

Rules Pending Review – September 2014 – March 2015

Five-Year Rule Review

In accordance with the Periodic Review of Rules requirement, the State Board of Orthotics, Prosthetics, and Pedorthics is processing two chapters plus two single rules of its Administrative Rules series for review as indicated below. For the two rules recommended for substantive changes, we have the proposed language attached following this summary; other affected rule language is referenced by link to the current text and is not reproduced here. Finally, a Business Impact Analysis review is included for stakeholder review and feedback and in accordance with the requirements of the [Common Sense Initiative](#).

CONFIDENTIAL PERSONAL INFORMATION RULES – OAC 4779-13 series – NO CHANGE

We are proposing to process [OAC Rules 4779-13-01 through 13-05](#) as NO CHANGE rules. This rule series imposes administrative requirements on the Board and its staff to comply with [Revised Code Section 1347.15](#) regarding access to Confidential Personal Information within the Board's records and record systems. These rules present no adverse impact on businesses.

ADMINISTRATIVE HEARING RULES – OAC 4779-11 series -- RESCIND

In addition, we are proposing to RESCIND entirely and not replace [OAC Rules Chapter 4779-11](#) (13 rules). The series sets forth procedural requirements for administrative hearings held by the Board.

The rule series was developed and adopted in 2003 based on advice from the Office of the Attorney General of Ohio. Administrative law procedural requirements are subject to change based on legislative enactment and case law development. Based on current advice from the Office of the Attorney General of Ohio, Health and Human Services Section, the rules are suggested as appropriate to RESCIND as no longer timely, relevant or complete; and to the extent they reference procedural requirements beyond the Board's enabling statute, they can also be seen as exceeding the Board's authority.

Rescission of the rules presents no adverse impact to businesses, as any business engaged in an administrative hearing process before this Board would be subject to the procedural requirements established under Ohio law that are not within the purview of this agency. Maintaining the rules might present an adverse impact on business if the rules were relied upon as authoritative but were found not to be conforming to current legal requirements.

OPPCE REQUIREMENTS AND REPORTING – OAC 4779-9-01 -- AMEND

The proposed change removes a reference to "automatic" suspension of license for failure to comply with requirements, substituting a reference to the sections of the Revised Code that appropriately delineate the Board's authority for disciplinary or adverse actions against a license or licensee. Current language is unenforceable and thus confusing and extraneous and ripe for amendment as incomplete and in conflict with other language.

FEES – OAC 4779-12-01 – AMEND [RESCIND AND REPLACE]

RC 4779.08 directs the board to adopt a rule or rules setting fees for licensing activities: application, issuance, renewal, and related functions; as well as fines for "violations of this chapter." License

application and renewal fees have not been adjusted since the Board’s inception in 2001. Going into budgeting for the FY16-17 biennium, the agency is facing an imbalance between revenues and expenses. The proposed language would allow the board to adjust fees within a defined range with a ceiling, giving some flexibility to respond to budget requirements as they are clarified. Language also requires notice to stakeholders of license fee increases under consideration allowing for comment and feedback, as well as posting the Board’s fee schedule on its website.

The following ranges/limits are proposed:

	<u>Current Fee</u>	<u>Proposed maximum fee</u>
Full license application	\$125	\$200
Temporary license application	\$150	\$200
License renewal (annual)	\$300	\$500
Reinstatement/late renewal fee	\$300 + \$150	\$250
OPPCE late filing	\$150	\$250
Replace license card	\$5	\$ 25
Replace wall certificate	\$10	\$ 50
Upgrade LO-TEMP, LP-TEMP, LPED-TEMP or LPO-TEMP to full	\$ - 0 -	\$200
Upgrade LP or LO to LPO	\$ - 0 -	\$200
Certified license verification	\$ -0-	\$ 50
License issuance	\$ - 0 -	\$300
Name Change in Database	\$ - 0 -	\$ 50
Review/approval of OPPCE activity	\$ - 0 -	\$ 50
Fines for violation of chapter	\$ - 0 -	\$500

Fee Waiver language: The board may grant waivers of the fee requirements listed in this chapter in cases of undue hardship including, but not limited to, natural disasters and acts of terrorism. Waivers may also be granted to veterans and active military personnel and their spouses.

