

The State Medical Board of Ohio

Guide to Public Participation in the Rule-making Process

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Introduction

The law under which the practice of medicine is regulated in Ohio has two components. The first is through statutes enacted by the Ohio General Assembly and codified in the Ohio Revised Code (ORC). The second is by rule, developed and enacted by the State Medical Board of Ohio and codified in the Ohio Administrative Code (OAC). Rules provide the detail that clarifies and amplifies the provisions of the Ohio Revised Code and have the force and effect of law. Rules cannot change the provisions of or exceed the scope of authorization in the Ohio Revised Code.

The process by which regulatory agencies adopt administrative rules may appear, at times, dauntingly complex. The process is designed, however, to offer the public and other interested and affected parties an opportunity to provide input regarding the content of any rule being considered. This guide has been published to assist members of the public who participate, or who may wish to participate, in the Board's rule-making process.

Mission and Structure of the Board

The practice of medicine is a privilege which, if practiced by untrained, unscrupulous, or incompetent persons is potentially so dangerous to the public that it requires comprehensive regulation. The State Medical Board of Ohio strives to protect and enhance the health and welfare of Ohio citizens by regulating the practice of licensed medical and limited branch practitioners.

The State Medical Board of Ohio is a state agency established by the legislature in 1896 to protect the public health, safety and welfare by regulating the practice of medicine. The Board is responsible for licensing physicians and surgeons, osteopathic physicians and surgeons, podiatric physicians and surgeons, physician assistants, anesthesiologist assistants, massage therapists, cosmetic therapists, mechanotherapists, naprapaths, and acupuncturists. In addition to granting licensure to these professionals, the Medical Board seeks to ensure the safe and effective provision of medical care to the citizens of Ohio by monitoring the professional conduct of its licensees and enforcing the provisions of Chapters 4730., 4731., 4760. and 4762. of the Ohio Revised Code and the provisions of the Ohio Administrative Code adopted by the Board.

The State Medical Board consists of twelve members: seven Doctors of Medicine (MDs), one Doctor of Osteopathic Medicine (DO), one Doctor of Podiatric Medicine (DPM) and three members of the public ("consumer" members). All members are appointed by the Governor for a term of five years. All final decisions are made by the full Board, but the Board employs a committee structure to assist in the accumulation of expertise required over the many substantive areas of the practice of medicine for which the Board has responsibility. The various committees are subsets of the full Board and make recommendations to the full Board. The Board employs an executive director and a support staff to assist the Board in carrying out its various functions.

Rule-making Authority

An agency's authority to adopt administrative rules is found in statutes, and is generally of two types: general rule-making authority and issue-specific rule-making authority. The Medical Board has been granted a general authority to adopt rules related to its administrative functions and to govern the practice of medicine in sections 4730.07, 4731.05, 4760.19 and 4762.19 of the Revised Code. Specific authorizations or requirements for the Medical Board to adopt rules related to specific legislative initiatives can be found in other language in the Medical Board statutes. All rules of the Medical Board can be found in Chapter 4731 of the Ohio Administrative Code.

The Rule-making Process

Prior to the initiation of the formal rules process, the Board must decide that it needs to propose to change an administrative rule. Often the Board is directed by the legislature to write rules to explain or assist in the administration of new pieces of legislation related to the practice of medicine. Issues also come to the attention of the Board from its licensees, its staff and the public, and in some of those cases the Board may also decide that the best way to address the issue is through administrative rule. In addition, Chapter 119. of the Revised Code requires that each state agency review each of its rules every five years. In any year, then, 20 percent of the Medical Board's rules are scheduled to be reviewed, and each must then go through the formal rule-making process.

In the technical language of rule-making, rules can be of three types: a new rule, an amended rule, or a rescission. Once the Board decides to draft a proposed rule, its procedures are governed by Chapter 119. of the Revised Code.

Filing the Rule

The first step in the rules process is the initial filing of the rule. Once the Board approves a rule change, it must file the proposed rule with the Joint Committee on Agency Rule Review (JCARR). JCARR consists of five senators and five members of the House of Representatives. JCARR maintains jurisdiction over the disposition of the rule from the time it is filed until either it is withdrawn by the Medical Board or moves through the full JCARR process which will be outlined below.

Public Rules Hearing

The second step in the rules process is the public rules hearing which must be held between thirty and forty-one days from the date the rule is first filed with JCARR.

Public Notice: At least thirty days prior to the public hearing, the Board will make reasonable effort to ensure notice is given to all persons who are subject to, or affected by, the proposed rule change, including the Board's licensees and the general public. Public notice of intention to change a rule must include:

- A statement of the Board's intention to consider adopting, amending, or rescinding a rule,
- A synopsis of the proposed rule, amendment or rule to be rescinded or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates,
- A statement of the reason or purpose for adopting, amending, or rescinding the rule,
- The date, time and place of the public rules hearing.

