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September 21, 2018

The Honorable Lt. Governor Mary Taylor
Common Sense Initiative
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CSIReferrals@governor.ohio.gov

Via e-mail

Re: August 2018 Referral by the Council of Holistic Health Educators

Dear Lt. Governor Taylor,

Please accept this letter as the State Medical Board of Ohio's ("the Medical Board") response to the referral made by the Council of Holistic Health Educators ("CHHE") on in August 2018. In its referral, CHHE asks the Common Sense Initiative ("CSI") to prohibit the Medical Board from enforcing Chapter 4759 of the Revised Code because those long-established laws improperly prohibit unlicensed individuals from offering nutritional advice. For the following reasons, CSI should decline to render an opinion on CHHE's referral because CSI is without jurisdiction to grant CHHE any relief.

In their referral, CHHE essentially requests that CSI order the Medical Board to cease regulating the practice of dietetics. CHHE also asks this body to recommend to the General Assembly that Chapter 4759 be rescinded or revised. Because CSI lacks the power to do either of those things, this body should decline to render any opinion on the referral.

For more than 30 years, the State of Ohio has regulated the practice of dietetics. See R.C. 4759.01, *et seq.* In July 1987, the General Assembly created the Board of Dietetics ("Dietetics Board"). See 1987 Ohio H.B. 570 (Ex. A). Only those licensed by the State may practice dietetics. See R.C. 4759.02. As part of the 2017 budget bill, the Dietetics Board was dissolved and its duties placed under the jurisdiction of the State Medical Board. See 2017 Ohio H.B. 49, Sec. 515.31. The rules of the former Dietetics Board remain in effect until such time as the Medical Board modifies or rescinds them. 2017 Ohio H.B. 49, Sec. 515.31(C). The General Assembly further directed that the Medical Board appoint a Dietetics advisory council. See R.C. 4759.051. To date, the Medical Board has not taken any actions with respect to dietitians.

A. There is no "action" for this body to review.

Before proceeding further with any analysis of CHHE's referral, CSI must ensure that it has the statutory authority to do as CHHE requests. CSI has been granted the authority to review "actions" taken or proposed to be taken by boards or commissions subject to review. See R.C. 107.56(B). The Medical Board is subject to that review. See R.C. 107.56(A)(25). As part of that review, CSI has been directed to review any "action" that may have an anti-competitive impact. See R.C. 107.56(B). Rule 107-3-01(B) defines an action as "a board's or commission's order, proposed order, or other proposed action which is subject to review."

In this instance, there is no “action” for CSI to review. Nothing has happened. No discipline has been proposed. No orders have been issued. No action been proposed that would impact CHHE or its members. Instead, CHHE has asked this body to invalidate laws that have been in effect for decades and, in effect, deregulate the practice of dietetics. That falls plainly outside of this agency’s purview because nothing in R.C. 107.56 gives CSI the power to invalidate an existing rule or statutory provision. Indeed, R.C. 107.56(C)(4) requires an aggrieved party to seek CSI review “within thirty days after receiving notice of the action or proposed action.” That requirement certainly belies any argument that the General Assembly intended to grant CSI the authority to review any rule or law – no matter the age.

B. Conclusion

In sum, the CSI should decline to take any action on CHHE’s referral. The Medical Board has taken no action, or even proposed to take any action, which would trigger review by this body. And the CSI has not been delegated any authority to strike down or invalidate longstanding rules or statutes. Simply put, CHHE has not asserted any legal authority by which they can obtain relief. Even if an “action” was at issue, the standards CHHE complains of were set forth in statute by the General Assembly, not merely in rule. Should CSI find that it has jurisdiction to consider CHHE’s referral, the Board requests the opportunity to supplement this response.

Sincerely,

/s/ James Wakley
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