WHAT DO YOU THINK?

Provide feedback regarding these rules or this process. We want to hear from you. [Email the board using this link \(will copy to CSI office\)](#), or download and send by mail or fax a [Stakeholder Response Form](#).

4779-9-01

Continuing education requirements and reporting (OPPCE).

- (A) All licensees shall verify the successful attainment of approved OPPCE as set forth in rule 4779-9-02 of the Administrative Code.
- (1) A licensed orthotist or prosthetist must achieve forty-five OPPCE units during each three-year accrual period.
 - (2) A licensed orthotist and prosthetist or licensed prosthetist-orthotist must achieve seventy-five OPPCE units during each three-year accrual period.
 - (3) A licensed pedorthist must achieve thirty-three OPPCE units during each three-year accrual period.
- (B) OPPCE hours must be earned no later than thirty days prior to the license expiration date for that renewal period. An excess of approved hours attained during a renewal period will not be applied towards future requirements, unless they are earned after signature date on the renewal application for that period.
- (C) The application for renewal shall include a section for verification of OPPCE compliance. Licensees shall complete the section to certify the completion of the required hours of OPPCE for the current renewal period.
- (D) As a condition of license renewal beginning with the license expiration and renewal date of January 31, 2014, an individual renewing an active license issued by this board, if attesting to completion of required OPPCE for the renewal to process in accordance with the requirements of section 4779.20 of the Revised Code, may be required to verify subject to documentation completion of at least a one-unit or one hour continuing education course approved by the Ohio department of health or the Ohio department of education or such other coursework as the board may determine is appropriate for the professions it licenses on the subject of human trafficking recognition and response training for allied healthcare professionals. The board shall include on its website information regarding such approved training and a link to state of Ohio authorized online resources for the attainment requirements of section 4779.20 of the Revised Code or the requirements of paragraph (A) of this rule.
- (E) It shall be the responsibility of the licensee to maintain and keep all records to serve as documentation for any audit pertaining to the completion of OPPCE requirements; including, but not limited to certificates of completion, transcripts, letters of attendance, or attendance registers. Records shall be maintained for a period of four years beyond the renewal date requiring attestation of OPPCE compliance for the holders of a license issued under sections 4779.10, 4779.11, 4779.12, 4779.13, 4779.16, and 4779.17 of the Revised Code. Legible copies shall

be sent to the board only in response to an audit.

- (F) Failure to meet OPPCE requirements or failure to provide attestation of completion of necessary OPPCE hours sent to the board by January thirty-first of any relevant renewal year may result in ~~automatic~~ suspension of ~~the~~ license ~~by April first of that year~~, pursuant to section 4779.20 of the Revised Code. Failure to verify completion of necessary OPPCE hours within thirty days after receipt of an audit request from the board may result in disciplinary action pursuant to section 4779.28 of the Revised Code. If reinstatement is desired, such individual shall be required to submit a formal request for reinstatement of licensure.

4779-12-01

Fees.

The following fee schedule shall apply:

