The State Board of Orthotics, Prosthetics and Pedorthics

Guide to Rule-Making and Public Participation

OPP Board meeting – 5-year review standard, discussion or stakeholder input indicates need for review or development of regulatory language to clarify or more effectively implement RC Chapter 4779. "No change" rules must be considered and processed as well. (SB3, 129GA)

Staff and Members reach out to stakeholders, study issue and draft suggested language. Staff puts in proper format according to LSC drafting rules and requirements. Consider further stakeholder outreach. Staff drafts proposed Business Impact Analysis per ORC 107.52.

OPP Board meeting -- Proposed language is considered as a regular agenda item. The Board takes a formal action to authorize initiation of the formal rule-writing process. Staff prepares informational package

Staff initiates formal stakeholder notification in compliance with ORC 121.82, email blast and website posting, including plain language summary and all proposed language included or by hyperlink. Define comment period end date. Comments must copy to: **CSIPublicComments@governor.ohio.gov**.

After comment period ends, process waits on recommendations from the Office of the Common Sense Initiative. OPP then prepares and issues a response to CSI. Board considers all information, takes formal action to initiate formal electronic rule filing

Public Notice of Intent to Adopt, Amend or Rescind Rule(s) is filed through the Electronic Rules Filing website with JCARR, Secretary of State, LSC, CSI, other agencies as required or indicated**.** Filing includes the exact proposed language and/or changes, and with required supporting information (rule summary, fiscal analysis, BIA). **Includes Notice of Date, Time, Location for Public Hearing**. OPP Board sends notices to all known interested parties.

OPP Board Public Rules Hearing Held

Scheduled no sooner than 31 to 40 days after the formal Public Notice is filed. Public testimony is accepted, recorded. Record may be held open for defined period to accept further testimony. Hearing Summary and Hearing Report demonstrating consideration of hearing information must be prepared and filed. (SB3, 129GA)

JCARR Hearing Held

Scheduled no sooner than 41 days after formal Public Notice of Intent filed. JCARR reviews according to certain criteria, may suggest or order revisions, may recommend the Ohio General Assembly invalidate.

OPP Board meeting held after end of JCARR jurisdiction. Board takes action to finally approve rules, sets effective date not sooner than 10 days after final file date. Board may also choose not to final file, may withdraw rules, or revise and re-initiate process.

77 South High Street, 18th floor
Columbus, Ohio 43215
Tel: (614) 466-1157 Fax: (614) 387-7347
Web: opp.ohio.gov
email: bopp@opp.ohio.gov

The State Board of Orthotics, Prosthetics and Pedorthics

GUIDE TO RULE-MAKING AND PUBLIC PARTICIPATION

This guide is published to educate and assist members of the public who participate, or who may wish to participate, in the Board's rule-making process.

For a complete copy of the Board's rules regarding public meetings and hearings and the rule making process -- or any other issue addressed by regulatory language -- you may contact the Board office, or access the Board's laws and rules on our website at:

http://opp.ohio.gov

You may also access the State of Ohio link to the full and searchable on-line versions of the Ohio Administrative Code http://codes.ohio.gov/oac and Revised Code http://codes.ohio.gov/orc/

THE STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS

The Board was established with the enactment of Senate Bill 238 of the 123rd Ohio General Assembly, which became effective on October 27, 2000.

The Board's purpose is to protect the health and welfare of the public by carrying out its responsibilities under Ohio Revised Code (ORC) Chapter 4779 to license and regulate the professional practice of Orthotists, Prosthetists and Pedorthists, functioning as allied health care professionals. The Board carries out this mission by:

- maintaining standards for initial licensure;
- fielding and investigating complaints of unlicensed practice and practice contrary to law and rule;
- promulgating rules;
- establishing criteria for continuing education; and
- assuring compliance with continuing education and license renewal requirements.

ORC § 4779.05 details the requirements of Board composition. The Board consists of seven members who are appointed by the Governor to serve for terms of three years. No member shall serve for more than two consecutive terms. All members must be residents of the State of Ohio, and the Board's composition must reflect the following criteria:

- one member must be a licensed orthotist
- one member must be a licensed prosthetist
- two members must be licensed as orthotists or prosthetists, or both
- one member must be a licensed pedorthist
- one member must be licensed as an MD, DO, or DPM under ORC Chapter 4731;
- one member must be a consumer of orthotic or prosthetic goods and services.

According to the terms of ORC § 4779.06, members "shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings of the board and in the performance of their official duties. The board may employ such employees as are necessary to enable it to execute its duties."

