

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Dental Board

Regulation/Package Title: 2015 – Chapter 19

Rule Number(s): 4715-19-01, 4715-19-02, 4715-19-03, 4715-19-04, and 4715-19-05

Date: December 7, 2015

Rule Type:

New
 Amended

5-Year Review
 Rescinded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.

No Change

- **O.A.C. 4715-19-01 Personal information systems.**: This rule sets forth the definition of the personal information system maintained by the Board.

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- **O.A.C. 4715-19-03 Valid reasons for accessing confidential personal information.:** This rule sets forth the valid reasons for accessing the Board’s confidential personal information system.
- **O.A.C. 4715-19-05 Restricting and logging access to confidential personal information in computerized personal information systems.:** This rule sets forth the logging procedures/access to the Board’s personal information system.

Amended

- **O.A.C. 4715-19-02 Procedures for accessing personal information.:** This rule provides clarification of criteria for accessing the Board’s confidential personal information system, the process for notification of invalid access, appointment of data privacy contact, and completion of privacy impact assessment. Amendments to the rule were to further clarify the Board’s data privacy contact.
- **O.A.C 4715-19-04 Confidential information.:** This rule defines Board related statutes regarding confidential personal information systems. Amendments to the rule identifies Ohio Automated Rx Reporting System (OARRS) information obtained during an investigation by the Board to the list of confidential personal information.

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

O.R.C. 119.03 Administrative procedure definitions.

O.R.C. 1347.15 Access rules for confidential personal information.

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.

These regulations do not implement a federal requirement nor were they implemented to enable the state to obtain or maintain approval to administer and 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.

This question is not applicable since the regulations do not implement a federal requirement.

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)?

The General Assembly determined that the profession of dentistry required regulation and established a Board to license individuals and enforce the law and rules governing the practice of dentistry and dental hygiene in Ohio. These regulations allow the Board to carry

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out its statutory mission of ensuring public protection and by ensuring the safety of information contained in the Board's confidential personal information system.

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

The rules are not quantitative regulations, nor do they impose a measureable (if any) quantitative burden on the licensees or the general public. The success of the regulation will be measured by the affected individuals understanding or legal objections to the rules.

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 Board's Law and Rules Review Committee (Committee), holds open meetings throughout the rule review year. The Committee is comprised of eleven (11) members including representatives of the Board, the Ohio Dental Association and the Ohio Dental Hygienists' Association. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list; a listing of parties interested in all Board proceedings. The Committee met with the opportunity to discuss these rules in July, September, and December 2014.

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

Discussion by the Committee and voted on by the full Board resulted in the decision that these rules are working as intended by the legislature and that the amendments to the rule were to further clarify the Board's data privacy contact and to identify information obtained by the Board during an investigation via the Ohio Automated Rx Reporting System (OARRS) to the list of confidential personal information.

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 this rule as the rule is not data driven.

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?

No alternative regulations were considered by the agency since it was determined that the rule works as intended by legislature.

- 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 Board did not see an application for the rule in this package to be performance-based.

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

The five-year rule review process is conducted with a focus on eliminating obsolete, unnecessary, and redundant rules and avoiding duplication. In addition, meetings with interested parties help to ensure that these rules do not duplicate any existing Ohio regulation.

- 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 Board will continue to use its website and social media links to educate and update licensees on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel in an effort to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules, particularly amended rules are provided to their members through communications and CE opportunities. Staff training is conducted for rule changes to ensure that regulations are applied consistently.

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 rule impacts any personnel in the practice of dentistry or any interested party inquiring into information maintained in the Board's information systems.

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

This rule establishes a personal information system maintained and utilized by the Board. The proposed amendments will not impose any additional adverse impact in the form of fees, fines or employer time.

- 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.

This rule establishes a personal information system maintained and utilized by the Board. The proposed amendments will not impose any additional adverse impact in the form of fees, fines or employer time.

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

The regulatory intent set forth in this rule is to establish how the Board is to keep confidential information, who can access that information and how that access is monitored or tracked. The regulation ensures that confidential information is only accessed by select individuals and solely for necessary work purposes. This regulation affects the internal operations of the Board and will not pose any adverse impact on the regulated business community.

Regulatory Flexibility

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

The rules exist for the sole purpose to provide the Board the authority to discipline licensees for substandard practice which allows the Board to fulfill its statutory mission of protection of the public while also allowing for the protection of confidential personal information of regulated individuals of the Board.

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?

There is no penalty or violation applied to this rule. Therefore, this is not applicable.

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

Resources available to assist small businesses/stakeholders with compliance are online access to the Ohio Revised and Administrative Codes and written and verbal from Board staff in response to inquiries from interested parties.

ACCESSING CONFIDENTIAL PERSONAL INFORMATION

4715-19-01 PERSONAL INFORMATION SYSTEMS.

