outreach, the Board shared the proposed rules with stakeholders via email, including the Ohio Academy of Family Physicians, Ohio State Medical Association, Cleveland Clinic Foundation, Ohio Osteopathic Association, and the Ohio Foot and Ankle Association. No comments were received from stakeholders during the early stakeholder outreach period. Following the filing of the rules with CSI, the Board's hearings examiners made suggested edits to OAC 4731-13-03, that would allow hearing examiners or other parties involved to motion for a virtual hearing. The Board then held a second CSI public comment period, during which two comments were received. One comment regarding electronic filing was met with clarification that paper filings will still be accepted, and that electronic filings are now provided as an option. The second comment expressed concern over the ability of a hearing examiner to authorize a remote hearing, and the deadline to request a hearing being increased to seven days. In response, the Board stated that a hearing examiner could not unilaterally deny a right to confrontation, and that any motion by a hearing examiner could be appealed. Additionally, the Board stated that the deadline to request a hearing is meant to provide time for the Board to review material, and that late requests can still be considered. The Board also stated that if the Ohio State Bar Association issues guidelines on remote hearings, the rule will be revisited at that time.

Impacted communities include Medical Board applicants, and licensees who have received a notice of an opportunity for hearing by the Board. Potential adverse impacts identified by the Board include disciplinary action, potential expense to hire attorneys or medical professionals when necessary, and time needed to prepare and participate in hearings. The Board states that the rules are necessary to provide clarity on the requirements of licensees and applicants that appear before the Board, and to provide resources for those preparing for hearings.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.