- (A) The application fee for a license to be issued pursuant to section 4779.10, 4779.11, 4779.12, 4779.13 or 4779.17 of the Revised Code which is not presented as an initial application for a temporary license to be issued pursuant to section 4779.18 of the Revised Code shall not exceed two hundred dollars. The prescribed fee shall be submitted with the application for initial licensure.
- (B) The application fee for a temporary license to be issued pursuant to section 4779.18 of the Revised Code shall not exceed two hundred dollars. The prescribed fee shall be submitted with the application for initial licensure.
- (C) Examination fees will be paid directly to the appropriate testing agencies by the applicant as provided for in rule 4779-5-02 of the Administrative Code.
- (D) The fee for an approved license to be issued pursuant to section 4779.10, 4779.11, 4779.12, 4779.13 or 4779.17 of the Revised Code shall not exceed three hundred dollars. The prescribed fee shall be submitted upon application for the initial license documents to issue after approval has been recorded.
- (E) The cost for a license to be issued pursuant to section 4779.10, 4779.11, 4779.12, 4779.13 or 4779.17 of the Revised Code by upgrade from a temporary license previously issued pursuant to section 4779.18 of the Revised Code shall not exceed two hundred dollars. The prescribed fee shall be submitted with the upgrade application.
- (F) The cost for a license to be issued pursuant to section 4779.12 of the Revised Code by consolidation of licenses previously issued under sections 4779.10 and 4779.11 or 4779.18 of the Revised Code shall not exceed two hundred dollars. The prescribed fee shall be submitted with the consolidation application.
- (G) The annual license renewal fee shall not exceed five hundred dollars per license. The prescribed fee shall be submitted with the renewal application.
- (H) The license reinstatement fee and/or late renewal fee shall not exceed an amount that is fifty percent of the license renewal fee established pursuant to Division (C) of this rule, and shall be payable in addition to the renewal fee. The prescribed fee shall be submitted with the renewal or reinstatement application.
- (I) The OPPCE accrual certification late fee shall not exceed an amount that is fifty percent of the license renewal fee established pursuant to Division (C) of this rule, and shall be payable in addition to the renewal fee and any late renewal fee.
- (J) The fee to review an application for approval of OPPCE units for a continuing education course pursuant to Revised Code section 4779.23 or for approval of OPPCE credits for teaching pursuant to Revised Code section 4779.24 shall not

exceed fifty dollars per activity. The fee shall be submitted with the application for approval of continuing education coursework or teaching activities.

(K) The cost for a replacement license card shall not exceed twenty-five dollars. The fee shall be submitted with the request.

(L) The cost for a replacement license wall certificate shall not exceed fifty dollars. The fee shall be submitted with the request.

(M) The cost of a certified license verification shall not exceed fifty dollars. The prescribed fee shall be submitted with the request.

(N) The cost to complete a name change shall not exceed fifty dollars. The prescribed fee shall be submitted with the request.

(O) The cost to apply for licensure or registration, or for renewal of licensure or registration, of subordinate license or provider types allowed by RC Chapter 4779 shall not exceed the costs for application or renewal of license or provider types as provided for in this rule.

(P) No personal checks will be accepted as license renewal fees. Renewal fees not paid through any online or electronic payment method provided for by the board will only be accepted if remitted by official bank check, certified check, money order, or business check.

(Q) All agency fees that are not established precisely by this rule must be approved by the board at a regular meeting of the board where at least sixty days' notice has been provided by posting to the Board's website information regarding the proposed fee schedule and by posting to the Ohio Business Gateway. All agency fees established pursuant to this rule shall be listed on the Board's website.

(R) The fine for violation of any provision of RC Chapter 4779 shall not exceed five hundred dollars.

(S) The board may grant waivers or reductions of the fee requirements listed in this chapter in cases of undue hardship including, but not limited to, natural disasters and acts of terrorism. Waivers may also be granted to veterans and active military personnel and their spouses.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Orthotics, Prosthetics, and Pedorthics (OPP)

Regulation/Package Title: 5-year rule review 2014-2015

Rule Number(s): 4779-9-01 – OPPCE Requirements (AMEND);

4779-12-01 – Fees (AMEND [Rescind/Replace]);

4779-11 series - Hearing Rules (RESCIND);

4779-13 series – Confidential Personal Information (NO CHANGE)

Date: 11.07.2014

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.

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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.

