CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: Part 2, Five Year Review Package

Rule Number(s): 4732-1-02, 4732-1-03, 4732-1-05, 4732-1-06, 4732-2-01, 4732-2-02, 4732-7-01, 4732-9-01, 4732-9-02, 4732-11-01, 4732-11-04 (rescind), 4732-11-05 (rescind), 4732-13-04, 4732-15-01, 4732-17-01, 4732-17-02 (rescind), 4732-17-02 (new), 4732-17-03

Date: November 19, 2014

Rule Type: X New

X Amended

X 5-Year Review

X Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

This is a 5-year review and also involves updates in response to HB83, effective March 20, 2014. A BIA has already been completed and no recommendations were received from the Common Sense Initiatives Office (CSIO) by letter dated July 18, 2014 for an initial package of change" rules submitted to CSIO on May 29, 2014. The following "no change" rules were included in that group, and will be filed with the current package: 4732-1-08, 4732-1-09, 4732-1-10, 4732-1-11, 4732-1-12, 4732-1-13, 4732-9-01.2, 4732-9-04, and 4732-11-03. Rule 4732-1-09.1 was proposed for rescission without recommendations from CSIO.

Proposed to be Amended

-Rule 4732-1-02 requires applicants to submit an application, transcripts of the doctoral degree, and statements verifying sufficient training hours or experience.

-Rule 4732-1-03 refers to fees (some set in law or with a range set in law) for the application and initial license (set in 4732.15), biennial renewal (set in 4732.14), license reinstatement penalty (permissive range in 4732.14), retaking a board jurisprudence examination (permissive based on 4732.06), and for an application to practice temporarily in Ohio without an Ohio license (permissive range in 4732.221).

-Rule 4732-1-05 requires license holders to display evidence of an active license with their wall certificate.

-Rule 4732-1-06 sets forth the procedures required to renew ("register") the license biennially and procedures for the reinstatement of an expired license and a license placed into "retired" status for a reduced fee of $50. The retired status was requested by older psychologists who wish to continue to refer to themselves as "psychologists" and to allay fears that just allowing the license to expire would prohibit that. The Board has never enforced use of the title "psychologist" among its retired license holders, but this was placed into law for this purpose.

-Rule 4732-2-01 addresses requirements on license holders for the completion sufficient approved mandatory continuing education (MCE) biennially as part of the license renewal process.

-Rule 4732-2-02 addresses requirements and procedures for license holders to follow to have MCE filed with one of the professional associations and reported to the Board as part of the biennial license renewal requirements.

-Rule 4732-7-01 deals with applicants for licensure licensed by other jurisdictions or who hold board certification from the American Board of Professional Psychology. Requires evidence of a passing score on the relevant national examination and a passing score a board-administered examination.

-Rule 4732-9-01 specifies requirements for licensure as a psychologist under various sections of ORC 4732.10, which includes a grandfather clause in 4732.10 (B)(4)(d). The rule contains substantial proposed deletions of language that is outdated because it relates to requirements for doctoral degrees that are not in psychology, which has been phased out (ended with applications received before May 1, 2010). This rule also contains requirements for supervised experience for those applying under the grandfather law and for those under the law that requires doctoral program accreditation effective in 2009.
-Rule 4732-9-02 contains the requirements for licensure as a school psychologist and specific coursework requirements (most of the rule) for those attempting to demonstrate a "degree deemed equivalent to a master's degree in school psychology."
-Rule 4732-11-01 specifies the actual national examinations that must be passed for admission to the board examinations for licensure as a psychologist or school psychologist, respectively.
-Rule 4732-13-04 is a chapter containing requirements to be met when an unlicensed person is delivering psychological or school psychological services under the supervision of a license holder (either as an "extender" in psychological work supervision or as a trainee toward licensure in psychological training supervision.
-Rule 4732-15-01requires that specific titles be used by unlicensed individuals practicing under the supervision of a license holder.
-Rule 4732-17-01 contains the Board's professional conduct requirements, frequently referred to as "ethics." Numerous amendments are proposed in order to protect the public and to educate license holders about the "do's and don'ts" of professional practice in broad areas including negligence, welfare of the client, finances (remuneration), testing, multiple relationships, confidentiality, competence, and telepsychology.
-Rule 4732-17-02 (proposed to be rescinded and replaced) currently contains outdated requirements for the ethical conduct of research. The new language has been in place as policy of the American Psychological Association for several years and is proposed to replace the previous version of the APA code section on research ethics and safeguards.
-Rule 4732-17-03 has historically contained the same list of grounds for which the Board can take disciplinary action, although HB83, effective March 20, 2014 contains an exhaustive list and it is proposed that the bulk of the rule be struck instead of adding the new bases for action from the new law. This is proposed to shorten and clarify the rule. The remainder of the rule contains the pre-hearing procedures, due process provisions, and hearing procedures.

