



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

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

**FROM:** Michael Bender, Business Advocate

**DATE:** September 22, 2022

**RE:** **CSI Review – Safe Haven program – impaired practitioners (OAC 4755:2-1-01, 4755-7-08, 4755-27-05, 4755-27-06, 4755-41-01, 4755-41-03, and 4755-64-01)**

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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 rule package consists of one new rule and six amended rules proposed by the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (Board) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on August 4, 2022, and the public comment period was held open through August 19, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 4, 2022.

Ohio Administrative Code (OAC) 4755:2-1-01, a new rule, authorizes the Board to conduct mental and physical examinations of those who have applied for licensure or have been licensed by the Board and establishes a safe haven program for licensees to undergo treatment for impairment due to drug abuse or other medical condition or illness without fear of disciplinary action by the Board. OAC 4755-7-08 contains the code of ethical conduct for occupational therapy. The rule is amended to incorporate the safe haven program with respect to impairment, list violation of confidentiality rights and failure to respect privacy rights as failure to adhere to minimal standards of prevailing practice, and require a license holder to disclose research that may pose a conflict of interest to those with

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whom the license holder may establish a working relationship. OAC 4755-27-05 contains the code of ethical conduct for physical therapists and physical therapist assistants. The rule is amended to incorporate the safe haven program and clarify that the patient-therapist relationship may extend beyond the established plan of care. OAC 4755-27-06 sets forth reporting requirements for physical therapy license holders. The rule is amended to update language and incorporate the safe haven program. OAC 4755-41-01 contains the code of ethical conduct for athletic trainers. The rule is amended to incorporate the safe haven program, state that athletic trainers may not engage in harassment that creates a hostile work environment, require athletic trainers to keep records of collaboration agreements, prohibit athletic trainers from engaging in sexual conduct or sexual contact with any patient or engaging in verbal behavior that is sexually demeaning to the patient, require athletic trainers to offer patients the ability to have a third person or chaperone in the room during an intimate exam or treatment, and update language and citations. OAC 4755-41-03 sets forth reporting requirements for athletic trainer license holders. The rule is amended to update language and incorporate the safe haven program. OAC 4755-64-01 contains the code of ethical and professional conduct for orthotics, prosthetics, and pedorthics. The rule is amended to incorporate the safe haven program and update language and citations.

During early stakeholder outreach, the Board sent the draft rules to license holders to review during a two-week period in late June and early July 2022. License holders largely expressed approval for the safe haven program, although a few had questions which the Board subsequently answered. The Board had previously discussed the safe haven program during its January and March 2022 meetings before voting to move forward with it in May 2022. Additionally, the Ohio Physicians Health Program, which will administer the safe haven program, reached out to the Ohio Occupational Therapy Association, the Ohio Physical Therapy Association, and the Ohio Athletic Trainers Association to answer questions that those organizations had. During the CSI public comment period, the Board received comments from six individuals from the professions that it regulates. Three of the individuals applauded the program, with one of those three asking whether a practitioner who caused injury or death to another person would be eligible for the program. The Board replied that a practitioner who caused egregious injury or death would not be accepted into the program and would be passed over to itself for enforcement action. One individual stated that requiring the program would not be the best course of action as it could be unavailable financially for some. The Board reassured the individual by saying that the safe haven program is voluntary. Two individuals called on the Board for additional support to assist healthcare workers with burnout. The Board did make some typographical and grammatical changes upon inquiry from the CSI Office.

The business community impacted by the rules includes all Ohio license holders as athletic trainers, occupational therapists, occupational therapy assistants, physical therapists, physical therapist assistants, physical therapists and physical therapist assistants as part of the Physical Therapy Compact, orthotics, prosthetics, and pedorthics. The adverse impacts created by the rules include fees

associated with the safe haven program, submitting to a mental or physical examination, and discipline for violations of practice such as warnings, fines, probation, remedial courses, suspension, and revocation. The Board states that the adverse impacts are justified to set the parameters of the safe haven program in order to get licensees back to work once they are able to overcome mental health or addiction challenges, while the code of ethics rules are necessary for public protection by explicitly stating when a practitioner is acting outside of their boundaries.

### **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.