4779-9-01 – AMEND

The rule language provides details to effectively administer the Continuing Education requirements established in the Practice Act at RC 4779.20. Division (D) of the rule, which was new language in an update processed in 2013 and is not being touched in this update, provides an opportunity for the Board to implement a Human Trafficking educational component to its mandatory CE requirements. The proposed amendment to Division (F) addresses a technical issue regarding compliance and enforcement that was brought to the Board's attention by OAG/HHS. It clarifies that any license suspension for non-compliance must be processed in accordance with standard disciplinary provisions.

4779-12-01 – Fees – AMEND [RESCIND/REPLACE]

The rule language establishes a fee schedule in accordance with the requirements of RC 4779.08, which directs the Board to establish by rule among other things fees and fines for license application and renewal, continuing education course and provider approval, and for violations of the Chapter. Basic license application fees and renewal fees have not changed since the Board began issuing licenses in FY2002. Application fees are \$125 for a full license, \$150 for a Temporary license, and \$300 for annual license renewal. The amended language would allow the Board some flexibility to re-calibrate fees as may be required in the biennial budgeting process but in a manner that requires notice to and involvement from the regulated constituency. Going into budget planning for FY16-17, the Board is projecting a shortfall of revenue vs. expense. The amended language would allow the Board in consultation with its licensed constituency, the Governor's office and the Office of Budget and Management to adjust fees as needed to maintain a budgetary balance between revenue and expense.

4779-11 series – Hearing Rules – RESCIND

The series sets forth procedural requirements for administrative hearings held by the Board. The rule series was developed and adopted in 2003 based on advice from the Office of the Attorney General of Ohio. It contains thirteen (13) rules covering matters such as representation, filing motions, granting continuances, witnesses, subpoenas, and other legal technical requirements. Administrative law procedural requirements are subject to change based on legislative enactment and case law development. Based on current advice from

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the Office of the Attorney General of Ohio, Health and Human Services Section, the rules are suggested as appropriate to RESCIND as no longer timely, relevant or complete; and to the extent they reference procedural requirements beyond the Board's enabling statute, they can also be seen as exceeding the Board's authority.

4779-13 (series) – Accessing Confidential Personal Information – NO CHANGE

The series contains the following rules:

- 4779-13-01 Definitions for language in rules governing access to confidential personal information.
- 4779-13-02 Procedures for accessing confidential personal information.
- 4779-13-03 Valid reasons for accessing confidential personal information.
- 4779-13-04 Confidentiality statutes.
- 4779-13-05 Restricting and logging access to confidential personal information in computerized personal information systems.

The rules were promulgated in year 2010 and were and are required for agency compliance primarily with RC 1347.15. Office of OAG/HHS has been consulted and has not reported any amendment or update required. These rules are mandated by RC 1347.15 and are in compliance with directives issued thereunder.

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

The Board's rulemaking authority is provided by RC 4779.08 which states at Division (A):
The state board of orthotics, prosthetics, and pedorthics shall adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter ...

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.

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

The rules referenced in this action are focused on internal administrative issues for implementation of Chapter 4779 as a professional practice act for the regulated professions in the state of Ohio and do not reference any federal authorities.

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)?

Chapter 4779, Ohio Revised Code, establishes the Board for the general purpose of protecting the public who are consumers of these specialized, customized medical devices. The statute as implemented through the rules seeks to establish minimum standards of education, training and care for the allied healthcare professionals who deliver the services.

[ORC Section 4779.08](#) requires (“shall adopt rules”) the Board to develop and implement rule language to carry out the chapter’s purposes, including all the subjects covered in this rule review.

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

These rules do not implement, modify or expand any programmatic initiative or benefit and thus the proposed changes will not result in any quantifiable outcome-oriented data. The rescission of the 4779-11 series will result in a net decrease in the number of rules promulgated by the Board and subject to revision or review.

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.

