

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Assessing and granting clearance for return to practice or competition

Rule Number(s): 4731-31-01

Date: \_\_\_\_\_

**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Rescinded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 4731-31-01 is a new rule proposed to implement the requirements of Section 3707.521 of the Revised Code that the Medical Board first promulgate a rule establishing standards by which allopathic (M.D.) and osteopathic (D.O.) physicians (hereinafter “physicians”) are

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

authorized to assess and clear youth athletes for the return to practice or competition under Sections 3313.539 or 3707.511 of the Revised Code in order for the physicians to be authorized to perform such assessments and clearances on and after September 17, 2015. The proposed rule states that the physicians may perform the assessment and clearance, sets the standard by which the assessment and clearance must be conducted, and requires physicians to use the model form developed by the Ohio Youth Sports Concussion and Head Injury Return-to-Play Guidelines Committee (hereinafter “Committee”) to document written clearance for the return to practice or competition.

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

The proposed rule is authorized by Section 3707.521 of the Revised Code.

**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.*

The proposed rule is not being adopted to implement a federal requirement or to enable the state to obtain or maintain approval to administer or enforce a federal law or to participate in a federal program.

**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)?**

Section 3707.521 of the Revised Code, effective September 17, 2015, provides that physicians may only assess and clear youth athletes who have sustained a possible head injury for return to practice or competition if the Medical Board has adopted a rule that authorizes them to do so and which establishes standards that are equal to or stronger than the guidelines developed by the Committee. The resulting rule will apply to the assessment and clearance of youth athletes under Sections 3313.539 or 3707.411 of the Revised Code. Rule 4731-31-01, therefore, promotes protection of the public by setting standards for the safe delivery of care to youth who receive a possible head injury during sporting activities.

Pursuant to Section 3707.521 of the Revised Code, the purpose of the Committee was to develop guidelines related to youth sports concussions. The guidelines were required to outline the diagnosis and treatment of concussions; the conditions under which an athlete may be granted clearance to return to practice or competition; and the minimum education

requirements necessary to qualify an allopathic or osteopathic physician or licensed health care professional to assess and clear an athlete for return to practice or competition. The State Medical Board of Ohio was represented on the Committee by Kim G. Rothermel, M.D. The Committee released its report in March 2015.

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

The success of the rule will be measured by licensee compliance with the rule and minimal questions from licensees and the public concerning the language and requirements of the rule.

**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 Medical Board discussed the Committee's report at a public meeting on April 8, 2015, and discussed the proposed rule at a public meeting on May 13, 2015.

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

The proposed rule was available to the public in attendance at the Medical Board's Policy Committee meeting on May 13, 2015. The agenda for the meeting was posted on the Medical Board's website prior to the meeting date. No questions or comments from the public were offered.

**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?**

The language of the rule enacts the recommendations of the Committee, which reviewed scientific data as part of arriving at its recommendations.

**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 Medical Board discussed whether physicians who engage in assessing and clearing youth athletes for return to practice or competition should be required to complete relevant continuing education. Continuing education is not required in the rule because it is not mandated for physicians in the Committee's guideline.

- 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.*

The Medical Board did not consider a performance-based regulation because the provisions of the rule were mandated by the Committee's recommendations.

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

Section 3707.521 of the Revised Code specifies that any agency responsible for licensing physicians is responsible for promulgating a rule that authorizes physicians to assess and clear athletes for return to practice or competition under Sections 3313.539 and 3707.511 of the Revised Code. The Medical Board is the only agency that licenses physicians. The Medical Board has no other rule that conflicts with proposed rule 4731-31-01.

- 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 Medical Board will post the rule on the Medical Board's website; notify licensees and interested parties, including medical associations, via email prior to the effective date of the rule; and notify licensees via the Medical Board's e-newsletter.

### **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 impacted business community includes all allopathic and osteopathic physicians.

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

The adverse impact is that the physician must be licensed by the Medical Board and renew the license every two years. A physician choosing to provide care for youth athletes will also be required to read and understand the Consensus Statement of Concussion in Sport: the 4<sup>th</sup> International Conference on Concussion in Sport, held in Zurich, November 2012. The document will be available via a link on the Medical Board's website.

- 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.*

A physician’s initial license is currently \$335. Renewal of the license is \$305. In addition, in order to renew the license the physician must complete continuing education coursework. Continuing education courses may be obtained free, however, some courses may cost thousands of dollars. The cost to the physician to read and understand the Consensus Statement on Concussion in Sport is unable to be estimated as it will depend on the billing rate for and amount of time a specific physician requires for reading and understanding.

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

The rule imposes the least amount of adverse impact that is compliant with the Committee’s recommendations.

**Regulatory Flexibility**

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

The rule does not provide any exemptions or alternative means of compliance for small businesses. The provisions of the rule are the least onerous possible in compliance with the Committee’s recommendations. Protection of the youth athletes requires that all physicians provide assessment and return to play clearance according to the same standards.

**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 Medical Board does not have authority to fine for violations of the rule. Moreover, whether discipline is imposed against a first-time offender will be determined on the particular facts of the case.

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

The Medical Board staff will assist the public and licensees in understanding the rule. The Medical Board staff will respond to written and telephonic inquiries. The Medical Board posts Frequently Asked Question documents on its website to clarify aspects of rules on which the same or similar questions are received with some frequency.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)