

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Chiropractic Board

Regulation/Package Title: 2018 Five Year Rule Review

Rule Number(s): 5-Year Review: 4734-1-03; 4734-5-01; 4734-6-05; 4734-6-07; 4734-8-02; 4734-8-03; 4734-8-05; 4734-8-06; 4734-8-08; 4734-9-01; 4734-9-03; 4734-9-04; 4734-9-05; 4734-9-06; 4734-9-08; 4734-9-09; 4734-9-10; 4734-9-11; 4734-10-03; 4734-10-05.

Amended Rules: 4734-7-03; 4734-8-09

Date: June 2018

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Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 4734-1-03 regulates the payment of fees to the Board. The Board is proposing recession of the rule since payments are now made through eLicense.

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Rule 4734-5-01 pertains to Board-approved doctor of chiropractic degree programs. The Board is proposing to amend the rule to adopt updated Council on Chiropractic Education (CCE) standards.

Rules 4734-6-05 pertains to licenses for voluntary public service. The Board proposes amending the rule to more closely mirror the enabling statute (4734.27)

Rule 4734-6-07 pertains to addresses of licensees. The Board proposes rescinding the rule and drafting as new. The new rule describes the contact information licensees must report and how it is reported and maintained through eLicense.

Rule 4734-7-03 pertains to CE credit for providing health care to indigent and uninsured persons as a volunteer. The Board proposes amending the rule to correct the omission of paragraph (D)(2) in the enacted version and to more clearly define the requirements for CE certificates for this type of CE.

Rule 4734-8-02 pertains to unlicensed supportive personnel. The Board proposes amending the rule to more clearly define the duties that chiropractic physicians may delegate to unlicensed personnel.

Rule 4734-8-03 pertains to the Board's Quality Intervention Program (QIP). The Board proposes amending the rule to make the rule to provide clearer guidance.

Rule 4734-8-05 pertains to physical examinations and prescribed treatment. The Board proposes amending the rule to clearly define that a diagnosis(es) must be included in a patient evaluation.

Rule 4734-8-06 pertains to aggravating and mitigating factors when the Board considers disciplinary cases. The Board proposes amending the rule to include additional aggravating and mitigating factors.

Rule 4734-8-08 pertains to universal precautions when performing or participating in invasive procedures. The Board proposes amending the rule to provide clearer guidance.

Rule 4734-8-09 pertains to concussion management. The Board proposes amending the rule to update a reference to the consensus statement on concussion.

Rule 4734-9-01 pertains to the Board's disciplinary fine schedule. The Board proposes amending the rule to make it clearer and easier to understand.

Rule 4734-9-03 pertains to signs and display of license. The Board proposes no changes to the rule.

Rule 4734-9-04 pertains to ownership of chiropractic practices. The Board proposes no changes to the rule.

Rule 4734-9-05 pertains to maintaining confidentiality of patient information. The Board proposes no changes to the rule.

Rule 4734-9-06 pertains to sexual misconduct. The Board proposes no changes to the rule.

Rule 4734-9-08 pertains to chiropractic professional ethics. The Board proposes rescinding and drafting the rule as new to reorder the paragraphs and to add additional ethical provisions.

Rule 4734-9-09 pertains to fee splitting. The Board proposes no changes to the rule.

Rule 4734-9-10 pertains to actions a licensee must take upon imposition of discipline. The Board proposes rescinding the rule and drafting as new to provide clearer guidance for ease of compliance.

Rule 4734-9-11 pertains to prepayment plans. The Board proposes amending the rule to make a correction.

Rule 4734-10-03 pertains to applications for acupuncture certificates. The Board proposes rescinding the rule and drafting as new to make it clearer for ease of compliance.

Rule 4734-10-05 pertains to referrals to acupuncturists and/or oriental medicine practitioners. The Board proposes rescinding the rule since it is duplicative of ORC 4762.10.

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

ORC Section 4734.10

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.

N/A

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

N/A

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 rules establish minimum standards for the practice of chiropractic. The rules provide clear guidance for applicants and licensees which ensures consistency. The rules also permit the public to know what to expect when seeking services from a chiropractic physician. The primary purpose of the rules is to protect public safety.

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

Clear, concise and plain language will provide consistent processes for those affected.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

March 6, 2018 - An email seeking early stakeholder input was sent to all licensees and all Board-approved chiropractic colleges regarding all rules in the package with the exception of Rule 4734-7-03 (email to same stakeholders sent 3/23/18) and Rule 4734-8-09 (email to same stakeholders sent 3/6/18).

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

Rule 4734-5-01: The term pharmacology should be added to the rule to reflect our training in pharmacology.

The Board added this term to the rule.

