



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Brian Carnahan, Ohio Counselor, Social Worker, and Marriage and Family Therapy Board

FROM: Michael Bender, Business Advocate

DATE: March 18, 2024

RE: CSI Review – Art and Music Therapy, Supervision, and Five Year Rules (OAC 4757-1-05, 4757-1-06, 4757-3-01, 4757-3-02, 4757-5-01, 4757-5-02, 4757-5-03, 4757-5-04, 4757-5-05, 4757-5-06, 4757-5-07, 4757-5-08, 4757-5-09, 4757-5-10, 4757-5-11, 4757-5-13, 4757-11-03, 4757-11-04, 4757-13-05, 4757-15-01, 4757-17-01, 4757-18-01, 4757-18-02, 4757-18-03, 4757-18-04, 4757-19-03, 4757-19-04, 4757-21-01, 4757-23-01, 4757-24-01, 4757-24-02, 4757-24-03, 4757-24-04, 4757-29-01)

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 eight new rules, twenty-two amended rules, and four no-change rules proposed by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board (Board) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on February 20, 2024, and the public comment period was held open through March 1, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 20, 2024.

Ohio Administrative Code (OAC) 4757-1-05 establishes fees for licenses issued by the Board. The rule is amended to incorporate licensed professional art therapists (LPATs) and licensed professional

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music therapists (LPMTs). OAC 4757-1-06 describes how the Board must maintain its personal information system. OAC 4757-3-01 contains definitions for terms used by the rules of the Board. The rule is amended to add definitions pertaining to the art therapy and music therapy licenses. OAC 4757-3-02 lists the abbreviations to be used by those licensed or registered by the Board to designate their titles. The rule is amended to add abbreviations for LPATs and LPMTs.

OAC 4757-5-01 declares that all licensees and registrants will be measured by the code of ethical practice and professional conduct. The rule is amended to update language and incorporate the codes promulgated by the American Music Therapy Association, the Certification Board for Music Therapists, the American Art Therapy Association, and the Art Therapy Credentials Board. OAC 4757-5-02 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to clients and consumers. The rule is amended to update language, add clarifying language, require licensees and registrants to obtain consent when providing services in public settings, prohibit the duplication of professional services, prohibit licensees and registrants from diagnosing or making a recommendation to anyone who is not a client, prohibit licensees and registrants from using clients or their information in media without consent, require licensees and registrants to obtain consent to perform any physical touching when rendering services, declare that a licensee acting as a supervisor may be subject to discipline for failure to fulfill the terms of a supervision agreement, prohibit licensees from accepting art materials from clients, state that art or music produced by the client is the client's property, require art therapists to provide a safe and functional environment, and require art therapists to be aware of the hazards of toxicity of art materials. OAC 4757-5-03 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to multiple relationships with individuals encountered in a professional or non-professional setting. The rule is amended to update language, include business relationships among the examples of multiple relationships, and state that licensees and registrants should decline gifts from clients.

OAC 4757-5-04 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to sexual relationships with clients. The rule is amended to update language. OAC 4757-5-05 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to impaired practice. The rule is amended to update language. OAC 4757-5-06 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to assessment and testing instruments. The rule is amended to update language. OAC 4757-5-07 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to research and publication. The rule is amended to update language. OAC 4757-5-08 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to payment for services. The rule is amended to update language. OAC 4757-5-09 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to recordkeeping. The rule is amended to update grammar,

remove unnecessary language, and provide guidelines for how art therapists and music therapists should handle art or music products. OAC 4757-5-10 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to reporting unethical actions. The rule is amended to update language. OAC 4757-5-11 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to change of name and/or address. The rule is amended to update language and reduce the reporting timeframe for a name or address change from ninety days to forty-five days. OAC 4757-5-13 establishes the standards of ethical practice and professional conduct for licensees and registrants with respect to teletherapy. The rule is amended to update language and add clarifying language.

OAC 4757-11-03 provides for the confidentiality of investigatory records. The rule is amended to update language, remove unnecessary language, and clarify who can grant access to investigation records. OAC 4757-11-04 sets forth the procedures for hearings before the Board. OAC 4757-13-05 establishes the policy for professional counselor and professional clinical counselor examination. The rule is amended to remove limits on the number of exam attempts, eliminate the requirement for a remediation plan, and require examinees to follow the re-take policy of the exam owner or administrator rather than wait ninety days. OAC 4757-15-01 establishes the scope of practice for a licensed professional counselor (LPC). OAC 4757-17-01 contains the supervision requirements for LPCs. The rule is amended to update language and citations, restructure the rule, clarify the responsibilities of supervisors and supervisees, differentiate between individual and group supervision, require the delivery of services in a non-discriminatory manner, remove a provision describing situations where a training supervisor and LPC are employed by the same agency, clarify that supervisors do not need to maintain supervision records, move the submission of supervision hours online, require supervisors to submit supervision hours when requirements are met, allow supervisors to not submit a recommendation if they believe a supervisee is not qualified, provide for the supervision of LPCs owning a solo private practice, and clarify the supervision of Ohio Chemical Dependency Professionals Board (OCPDB) licensees by licensed professional clinical counselors (LPCCs) and of Board licensees by OCPDB licensees.

