



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Anne Gonzales, Ohio Vision Professionals Board

FROM: Jacob Ritzenthaler, Business Advocate

DATE: August 31, 2023

RE: CSI Review – Changes to Optometrist, Optician, and Ocularist Rules (OAC 4725-1-01, 4725-3-01, 4725-3-08, 4725-3-09, 4725-3-12, 4725-3-13, 4725-5-05, 4725-5-06, 4725-5-10, 4725-5-11, 4725-5-14 through 4725-5-19, 4725-7-01, 4725-7-06, 4725-9-02 through 4725-9-05, 4725-11-04, and 4725-16-03)

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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of twenty-four amended rules proposed by the Ohio Vision Professionals Board (Board) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 1, 2023, and the public comment period was held open through June 12, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 1, 2023.

The rules in this chapter set forth requirements for licensees of the Board, including requirements for examinations and license applications, misconduct, and continuing education for optometrists, opticians, and ocularists. Ohio Administrative Code (OAC) 4725-1-01 lists requirements for the Board to provide public notice prior to the adoption, amendment, or rescission of an administrative rule and is amended to update the name of the Board. OAC 4725-3-01 establishes requirements for licensure application, including required information and documents to be submitted with an application, examination content, and criminal background checks, as well as the list of definitions used throughout the chapter. The rule is amended to remove requirements for oculist licensure,

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introduce requirements for applicants for optometrist licensure to submit background checks to the Board prior to the issuance of a license, and reduce the number of hours of required supervised experience for spectacle dispensing opticians and spectacle-contact lens dispensing opticians. OAC 4725-3-08 establishes the requirements for licensure by endorsement of an optometrist or dispensing optician educated outside the US. The rule is amended to reorganize rule language and update requirements for reciprocity, including removing ocularist requirements. OAC 4725-3-09 concerns the issuance of license certificates and procedures for renewing certificates. Amendments to the rule include increasing the renewal period to two years, changing the grace period for renewal to within thirty days of the expiration date, and incorporating requirements for optometrist continuing education and license reinstatement which are to be rescinded in a separate rule package. OAC 4725-3-12 allows a member of the military or their spouse, if on active military duty in Ohio, to apply for a military license to practice as an optometrist or optician. The rule is amended to waive continuing education requirements for members on active duty and include clarifying edits. OAC 4725-3-13 is amended to list relevant fees for optometrists, opticians, and apprentices.

OAC 4725-5-05 lists relevant definitions to the codes of ethics for practitioners and fundamental rules for licensees and is amended to include a definition and clarification of “client.” OAC 4725-5-06 and 4725-5-10 address the splitting of fees and practicing under the control of an unlicensed person or corporation. The rules include amendments to change the term “general corporation” to “professional corporation” and make clarifying edits. OAC 4725-5-11 concerns record keeping requirements and is amended to reference the definition of a reasonable charge for copying patient records. OAC 4725-5-14 establishes procedures for reporting clinically induced reactions and is amended to update the name of the Board. OAC 4725-5-15 and 4725-5-16 require that licensees to notify the Board of changes in practice address, provide information on prescriptions for therapeutic pharmaceutical agents, display the names of all optometrists practicing at a location, and maintain standards of practice. The rules are amended to clarify language concerning certificates of licensure and name badges worn when in direct patient contact, as well as to remove requirements for ocularists. OAC 4725-5-17 requires optometrists to provide information regarding concerning eye examinations, including outlining fees associated with contact and spectacle fittings. The rule is amended for minor language updates. OAC 4725-5-18 allows for the delegation of duties to ancillary personnel by an optometrist, specifies the types of activities that may be delegated, and the supervision level required. OAC 4725-5-19 sets standards for utilizing controlled substances for self-use or use by a family member.

OAC 4725-7-01 and 4725-7-06 set forth requirements for the specifications included in a prescription for contact lenses and the release of a prescription to a patient following an examination and diagnosis. The rules include minor language amendments. OAC 4725-9-02 and 4725-9-03 establish requirements for optometrist and optician education programs and approval for continuing education programs. Amendments to these rules reflect the change to a biennial period and adjust relevant

timeframes and continuing education hours appropriately. OAC 4725-9-04 and 4725-9-05 allow for exemption from continuing education requirements and require optometrists to submit certificates of attendance at continuing education courses. OAC 4725-11-04 establishes the duties of the Board's director and is amended to remove unnecessary regulatory restrictions. OAC 4725-16-03 concerns the prescription of controlled substances and is amended to remove language regarding "therapeutic pharmaceutical agent certificates" and unnecessary references.

During early stakeholder outreach, the Board reviewed the proposed rules during three public meetings. The Board received comments during that time which prompted amendments to the rules. During the CSI public comment period, the Board received a comment from the National Association of Retail Optical Companies (NAROC) which suggested including amendments that would allow apprentices to work under the supervision of any licensed optician or optometrist within a business, instead of only licensees with which that the apprentice is registered. The Board did not make changes based on this comment, stating that statute requires apprentices to receive credit only for work done under the supervision of their registered supervisor. The Board did note that it is possible to register multiple supervisors, which would allow the apprentice to work even if one of the supervisors are not present. NAROC also suggested including additional language to clarify supervision requirements in the use of telehealth. After discussions between the CSI Office, the Board, and NAROC, the Board revised OAC 4725-5-18 to clarify that *general* supervision of ancillary personnel is required when a licensed optometrist provides telehealth services from a remote site and delegates ministerial and administrative duties, tasks, and functions to ancillary personnel. One comment was received that supported the proposed changes within the rules.

The business community impacted by the rules includes approximately 6,130 licensees. The adverse impacts created by the rules include the process for license application, submission of information to the Board, compliance with requirements for duty delegation and prescriptions, and record keeping. For optometrists, fees for licensure, renewal, and reinstatement cost \$350 and late fees cost \$125. For opticians, fees for licensure and renewal cost \$195 and late fees cost \$75. Apprentices must pay a \$20 fee for registration. The Board states that the adverse impacts are necessary to comply with statutory requirements and to provide license applicants with guidelines for obtaining licensure.

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.