<u>Proposed to be Rescinded</u>
-Rule 4732-11-04 (proposed to be rescinded) specifies the subject areas for "the examination for a psychologist license," which has been irrelevant and confusing since the Board adopted use of the Examination for Professional Practice in Psychology during the 1980's.

-Rule 4732-11-05 (proposed to be rescinded) specifies the subject areas for "the examination for a school psychologist license," which has been irrelevant and confusing since the Board adopted use of the Praxis-II School Psychology Test (national) since the 1980's and eliminated its essay examination for the school psychologist license around 2002.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   ORC 4732.06; 4732.14; 4732.221

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?** ***If yes, please briefly explain the source and substance of the federal requirement.***

   No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   There are no federal requirements to exceed.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The practice of psychology and school psychology, like other healthcare professions, can be hazardous and harmful. These rules are required to provide protections and assurances to the public relative to minimum standards for licensure and professional conduct, bases for discipline when there are serious violations of client and patient rights, and procedures for due process and hearing procedures for license holders who proceed to administrative hearings.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   The rules were reviewed by a committee inclusive of representatives of the major professional stakeholder groups, including the Ohio Psychological Association, the Association of Black Psychologists, and the Ohio School Psychologists Association. Second, the regulations will be deemed to have successful outcomes if they are clear to the reader and additional work to clarify the rules is not required by the Board staff.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Ann Brennan, Executive, Ohio School Psychologists Association
Michael Ranney, Executive, Ohio Psychological Association
David Hayes, Ph.D., ABPP, OPA Liaison to the Board
Glenn Karr, Attorney-at-Law, Member of the public
Bridgette Petite, Ph.D., Association of Black Psychologists
Robin Graf-Reed, Ph.D., National Center for Organizational Development
Roger Carroll, Principal Assistant Attorney General and Board Counsel
Kenneth Drude, Ph.D., Member of the State Board, Rules Committee Chair
Victor McCarley, Psy.D., Member of the State Board
Carolyn Knauss, Board Investigator
Ronald Ross, Ph.D., Executive Director
All members, State Board of Psychology

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The stakeholder group participated in "live" rule writing during five separate 2-3 hour meetings between April and September of 2014. Language was deleted pursuant to recommendations by agents of the Board because of its outdated and irrelevant nature, and the committee added language deemed critical to update various sections during this 5-year review process. The professional association representatives and an attorney who represents many psychologists who are under investigation by the Board reached consensus on each rule. The Board, at its meetings of October 2, 2014 and November 14, 2014, made minor changes to some of the language proposed by the rules committee.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

One guiding principle during the stakeholder meetings was to clarify, cut, and codify only when necessary and to develop, for example, rules that are reflective of current standards of care. The most important changes not required by HB83 are found in OAC 4732-17-01, where updated standards of professional conduct are proposed. The Board Rules Committee

of stakeholders, and the Board, considered not adding additional rules to specific sections of 4732-17-01—namely, attention is called to (C) Welfare of the client, where additional requirements and prohibitions were deemed critical in order to protect people from having license holders render professional opinions about them without sufficient information and based on advocacy instead of scientific data and a clear professional role. The Board's most common complaints against license holders are rooted in psychologists' involvement in domestic relations cases when they are inappropriately advocating for one parent over the other when in a clear conflict of interest. Also, additional rules are proposed in the "Informed Consent" section [4732-17-01 (C)(4)] because our analysis of complaints calls for more specific rules regarding the importance of getting consent for services and clarifying the purpose of evaluations, limits to confidentiality, and purported uses of data from treatment session, as examples. The goal throughout OAC 4732-17-01 is to help educate license holders (an important way to protect the public) by clarifying the expectations and prevailing standards of care in the profession. Without doing this, license holders would be robbed of clear prohibitions and the public would not be served because the Board would not be putting forward the most recent standards of care.

In addition, although many fees are set in statute, the Board is granted latitude to set the fee for license reinstatement and for the application for permission to practice in Ohio for up to 30 days annually without an Ohio license. First, the stakeholder committee reached consensus that t setting the license reinstatement penalty at $250 would foster compliance with meeting the license registration deadline if coupled with aggressive notification and education of license holders. This is not intended to generate revenue, but is intended to impress upon license holders the importance of keeping the license valid, being able to continue to provide uninterrupted services, making sure that the Board has a good mailing address, and hopefully having less licenses expire—which requires additional staff resources and potential problems for the license holder. The professional associations support this fee of $250 because they are aware that many license holders change addresses and do not notify the Board and do not receive the notice of license renewal. This causes problems for clients and leads to additional need for staff resources. Our hope is to get no revenue from this penalty, but to foster compliance with the biennial license renewal deadlines so licenses remain active. We plan to notify each license holder about all rule updates, and to highlight this penalty fee. Second, there has never been a fee for out-of-state psychologists applying to practice in Ohio for up to 30 days, and the range in law for the fee is $75 to $150. The stakeholder group and Board agreed that $125 would adequately cover in-house administrative resources put into the application review and produce a small amount of revenue from these non-Ohio psychologists practicing in Ohio (generally to do forensic evaluations for lawyers and courts). We issue approximately twelve (12) 30-day temporary practice permits annually.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

