

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Emeritus Registration

Rule Number(s): 4731-22-01; 4731-22-02; 4731-22-03; 4731-22-04; 4731-22-06; 4731-22-07; 4731-22-08

Date: July 11, 2016

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Rescinded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.

The emeritus status is an honorary status that honors physicians (allopathic, osteopathic, and podiatric physicians), cosmetic therapists, and massage therapists who have practiced at least ten years and end their professional careers without disciplinary action. The rules do not

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give a license or permit a person to practice any profession, or permit the person do anything they couldn't do without having emeritus status. The person must have an active Ohio license at the time of applying for the emeritus status. The rules provide a mechanism for a medical professional who has obtained the credential "M.D.," "D.O.," "D.P.M.," "M.T.," or "C.T." to officially use the credential even after the Ohio license is expired and the holder is no longer engaged in active practice in Ohio. Thus, a person who is granted emeritus status pursuant to the rules in Chapter 4731-22, OAC, does not violate the prohibition of Section 4731.34(A), Ohio Revised Code, by using their professional credential.

The definition of "retired" in Rule 4731-22-01(D) is amended to no longer require that the applicant have let expire all their professional licenses in any state. Rule 4731-22-02 is proposed in a re-formatted style to facilitate understanding of its provisions. Because the re-formatting amends the current rule by more than fifty percent, the current rule will be rescinded and the rule with the amended language will be adopted as a new rule. Rule 4731-22-07 is proposed to be amended to clarify the requirements for a change to active status. Because the amended language constitutes more than fifty percent of the current rule, the current rule will be rescinded and the rule with the amended language will be adopted as a new rule

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

Sections 4731.05 and 4731.15, ORC.

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, the rules do not implement a federal requirement.

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

Not applicable.

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)?

Currently a total of 2292 physicians and massage therapists hold the emeritus status from the Medical Board. The rules are needed to clarify that the prohibition of Section 4731.34(A), Ohio Revised Code, does not prohibit these persons, who were licensed for at least ten years without administrative discipline, from using their professional credential after they have ceased practice and allowed their Ohio license to expire.

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

The rule will continue to be successful if applications for emeritus status or return to active status are filed complete.

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.

The proposed rules were sent via email to interested parties on February 12, 2016 to organizations such as, but not limited to, the Ohio State Medical Association, Ohio Academy of Family Physicians, Academy of Medicine of Cleveland and Northern Ohio, Ohio Podiatric Association, representatives of the massage therapy community, county medical societies, Ohio Osteopathic Association, governmental affairs representatives for numerous organizations, state agencies such as the Nursing Board and the Ohio Department of Health, and all other parties that have requested notice of Medical Board rule activities.

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

No comments were received from interested parties.

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 rule or outcomes. However, the current rules have enabled 2,292 persons to secure the emeritus status.

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 only alternative provision considered was whether to amend the definition of "retired" in Rule 4731-22-01(D). The current language requires the person to give up not only their Ohio license, but also all licenses in all states. The Medical Board determined to amend the definition because today it is common for practitioners to hold licenses in several states but the person would only be able to use the emeritus credential in Ohio.

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.

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The rules in Chapter 4731-22 do not mandate any action. They provide a mechanism where, at the licensee's discretion, the licensee can retire from active practice and continue to use the professional credential without fear of violation of Section 4731.34(A) of the Revised Code and without having to complete continuing education coursework. The rules set out the process and criteria for attaining the voluntary emeritus status and for voluntarily returning to active status.

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

The Medical Board is the only agency authorized to promulgate rules related to the credentials for physicians, massage therapists, and cosmetic therapists.

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.

The rules, with an explanation of amendments, will be circulated to all licensees and medical organizations and posted on the Medical Board's website. Medical Board staff will be available to answer questions.

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 do not mandate any action. However, should a physician, massage therapist, or cosmetic therapist wish to receive emeritus status, the procedure and requirements of the rules must be met.

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

The nature of the adverse impact is that emeritus status is only available to licensed physicians, massage therapists, and cosmetic therapists. The applicant for the status must complete and submit an application.

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.

The cost of an initial physician's license is \$335. The two-year renewal of the physician's license costs \$305.

The cost of an initial license as a massage therapist or cosmetic therapist is \$150.00
The two-year renewal fee is \$100.00

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

The rules in Chapter 4731-22 were first promulgated as a means of honoring physicians, massage therapists, and cosmetic therapists for their service to Ohio patients. Currently 2,292 persons rely on the previously granted status in order to continue using their professional credentials after they voluntarily allow their professional license to expire.

Regulatory Flexibility

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

The rules in Chapter 4731-22 does not mandate any action or activity. Emeritus status is equally available to any physician, massage therapist, or cosmetic therapist who wants to allow their Ohio professional license to expire after ten years of practice without any disciplinary action against the license.

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?

The rules in Chapter 4731-22 do not mandate any action or activity. Should a physician, massage therapist, or cosmetic therapist choose to apply for emeritus status the failure to submit the required paperwork will result in denial of the application only. There are no fines or other penalties for failure to submit information required by Rule 4731-22-02.