OAC 4757-18-01, a new rule, outlines the qualifications for an LPAT. OAC 4757-18-02, a new rule, provides for the approval of applications for licensure as an art therapist. OAC 4757-18-03, a new rule, describes the application process for a reciprocal art therapy license. OAC 4757-18-04, a new rule, establishes the scope of practice for an art therapist. OAC 4757-19-03 specifies the requirements for a certificate of registration as a social work assistant. OAC 4757-19-04 establishes the policy for social worker examination. The rule is amended to remove limits on the number of exam attempts, eliminate the requirement for a remediation plan, and require examinees to follow the re-take policy of the exam owner or administrator rather than wait ninety days. OAC 4757-21-01 establishes the scope of practice for a registered social work assistant. The rule is amended to remove unnecessary language and clarify which type of advanced practice registered nurses may provide supervision of

a registered social work assistant. OAC 4757-23-01 contains the supervision requirements for licensed social workers (LSWs). The rule is amended to update language, add clarifying language, restructure the rule, clarify the responsibilities of supervisors and supervisees, differentiate between individual and group supervision, clarify which type of APRNs may provide supervision of an LSW, require the delivery of services in a non-discriminatory manner, and clarify the supervision of OCPDB licensees by licensed independent social workers (LISWs) and of Board licensees by OCPDB licensees, clarify that supervisors do not need to maintain supervision records, move the submission of supervision hours online, require supervisors to submit supervision hours when requirements are met, allow supervisors to not submit a recommendation if they believe a supervisee is not qualified, and prohibit an LSW from being in solo private practice.

OAC 4757-24-01, a new rule, outlines the qualifications for an LPMT. OAC 4757-24-02, a new rule, provides for the approval of applications for licensure as a music therapist. OAC 4757-24-03, a new rule, describes the application process for a reciprocal music therapy license. OAC 4757-24-04, a new rule, establishes the scope of practice for a music therapist. OAC 4757-29-01 contains the supervision requirements for licensed marriage and family therapists (MFTs). The rule is amended to update language, restructure the rule, clarify the responsibilities of supervisors and supervisees, differentiate between individual and group supervision, require the delivery of services in a non-discriminatory manner, clarify that supervisors do not need to maintain supervision records, move the submission of supervision hours online, require supervisors to submit supervision hours when requirements are met, allow supervisors to not submit a recommendation if they believe a supervisee is not qualified, provide for the supervision of MFTs owning a solo private practice, and clarify the supervision of Ohio Chemical Dependency Professionals Board (OCPDB) licensees by independent MFTs and of Board licensees by OCPDB licensees.

During early stakeholder outreach, the Board invited over 42,000 licensees and stakeholders on February 1, 2024, to submit comments on the rules. Stakeholders contacted by the Board included the National Association of Social Workers – Ohio Chapter, the Ohio Counseling Association, the Ohio Council of Behavioral Health & Family Services Providers (Ohio Council), the Buckeye Art Therapy Association, and the Association of Ohio Music Therapists. Many commenters asked questions for clarification regarding topics such as grandfathering provisions, license titles, scope of practice, and reporting supervision hours. The Board answered these questions by explaining how recent statutory changes creating the art therapy and music therapy licenses established what needed to be incorporated in rule. Some commenters expressed concerns regarding the receipt of gifts of nominal value. The Board responded by adding language clarifying when and how such gifts could be accepted. A couple of comments were also submitted regarding the Board’s proposal to eliminate limits on exam attempts and the elimination of remediation plans. The Board noted that both changes were based on reviews of requirements in other states as well as the knowledge that remediation plans did not result in higher pass rates. During the CSI public comment period, the Board received eleven

comments, including from an LPCC, an LSW, three LISWs with training supervision (LISW-S) designation, an art therapist, and individuals associated with the Ohio Council, Cleveland Clinic, Beavercreek City Schools (BCS), and Individual, Couple, and Family Therapy (ICFT).

The LPCC commenter encouraged the Board to add clear guidance with respect to the ability of licensed art therapists to diagnose and treat mental health issues. The Board replied that the authorizing statute did not include diagnosis in its provisions. The LSW pointed out that documenting and photographing client work can vary for art therapists depending on the setting. The Board explained that the licensee can note in the client's record any instances when the client takes art work or when it cannot be retained. The three individuals with LISW-S designations and the BCS commenter raised questions about the changes made to the requirements for training supervision and the submission of supervision hours. The Board provided answers to ease their concerns. The art therapist asked whether or not current registered art therapists would be grandfathered in with the new rules. The Board cited the applicable provision allowing such individuals to receive an art therapist license. The two commenters from the Cleveland Clinic expressed concerns about the proposed restrictions on who can call themselves an "art therapist." The Board replied that, legally, only those with an art therapist license could use that title. The Ohio Council supported the changes made with respect to supervision requirements for LPCs. The commenter from ICFT sought clarification regarding whether triadic supervision could count as individual supervision. The Board responded that triadic supervision could indeed be viewed as individual hours. Lastly, the Board made several technical and grammatical corrections to the rules.

The business community impacted by the rules includes counselors, social workers, marriage and family therapists, art therapists, music therapists, students, educators, education programs, and businesses that employ Board licensees. The adverse impacts created by the rules include the time and cost associated with licensure fees, obtaining the necessary education, passing examination, maintaining records and information, abiding by the standards of ethical practice and professional conduct, working within the proper scope of practice, and providing or receiving supervision. Licensure fees are established in rule. Failure to comply with the rules can result in discipline such as license suspension or revocation. The Board points out that the proposed changes should not result in the direct expenditure of financial resources or limit the ability of licensees to operate effectively business-wise. Changes to the rules will eliminate the requirement for multiple supervisors to submit supervision hours for dependent licensees seeking an independent license, which the Board says will result in time savings for supervisors. Furthermore, according to the Board, the elimination of the requirement to prepare a remediation plan will simplify the application process for applicants. The Board states that the adverse impacts to business are justified to implement statutory requirements and ensure public protection.

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.