At this time, the Board employs a single Full Time Employee as Board Director, and occasional temporary, part-time office assistance. The Board is advised and represented in legal matters by an Assistant Attorney General who also represents a number of other agencies and/or boards in the Health and Human Services Section.

RULE MAKING AUTHORITY

ORC § 4779.08 provides the statutory authority and responsibility for the Board to promulgate rules "to carry out the purposes of this chapter", listing a number of subject areas for which the Board is directed affirmatively to enact rules, including:

> (1) The form and manner of filing of applications to be admitted to examinations and for licensure and license renewal;
>
> (2) Standards and procedures for formulating, evaluating, approving, and administering licensing examinations or recognizing other entities that conduct examinations;
>
> (3) The form, scoring, and scheduling of licensing examinations;

(4) Fees for examinations and applications for licensure and license renewal;

(5) Fees for approval of continuing education courses;

(6) Procedures for issuance, renewal, suspension, and revocation of licenses and the conduct of disciplinary hearings;

(7) Standards of ethical and professional conduct in the practice of orthotics, prosthetics, and pedorthics;

(8) Standards for approving national certification organizations in orthotics, prosthetics, and pedorthics;

(9) Fines for violations of this chapter;

(10) Standards for the recognition and approval of educational programs required for licensure, including standards for approving foreign educational credentials;

(11) Standards for continuing education programs required for license renewal;

(12) Provisions for making available the information described in section 4779.22 of the Revised Code. [Dissemination of information to the Public]

ORC § 4779.08 also states that the Board must follow the rules promulgation and adoption procedure set forth in ORC §119.03 (procedural language transitioned to RC §106.03 and .031 pursuant to SB3, 129 GA). These sections of Ohio's Administrative Procedures Act prescribe a structured process and timetable for rules:

- to be formally proposed;
- to be filed with other state agencies and made available for public review and comment;
- for a public hearing or hearings to be held to receive evidence and/or testimony regarding the effect of the proposed regulatory language or suggestions to amend the language;
- for review by JCARR (Joint Committee on Agency Rule Review). [more on JCARR below]

All Rules adopted by the Board can be found in Chapters 4779-1 through 4779-11 of the Ohio Administrative Code.

MEETINGS OF THE BOARD

The Board meets on a regular basis, generally four to five times per year, but more or less frequently as dictated by work flow and legal deadlines. All meetings of the Board are open to the public, although the Board may convene an Executive Session to discuss matters privileged under public meeting law.

The Board maintains a list of stakeholders and other parties interested in the operations of the Board and ORC Chapter 4779, and all such persons receive notices on a regular basis regarding scheduled Board meetings and any proposals to amend, rescind or adopt any rules. Any person interested in receiving notice of regular or special meetings of the Board, or of any proposal or action to enact, amend or rescind a rule, may request in writing to be notified of any meetings of the Board and/or hearings to consider changes to regulatory language. Requests to enter into discussion with the Board during a meeting should be made in writing in advance to the Director and should state the nature of the business to be discussed. The scheduling of such discussion will be at the discretion of the Board President.

All proposed rules, amendments, or rescissions are discussed in open session at regularly scheduled Board meetings.

COMMON SENSE INITIATIVE – BUSINESS IMPACT ANALYSIS

RC § 107.52 requires the agency to complete a Business Impact Analysis for rules that have an adverse impact on business. As a licensing agency requiring payment of fees for application and renewal, all related rules are considered to have an adverse impact on business. Report is completed on a form provided by the CSI office. Notification is issued to stakeholders including access to the draft rules and BIA document, defining a comment period and providing links to the CSI office. CSI office issues any recommendations, or memo of no recommendations, to agency after end of comment period. Agency prepares a response and sends to CSI.

JOINT COMMITTEE ON AGENCY RULE REVIEW (JCARR)

All formal actions to create, change or abandon rule language must be filed with JCARR for review by JCARR staff to ensure that the following criteria are met:

- The rule does not exceed the scope of the agency's statutory authority.
- The rule does not conflict with a rule of the agency or another agency.
- The rule is consistent with the intent of the General Assembly in enacting the statute under which the agency proposed the rule.
- The agency has prepared a complete and accurate Rule Summary and Fiscal Analysis of the proposed rule.
- The language, to the extent it seeks to incorporate other language or text by reference, is in compliance with ORC §121.71 - 121.76.