The Board did not consider any performance-based regulations in this package because either the rules are mandated (e.g., certain statutory fees) and/or the rules are not conducive to a performance-based approach to regulation.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Chapter 4732 of the Administrative Code contains the only regulations in Ohio granting an agency authority to govern the practice of psychology and the practice of school psychology outside of school settings.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

1) Ensuring that no license is issued without the Board determining that the candidate has successfully complied with each requirement in results of a criminal background check is consistent with licensure;
2) Ensuring that pre-licensure training/experience is completed in a timely manner following the completion of graduate-level coursework;
3) Ensure that the Board's investigations are conducted fairly and thoroughly, with consistent decisions regarding the initiation of disciplinary actions vs. educational outcomes without formal actions. The Board has a reputation for being firm, fair, and consistent.
4) Provide notice of all rule changes and educate our license holders via email and website updates, including: a highlight of the new fees from statute and the proposed rules; continuing to provide notice of the new continuing education requirement in statute [also contained in OAC 4732-2-01 (C)(9)] to complete four hours in ethics, professional conduct, and/or the role of "culture and ethnic identity" in the provision of services; notice of the need to assign a specific title to each unlicensed supervisee to foster consistency and decrease confusion for the public about the unlicensed/training status of those individuals practicing under supervision; highlighting changes to the Rules of Professional Conduct in 4732-17-01, focusing on the most significant proposed new areas under (C) Welfare of the client (1) Conflicts of interest and (4) Informed consent.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Applicants for the psychologist and school psychologist licenses; license holders; expired license holders seeking reinstatement of the license; license holders acting as supervisors of unlicensed persons; unlicensed supervisees.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Time: Applicant compliance with completing the application and seeking letters of reference, sitting for the examinations, completing criminal background checks; Psychologists serving as supervisors of pre-licensure candidates are required to expend time completing supervision verification forms. Please note that in 4732-13-04 (B)(9) we propose to eliminate a process that requires supervisors to complete a form and to limit supervisees to no more than four without written permission of the Board. We are proposing to eliminate that process, and allow license holders to self-monitor by keeping the number of weekly client hours of supervisees to less than 100.

Fees: License application raised by statute from $125 to $300; biennial license renewal fee raised by statute from $350 to $360 in FY2017 then $365 beginning FY 2021 then stop. Out of state psychologists applying to practice in Ohio without a license is proposed to be $125. The penalty fee to reinstate an expired license is proposed to be increased to $250 from $50 as an incentive to register the license timely and pay closer attention to the license renewal deadlines.

c. Quantify the expected adverse impact from the regulation.

Becoming a psychologist requires compliance with substantial supervised training and experience. Law and rules require the completion of 3,600 hours of supervised training for psychologist licensure, and 3 years of full-time experience post-master's degree internship for the school psychologist license. Successfully registering the license biennially requires the license holder to complete acceptable continuing education coursework and to pay the required Board fee for renewal.

License application raised by statute from $125 to $300; biennial license renewal fee raised by statute from $350 to $360 in FY2017 then $365 beginning FY 2021 then stop. Out of state psychologists applying to practice in Ohio without a license is proposed to be $125. The penalty fee to reinstate an expired license is proposed to be increased to $250 from $50.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The penalty fee to reinstate an expired license is proposed to be increased to $250 from $50 as an incentive to register the license timely and pay closer attention to the license renewal deadlines. When a license expires, clients' continuity of services can be interrupted, and we see the $250 as akin to the cost of a speeding ticket to foster compliance and avoid unintended problems when the license expires. Proposed updates the 4732-17-01 are important updates to help foster compliance with prevailing standards of care and to protect the rights of clients and other persons (these proposed amendments are no so much seen as affecting time or money, but effort and compliance with the requirements to practice psychology in a competent and ethical manner).

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The public looks to the Board to ensure that reasonable steps are taken to review the education, training, experience, and conduct of applicants and license holders.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

These rules do not involve waiver of paperwork violations. Please note again that in 4732-13-04 (B)(9) we propose to eliminate a paperwork process that requires supervisors to complete a form and to limit supervisees to no more than four without written permission of the Board. We are proposing to eliminate that process, and allow license holders to self-monitor by keeping the number of weekly client hours of supervisees to less than 100.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board's website contains a wealth of information about each of the rules at issue. The Board staff is comprised of 5 individuals available during business hours by phone and email. The Board has earned a reputation for being responsive and available, and the Executive Director's direct dial telephone number and email address are published on the Board's website.