By law, that public notice must be provided to the Register of Ohio who will publish the notice on the Register's web site (<http://www.registerofohio.state.oh.us/>). In addition, the Board may provide additional sources of public notice including, but not limited to, the following:

- The Board maintains a mailing list of all persons who have made a prior written request to receive a copy of each public notice, and copies of such notices may be sent by regular mail or electronic mail to each person on the mailing list at least thirty days prior to the date set for the hearing.
- Upon request, the Board shall promptly send a copy of the notice of the public rules hearing and, if requested, a copy of the proposed rule change, by regular mail or electronic mail to any person not appearing on its mailing list.
- The Board posts the notice of the public rules hearing as well as the full text of the proposed rule on ("Rules" subweb of the Board's web site (<http://www.med.ohio.gov>)).
- Notice of the rules hearing and the text of the proposed rule change will be available at the Board's offices for at least thirty days prior to the public rules hearing.

The Board may assess a reasonable fee for providing the notice and copies of the rules, not to exceed the cost of copying and mailing.

The Public Rules Hearing:

On the date, and at the time and place designated in the notice, the Board will conduct a public hearing at which any person affected by the proposed action of the Board or any member of the public may testify.

Review of Rules Testimony

Once the hearing record is closed, the Board will thoroughly review and consider all the testimony at a regularly scheduled meeting. The Board may decide to proceed with the rules unchanged, it may withdraw the rule, or it may make changes to the rule based on the testimony received and refile it at a later date. The Board is not required to conduct another public hearing when the rule is refiled, nor will it, as a matter of course, contact interested parties to provide notification of amendments to the original rules proposal.

JCARR Hearing

All rules filed with JCARR are reviewed to ensure that the following criteria are met:

- The rule does not exceed the scope of the Medical Board's statutory authority.
- The rule does not conflict with any other rule of the Medical Board or of a different rule-making agency.
- The rule is consistent with the intent of the General Assembly in enacting the statute under which the Medical Board proposed the rule.
- The Medical Board has prepared a complete and accurate "Rule Summary and Fiscal Analysis" of the proposed rule.

JCARR holds a public hearing to review the rules under consideration. Once the hearing is complete and JCARR has determined that the proposed rule does not violate any of those four criteria, the Medical

Board can, usually at the next Board meeting after the JCARR hearing, consider the proposed rule for final adoption.

Rules Adoption

After complying with the filing provisions of Chapter 119. of the Revised Code, and when the time for legislative review and invalidation (i.e. JCARR's jurisdiction) has expired, the Board may issue an order adopting the proposed rule and must designate the effective date of the rule, which shall not be earlier than the tenth day after it has been filed in its final form.

When the rule is adopted, the final language will be posted on the Register of Ohio and on the Board's web site. The Board will also publish the new rules in its newsletter and will send copies of the final rules to those on the mailing list.

Public Participation in the Rules Process

The Medical Board values the input of the public in its rule-making process, and commits to continue to make every reasonable effort to ensure that the public has the opportunity to provide that input at every step of the process.

- *Initiating the discussion:* The public is encouraged to bring issues of concern to the attention of the Board. Members of the public may contact the Board's Public Inquiries section by telephone or may send a letter expressing their concerns to the Board.
- *During the process of rule formulation:* Members of the public may attend the monthly meetings of the Board and the Board's Committees. The President of the Board and the chairpersons of the various committees may permit reasonable requests by members of the public to be heard on the topics being discussed at the meetings. Members of the public may also submit written testimony for consideration by the Committees and the Board. The Board and Committee agendas—the list of issues to be discussed each month—will be mailed to anyone upon request, can be picked up at the Board's offices in the week before each month's Board meeting, and are available on the Board's web site a week prior to the Board meeting.
- *At the public rules hearing:* Testimony may be presented at the public rules hearing by any person. Those who intend to testify at the hearing are asked to complete a witness slip upon their arrival at the hearing, and witnesses are called to testify in the order in which the slips are received. Board members may ask questions of a witness or may place a time limit on a witness's oral testimony to assure that all who wish to testify can be heard.

For those preferring to testify in writing, the Medical Board will accept written testimony. A person who presents testimony in writing is not required to appear at the hearing. Written remarks may be submitted to the Board by mail, fax, or email any time prior to the hearing and until such time as the hearing record is closed.

- *At the JCARR hearing:* This hearing is the final opportunity for the public to provide comments about the rules. The comments before JCARR may only address the four issues within JCARR's jurisdiction as listed above.

Conclusion

The Board relies upon public input to guide its rule-making activities and encourages feedback and comments on its rules. If you would like to be placed on the Board's mailing list to receive notice of all meetings of the Board, please contact the Board office.

If you have any questions regarding the information in this pamphlet, or would like more detailed information on the rule-making process, please contact the Board office.

The Board's current laws and rules are available on the "Statutes" and "Rules" subwebs of the Board's website (www.med.ohio.gov) and can also be found, along with Chapter 119. of the Ohio Revised Code at the state of Ohio's website at <http://www.legislature.state.oh.us/laws.cfm>. A copy of the Board's laws and rules will also be mailed upon request.

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