

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: State Board of Psychology

Regulation/Package Title: Final Five Year Review Package

Rule Number(s): 4732-5-01 (amend), 4732-5-02 (rescind and replace)

Date: July 13, 2015

Rule Type:  New

5-Year Review

Amended

Rescinded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.

#### Proposed to be Amended

-Rule 4732-5-01 reiterates title protections found in statute and reiterates authority granted to non-licensees to practice professions regulated under other sections of the Revised Code. The rule is intended to reiterate the statutory prohibition against non-license holders to hold themselves out to the public by the title “psychologist” and to use associated terms. The rule also lists procedures deemed to require professional expertise in psychology, although the procedures may be used by other licensed professionals within the confines of the title restrictions.

#### Proposed to be Rescinded

-Rule 4732-5-02 deals with the scope of psychological practices and with exemptions from licensure requirements. The rule is being replaced to narrow its focus, eliminate confusing wording, to reflect updated exemptions in 4732.22 from HB 83 of the 130th General Assembly and to eliminate reference to 4732.23, which was repealed in HB83.

#### Proposed to Replace Rescinded 4732-5-02

-Rule 4732-5-02 is proposed to replace the current rule to narrow its focus, eliminate confusing wording, to reflect updated exemptions in 4732.22 (HB 83 of the 130th General Assembly) and to eliminate reference to 4732.23, which was repealed in HB83. The proposed rule reflects the statutory exemptions from licensure in 4732.22 in addition to exemptions from licensure related to teaching and research in which client welfare is not directly affected [4732.01 (B)].

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

ORC 4732.06

### **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.

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**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, like other healthcare professions, can be hazardous and potentially harmful. These rules are required to provide protections and assurances to the public relative to the use of certain titles as an index of qualification and licensure, to reiterate that other professionals are not prohibited from using certain procedures while needing to avoid use of certain titles and terms, and to provide a list of procedures deemed to require expertise in psychology. Exemptions from licensure requirements are an important part of regulation because they clearly outline those persons who may use certain procedures in the course of business and within reasonable confines of title restriction.

**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

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**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 rule writing “live” during five separate meetings between April and September of 2014. Language was deleted pursuant to recommendations by agents of the Board 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.

Finally, following the initial filing of these rules and consultation with JCARR staff, changes were approved by the Board during its April 23, 2015 meeting, and the rules were refiled on June 22, 2015. Repealed statutes were identified in the rules by JCARR staff, and the rules therefore required additional attention.

**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?**

The field of healthcare is comprised of various professions, many of which have a “domain” of practice and a list of allowable titles for the purpose of clarifying one’s qualifications for the public. A certain number of boundaries are required so that we know the qualifications of our healthcare professionals, although flexibility is required so that qualified professionals are not prohibited from using procedures consistent with their profession, licensure and scope of practice.

The minor changes to 4732-5-01 serve to both make the rule consistent with new statutes and to clarify that two outdated procedures are not in the domain of psychological practice (sensitivity training and confrontation groups). The listing of certain “hazardous” procedures by regulatory boards is a widely accepted practice and other alternatives to changes to the list were not embraced by stakeholders and the Board.

The new version of 4732-5-02 is a reiteration of the exact language from statute 4732.22 (A) with the additions of exemptions found in 4732.01 (B), which states, “For purposes of this chapter, teaching or research shall not be regarded as the practice of psychology, even when dealing with psychological subject matter, provided it does not otherwise involve the

professional practice of psychology in which an individual's welfare is directly affected by the application of psychological procedures.” Because each part of the rule is already in statute, consideration was given to simply rescinding the rule, but it was determined that the rule should be proposed because it includes all exemptions in one place.

**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 reiterations of law 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 Ohio 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.**

Provide notice of all rule changes and educate our license holders via email and website updates, including explanation for the reasons that the rules are being changed.

**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;**

License holders, professionals regulated by other agencies, and non-licensed persons (e.g., religious official) using “psychological” procedures consistent with their profession but required to attend to restrictions on use of title and terms.

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

Time/Effort: Other rules contain explicit requirements for licensure and license renewal, showing clear adverse impacts. In addition, to have “professional expertise in psychology” as referenced in 4732-5-01 (B), one is required to be a license holder (or under supervision of a psychologist as specified in other rules), requiring attainment of significant education and training in psychology, examinations, and licensure. Therefore, there are significant commitments required to be able to provide authorized psychological procedures. Adverse impact could be found in the

requirement for effort to be made by exempted persons to avoid use of the Board’s four restricted terms—psychologist, psychology, psychological, and psychologic.

Money: Adverse impact could be found in the requirement for money to be expended by exempted persons to comply with requirements to refrain from using restricted terms—psychologist, psychology, psychological, and psychologic—for example, to make changes to website or business stationary reflecting use of prohibited terms or titles. The monetary cost of complying with these specific rules is judged to be minimal to null, although related enforceable laws involve the prospect of a non-license holder being referred by the Board to a county prosecutor for the unlicensed practice of psychology. In addition, to have “professional expertise in psychology” as referenced in 4732-5-01 (B), one is required to be a license holder (or under supervision of a psychologist as specified in other rules). The education and training in psychology, examinations, and licensure all require expenditures.

**c. Quantify the expected adverse impact from the regulation.**

These rules are not among those with requirements for specific expenditure of time or money, such as those specific to education, training, experience, and application and examination processes and costs. However, there are, as stated above, significant financial and time commitments required to be able to provide authorized psychological procedures.

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

Restricted terms and general requirements for licensure are referenced in ORC 4732.01 and 4732.10, respectively. Adverse impact is potentially present. Regulators need to clarify exemptions from licensure and use of titles for the purpose of not infringing on non-license holders’ rights to make a living while restricting certain titles to those meeting certain professional and educational qualifications in psychology.

**Regulatory Flexibility**

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

Rule 4732-5-02 is specific to exemptions from licensure. There must be flexibility in the use of procedures to making a living in the helping professions. The rule echoes the law, which holds that many persons acting in a professional capacity shall be allowed to conduct business by using “psychological” procedures in accord with related restrictions on use of title and terms.

**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.

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

The Board's website contains information about 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.