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

Application for emeritus status is made on an individual basis at the time of license renewal. Medical Board staff members are available to answer questions concerning the requirements for emeritus status and the process for obtaining it.

*** DRAFT - NOT YET FILED ***

4731-22-01

Definitions.

As used in Chapter 4731-22 of the Administrative Code:

- (A) "Active" is a status that means an individual may perform acts that would constitute the practice of medicine requiring a license.
- (B) "Board" means the state medical board of Ohio.
- (C) "Registrant" means an individual who holds an emeritus registration.
- (D) "Retired" is a status that means an individual has no active license in ~~another state, or agrees in the emeritus application that he or she will not apply for renewal or reinstatement of any license held in another state~~ [Ohio](#).

*** DRAFT - NOT YET FILED ***

4731-22-02

Application.

~~Any practitioner duly licensed to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, massage therapy, or cosmetic therapy in this state for at least ten years who declares that he or she is retired from active practice may apply to the board for emeritus registration. The practitioner may do so by indicating on his or her biennial registration form or in written correspondence to the Board if he or she is in fact retired and has not been the subject of disciplinary action in Ohio resulting in the revocation, suspension, probation, reprimand, or any other limitation of the physician's license to practice.~~

(A) Any practitioner duly licensed to practice medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, massage therapy, or cosmetic therapy in this state for at least ten years who declares that he or she is retired and no longer in active practice in Ohio may apply to the board for emeritus registration.

(B) The practitioner may do so by indicating on his or her biennial registration form or in written correspondence to the board the wish to apply for emeritus status and including the following information:

- (1) He or she is in fact retired as that term is defined in rule 4731-22-01 of the Administrative Code and is no longer in active practice in Ohio; and
- (2) He or she has not been the subject of disciplinary action in Ohio resulting in the revocation, suspension, probation, reprimand, or any other limitation of the practitioner's license to practice.

*** DRAFT - NOT YET FILED ***

4731-22-03

Status of registrant [NO CHANGES](#).

The emeritus registration is not a license to engage in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery. Emeritus registrants shall not engage in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery. Emeritus registrants may refer to themselves as doctor, if previously licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, but may not hold themselves out to others as actively engaged in the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine and surgery.

***** DRAFT - NOT YET FILED *****

4731-22-04

Continuing education requirements [NO CHANGES.](#)

The continuing medical education requirements of Chapter 4731, of the Revised Code and agency-level 4731 of the Administrative Code are not applicable to emeritus registration.

*** DRAFT - NOT YET FILED ***

4731-22-06

Renewal cycle of fees NO CHANGES.

Being registered as emeritus will not subject an individual to the annual renewal cycle or renewal fees.

*** DRAFT - NOT YET FILED ***

4731-22-07

Change to active status.

(A) A registrant may apply to change to active status by completing a ~~restoration application, which shall include the following~~ the following:

(1) IF THE APPLICATION IS RECEIVED NO MORE THAN TWO YEARS AFTER THE DATE THE REGISTRANT'S OHIO LICENSE EXPIRED, THE REGISTRANT SHALL SUBMIT A REINSTATEMENT APPLICATION.

(2) IF THE APPLICATION IS RECEIVED MORE THAN TWO YEARS AFTER DATE THE REGISTRANT'S OHIO LICENSE EXPIRED, THE REGISTRANT SHALL SUBMIT A RESTORATION APPLICATION.

~~(1) Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.~~

~~(2) Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code.~~

~~(3) Submission of any other information required by the board.~~

(B) THE REINSTATEMENT OR RESTORATION APPLICATION SHALL INCLUDE ALL OF THE FOLLOWING:

(1) Documentation of compliance with the continuing medical education requirements for an active licensee for the time period in which the registrant's license was in inactive status. This requirement must be fulfilled prior to submission of the application.

(2) Submission of appropriate renewal fees and any applicable monetary penalty pursuant to section 4731.281 of the Revised Code IF THE REGISTRANT IS A PHYSICIAN OR PURSUANT TO SECTION 4731.15 OF THE REVISED CODE IF THE REGISTRANT IS A MESSAGE THERAPIST OR COSMETIC THERAPIST.

(3) Submission of any other information required by the board.

~~(B)~~(C) . In the event the holder of an emeritus certificate applies for restoration after two years from the ~~effective date of emeritus certificate~~ the registrant's Ohio license expired or if the registrant has not engaged in practice for more than two years, the board may require the applicant to demonstrate present fitness to practice pursuant to section 4731.222 of the Revised Code.

***** DRAFT - NOT YET FILED *****

4731-22-08

Cancellation of or refusal to issue an emeritus registration NO CHANGES.

The board may refuse to issue or may cancel a registrant's emeritus registration for acts or conduct that the secretary and supervising member deem to be a violation of any provision of Chapter 4731. of the Revised Code or this chapter of the Administrative Code. The decision to refuse to issue or to cancel a registrant's emeritus registration is not subject to hearing rights or appeal under Chapter 119. of the Revised Code.