JCARR meets on a regular basis to review the rules under consideration from various agencies. Each agency is notified of the date when their proposed rules actions are on JCARR's agenda, which information is also available at JCARR's website. This meeting is the final opportunity for the public to provide comments about the rules. The comments before JCARR can only address the four issues that are within JCARR's jurisdiction (statutory scope, conflicting language, legislative intent, accurate supplemental data).

PUBLIC RULES HEARINGS

Prior to adopting, amending or rescinding a rule, the board must make public notice of its intended action by filing the proposed action through the Electronic Rule Filing website with the various agencies specified by the Revised Code. The Legislative Service Commission then publishes the filing on the Register of Ohio, an electronic "gazette" accessible as a website to any interested party. The Board has an affirmative duty to notify all persons who have requested such information of this action. A reasonable effort must also be made to inform those affected by the proposed action.

The full text of all proposed rules will be available at the board's office at least thirty days prior to the date of the public rules hearing. The rules hearing notice 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 hearing on said proposed action.

The board may assess a reasonable fee, not to exceed the cost of copying and mailing, for notices and copies of proposed actions sent to persons requesting said information.

On the date, time and place designated, the board will conduct a public hearing on the proposed rules action. The hearing may be held by or before the full board, a designated board member, or an attorney hearing examiner. Any person affected by the proposed action may:

- Appear and be heard in person, by the person's attorney, or both;
- Present their positions, arguments, or contentions, orally or in writing;
- Offer and examine witnesses;
- Present evidence tending to show that the proposed action, if adopted or effectuated, would be unreasonable or unlawful.

The board must make a record of the information provided and/or testimony given at the hearing at the board's expense. The board may permit persons affected by the proposed action to present their positions, arguments, or contentions in writing, for a reasonable period before, after, or both before and after, the hearing. A person who presents their position or arguments or contentions in writing before or after the hearing is not required to appear at the hearing.

Upon closure of the hearing record, the board will thoroughly review and consider all testimony. The board may make changes to a rule based on testimony received. If the

board refiles a rule, a second public hearing notice is not required unless the changes in the language alters the intent and effect of the rule to such a degree that it is no longer consistent with the information provided in the public hearing notice issued with the original rule filing.

RULES ADOPTION

After complying with the filing provisions of ORC §119, and when the time for legislative review and invalidation has expired, the Board may issue an order adopting the proposed rule or the proposed amendment or rescission of the rule, consistent with the synopsis or general statement included in the public notice. At that time, the Board must designate the effective date of the rule, amendment, or rescission, which date must not be less than ten days after the rule, amendment, or rescission has been filed in its final form. The Board must make reasonable attempts to notify persons affected by the regulatory language of the action taken.

FIVE YEAR RULE REVIEW

The board will review each of its rules every five years to determine whether to continue without change, amend, or rescind each rule in accordance with ORC §119.032. Prior to the scheduled review date of a rule, the board shall review the rule to determine whether:

- The rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted, *and whether it contains derogatory or offensive words or phrases (SB3, 129GA)* ;
- The rule needs to be amended or rescinded to give more flexibility at the local level;
- The rule needs to be amended or rescinded to eliminate unnecessary paperwork;
- The rule duplicates, overlaps, or conflicts with other statutes or rules.

In reviewing each of its rules the board will consider the continued need for the rule, the nature of any complaints received concerning the rule, any relevant factors that may have changed in the subject matter affected by the rule, and whether the rule has an adverse impact on business that should be mitigated. On or before the designated review date, the board will file with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State the fully reviewed rule. Public notice of any amendment or rescission of a reviewed rule and hearing scheduled for such purpose will be in accordance with ORC §119.03 (now RC §106.03 and 106.031*) and OAC Chapter 4779-01. Although the timetables are somewhat different for the five-year rule review, the basic process with opportunities for public involvement and requirements for public notice remains.

Referenced agencies

Ohio Secretary of State: **http://www.sos.state.oh.us/sos/**

Legislative Service Commission: **http://www.lsc.state.oh.us/**

Joint Committee on Agency Rule Review: **http://www.jcarr.state.oh.us/**

Common Sense Initiative Office: **http://www.governor.ohio.gov/CSI**

*(SB3, 129 GA)

This brochure is published in compliance with ORC § 119.0311 - Guide to Public Participation in Rule-Making Act

77 South High Street, 18th floor
Columbus, Ohio 43215
Tel: (614) 466-1157
Fax: (614) 387-7347
Web: opp.ohio.gov
email: bopp@opp.ohio.gov