- (A) The executive director of the board shall be directly responsible for the personal information system maintained by the board.
- (B) The board shall discipline any employee who initiates or otherwise contributes to any disciplinary or other punitive action taken against another individual who brings to the attention of the appropriate authorities, the press, or a member of the public, any evidence of unauthorized use of any material contained in the personal information system.
- (C) The board shall maintain its personal information system with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination made by the board that is based on information contained in the system.
- (D) The board shall investigate, upon request, the accuracy, relevance, timeliness, and completeness of the personal information which is disputed by the subject of a record contained in its personal information system and report its findings to the disputant within thirty days after receipt of the request.
- (E) The board shall not place personal information into an interconnected or combined system unless said system contributes to the efficiency of other agencies or organizations authorized by law to use the system.
- (F) The board shall not use any personal information placed into an interconnected or combined system by another state or local board or an organization unless the personal information is necessary and relevant to the performance of a lawful function of the board.

4715-19-02 PROCEDURES FOR ACCESSING PERSONAL INFORMATION.

- (A) Personal information systems of the board are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the board to fulfill his or her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The board shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.
- (B) Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:
 - (1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
 - (2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and
 - (3) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.
- (C) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the

extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would neither delay or impede an investigation of the circumstances and involvement of an employee surrounding the invalid access, nor jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person. Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access, and may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

- (D) The board executive director shall designate an employee of the board to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.
- (E) The board executive director shall designate an employee of the board to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

4715-19-03 VALID REASONS FOR ACCESSING CONFIDENTIAL PERSONAL INFORMATION.

- (A) Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information is a manual system or computer system.
- (B) Any of the following functions normally performed by the board constitute valid reasons for authorized employees of the board to access confidential personal information:
 - (1) Responding to a public records request;
 - (2) Responding to a request from an individual for the list of CPI the board maintains on that individual;
 - (3) Administering a constitutional provision or duty;
 - (4) Administering a statutory provision or duty;
 - (5) Administering an administrative rule provision or duty;
 - (6) Complying with any state or federal program requirements;
 - (7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
 - (8) Auditing purposes;
 - (9) Licensure [or permit, eligibility, filing, etc.] processes;
 - (10) Investigation or law enforcement purposes;
 - (11) Administrative hearings;
 - (12) Litigation, complying with an order of the court, or subpoena;

- (13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals,/issues);
 - (14) Complying with an executive order or policy;
 - (15) Complying with a board policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state board; or
 - (16) Complying with a collective bargaining agreement provision.
- (C) In addition to the general processes described in paragraph (A) of this rule, in the following specific processes of the board, authorized board employees would have valid reasons for accessing CPI:
- (1) Investigators, attorneys, and staff may review CPI of individuals who are subject to investigation for alleged misconduct which may result in discipline against a dentist, dental hygienist or dental assistant. These same employees may review CPI of individuals who are not the subject of the investigation, but may be witnesses with information related to the investigation. CPI may also be reviewed by these employees and members of the board in professional conduct matters which become the subject of administrative hearings.
 - (2) Board employees may review CPI of persons who hold or are applying for any license, limited license, permit, certificate or registration.

4715-19-04 CONFIDENTIAL INFORMATION.

The following federal statutes or regulations or state statutes make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by this board in accordance with section 1347.15 of the Revised Code.

- (A) Social security numbers: 5 U.S.C. 552a. , unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.
- (C) Medical records: section 149.43 of the Revised Code and Health Insurance Portability and Accountability Act, Title II 45CFR 160, 45CFR 42 USC 1320.
- (D) College transcripts: Family Education Rights and Privacy Act, 34 CFR Part 99.
- (E) Records excluded by the Ohio Public Records Act: section 149.43 of the Revised Code.
- (F) Confidential information obtained during an investigation pursuant to section 4715.30 of the Revised Code.
- (F)(G) Confidential information obtained via the "Ohio Automated Rx Reporting System (OARRS)".

4715-19-05 RESTRICTING AND LOGGING ACCESS TO CONFIDENTIAL PERSONAL INFORMATION IN COMPUTERIZED PERSONAL INFORMATION SYSTEMS.

- (A) Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (B) When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (C) When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system

shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.

- (D) The board shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access. Access to confidential information is not required to be entered into the log under the following circumstances:
- (1) The employee of the board is accessing confidential personal information for official board purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (2) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically name individuals.
 - (3) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (4) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:
 - (a) The individual requests confidential personal information about himself/herself.
 - (b) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.
 - (5) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.
- (E) The board shall issue a log management policy that specifies the following:
- (1) Who shall maintain the log;
 - (2) What information shall be captured in the log;
 - (3) How the log is to be stored; and
 - (4) How long information in the log is to be retained.