Rule 4734-8-02:

Remove the requirement that a licensed chiropractic physician must be on the premises when unlicensed personnel are performing delegated duties.

The Board proposes to maintain the requirement that a licensed chiropractic physician remain on the premises when unlicensed supportive personnel perform delegated tasks as a matter of public protection.

The Board should permit licensed chiropractic physicians to delegate laser therapy to unlicensed personnel. Class IV laser therapy should be added to that list.

Delegation of low level laser therapy up to and including class IV lasers was added to the rule.

4734-8-09:

Chiropractic Orthopedics Diplomates should be included in the list of those that can perform youth sports participant concussion assessment and clearance.

Other types of Diplomates should be included in the list of those that can perform youth sports participant concussion assessment and clearance.

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As a matter of maintaining the Chiropractic Neurologists' standing as contemporaries and equivalents with other physicians managing concussion, it would be wise to adopt this latest position paper's recommendations and formally adopt it as the Board's guideline for concussion management.

My practice has a strong nutritional component. I don't think it's appropriate to force me or other doctors in my similar position to approach people who have ever had a concussion like the medical doctors do.

The diplomate awarded by the International Board of Chiropractic Neurology (IBCN) should be added to the rule.

Concussion management is regulated statutorily. The Board is prohibited from adding additional diplomates or specialties to the list of those that may treat concussed athletes. See [ORC 3707.521](#) and [Ohio Youth Sports Concussion and Head Injury Guidelines Committee Final Report](#).

Evidence the IBCN diplomate is equivalent to the currently approved diplomate recognized by the American Chiropractic Neurology Board was not provided.

4734-9-11:

No prepayment plan shall exceed one month in duration instead of twelve months in duration. Also a 12 visit max within that one month duration.

Thirty day prepayment plans are not feasible. The Board cannot regulate the maximum number of patient visits per month as this is dependent on each condition/diagnosis.

4734-10-3 and 4734-10-4

Rules 4734-10-1*, 4734-10-2*, 4734-10-3 and 4734-10-4 are unreasonable for they do not consider the licensure and experience of chiropractors who have practiced acupuncture in other states with less than 300 hours of training.

The Board cannot amend the 300 hour educational requirement since it is a statutory requirement. (See ORC 4734.211)

As it stands, we are to state that we are a “chiropractor certified by the state board to practice acupuncture.” I would like the board to consider allowing something that is less cumbersome but still accurate to our profession.

These rules do not address acupuncture titles.

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?

Scientific data was not used to develop the rules as the rules are not data driven.

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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 Board did not consider alternative regulations other than the ones addressed in question 8.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Performance based outcomes don't apply to the rules in this package.

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

There is no other agency that regulates the practice of chiropractic in Ohio.

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.

Staff training is conducted for all rules changes to ensure regulations are applied consistently and predictably. The Board uses its website, email notifications and newsletters to educate and update stakeholders on its rules.

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;

The rules in this package affect applicants for licensure, licensees, and doctor of chiropractic degree programs.

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

The rules require documentation, paperwork, time for compliance, fees, fines.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

Rule 4734-6-05 requires an application and \$75 fee.

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Rule 4734-7-03 requires documentation of volunteer CE credit.

Rule 4724-8-03 requires documentation, time for compliance and cost of CE.

Rule 4734-8-08 costs for disposable gloves and protective garments and devices, if the licensee performs procedures with exposure to blood and bodily fluids.

4734-8-09 requires documentation and time for compliance. Additional education is required for those who wish to assess and/or grant a clearance to return to play for a youth sports participant.

4734-9-01 outlines the fine schedule for disciplinary action, when imposed.

Rule 4734-9-10 requires documentation and time for compliance.

Rule 4734-9-11 requires documentation and time for compliance.

Rule 4734-10-03 requires an application and fee of \$100.

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

Regulation of the practice of chiropractic fulfills the Board's mission and purpose of public protection. The Board's statute provides for approval of doctor of chiropractic degree programs; applications and fees for licenses and renewals; documentation of volunteer CE credit; civil fines; a quality intervention program; a code of ethics, youth concussion education; and civil fines.

Regulatory Flexibility

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

Certain fee and deadline exemptions are granted for licensure or renewal to military personal as outlined in Board Rule 4734-11-01.

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?

Waiver of fines/penalties for paperwork violations do not apply to the rules in this package.

Application fees are a collection of revenue in accordance with ORC § 119.14 (C)(4) for which fees may be imposed.

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

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The Board's website provides information pertaining to the rules in this package. The Board also communicates with licensees via email and newsletters. The staff of the Board also personally answers and responds to each phone call, email, correspondence, etc.

Contact Information:

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