At the September 2014 meeting of the Board, Association representative Dianne Farabi was in attendance and included in discussion about rule review and budgetary issues. In September and October 2014 the agency posted information on its website and invited discussion and input by email blast to its stakeholders and licensed constituency. Announcements are issued to **licensees, employers and other stakeholders as maintained on the Board's Stakeholders Distribution List, which includes representatives of Ohio and National professional trade associations and credentialing partners.** The documents listed all the rules pending review with short descriptions, and included a "Stakeholder response form" to assist in providing feedback relevant to the rule review process and the particular requirements of ORC 107.52. Information regarding the pending review was also noted with invitations to review and respond in the Board's newsletters issued subsequent to the June and September 2014 meetings.

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

➤ *No substantial input has been received to date; the Association reportedly conducted a survey of its membership addressing certain questions regarding support for the Board and continued funding initiatives, yielding a fairly low response ratio with opinion evenly divided on the fee increase question.*

- 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?**

N/A

- 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?**

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From an administrative perspective, this is basic language largely governing the administrative operations of the Board. One of the proposed changes in the package allows the Board flexibility in setting license fee schedules in order to address budgetary issues appropriately and within expected parameters. The agency is seeking further authority from the legislature to “close the gap” in licensing/registration requirements.

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.

Not applicable to these rules.

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

Information publication, stakeholder notification, review by OAG/HHS.

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 only rule being proposed for “implementation” in this review is the Fee rule, 4779-12-01. Fees are assessed uniformly during license application submission and renewal processes. Anticipating implementation of a new eLicense database system, fee amounts for fee types will be programmed into the automated system to assure unbiased, accountable, and even application of requirements.

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 is identified as applicants for licensure, current constituent licensees, and their employers.

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

The rule allows the Board to consider increases in fees as follows (fees have not been adjusted since being established in FY2002)

	<u>Current Fee</u>	<u>Proposed maximum fee</u>
Full license application	\$125	\$200
Temporary license application	\$150	\$200
License renewal (annual)	\$300	\$500
Reinstatement/late renewal fee	\$300 + \$150	\$250
OPPCE late filing	\$150	\$250
Replace license card	\$5	\$ 25
Replace wall certificate	\$10	\$ 50
Upgrade LO-TEMP, LP-TEMP, LPED-TEMP or LPO-TEMP to full	\$ - 0 -	\$200
Upgrade LP or LO to LPO	\$ - 0 -	\$200
Certified license verification	\$ -0-	\$ 50
License issuance	\$ - 0 -	\$300
Name Change in Database	\$ - 0 -	\$ 50
Review/approval of OPPCE activity	\$ - 0 -	\$ 50
Fines for violation of chapter	\$ - 0 -	\$500

Fee Waiver language: The board may grant waivers of the fee requirements listed in this chapter in cases of undue hardship including, but not limited to, natural disasters and acts of terrorism. Waivers may also be granted to veterans and active military personnel and their spouses.

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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.

Answer same as for (b) above.

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

The Board is required per legislative and executive policy to take appropriate actions to balance its expenses and revenues to maintain an appropriate standing in the 4K90 rotary fund. In addition, the regulated community sought state licensure when the O&P leadership in the state advocated passage of the Practice Act in the 123rd General Assembly. It is common knowledge that fees and funding are part of that package.

Regulatory Flexibility

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

No. Chapter 4779 does not provide for licensing/regulation of the business entity itself per se; it only provides for licensing of individual practitioners. No distinction is or can be fairly drawn between individual practitioners based on the relative size of the business in which they are employed.

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 agency considers licensees’ requests for relief from late payment or late filing penalties on a case by case basis, and as reflected in the Board’s minutes, such requests are often granted on a one-time basis for good cause shown. In addition, the general orientation of the Board is to seek cooperative compliance. Other rule language establishes a mechanism to minimize the incidence of first-time paperwork violation and to provide for an informal remediation protocol. See [OAC 4779-9-03 OPPCE accrual deficiency and remediation](#)

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

Board office staff offer assistance as needed upon contact and request.