



## RULE WRITING

# What Good Looks Like

Often, as members of the Executive Branch, we are dealt a specific hand of regulations to administer; however, DOPL statutes also include a great deal of administrative rule making authority. While many different areas may allow for us to make laws, it is important that we weigh the need for them, having a full understanding of the benefits and the liabilities of regulation we enact.

The following set of questions are modified from a similar set of questions developed by Kara Schmitt titled “Questions a Legislator Should Ask” (2018). The intent of these questions is to help each board member assess both possible and existing regulation in a thorough manner. While not all questions will apply to each situation, we hope you find the checklist useful as you undertake the rule writing process.

### **Questions a *Board Member* Should Ask:**

#### **1. What is the issue this regulation addresses?**

- Is there a risk of public harm without this regulation?
- How prevalent is the issue?
- Has the public expressed concern, or requested the regulation? If so, how does this regulation address the public request?

#### **2. What is the public benefit of the regulation?**

- Does the public benefit outweigh any additional costs to the public?
- Would the proposed regulation unfairly disadvantage special populations such as veterans or active duty military personnel and spouses, immigrants, long-term unemployed, individuals with prior criminal records, etc.?

#### **3. Does rule making authority exist, whether explicit or implicit?**

- Is the statute unclear?
- Do other statutes or rules exist that address the issue?

- Do incorporated provisions, such as adopted codes of ethics, address the issue?

#### **4. What current laws or standards exist to address the issue?**

- Have professional association/organizations established alternative methods of addressing the problem, such as codes of ethics, additional certifications, etc.?
- Could other laws, such as consumer protection or criminal law, be used instead of this new regulation?
- Could strengthening or expanding an existing law be used, rather than creating new regulations?

#### **5. Have alternatives to regulation been considered?**

- Would regulation of the employer, business, or accrediting organization, rather than the individual, provide the necessary public protection?
- Could national standards be utilized?
- Why would this regulation be the most effective option?

#### **6. Has advice been sought from key stakeholders as to whether the proposed regulation would benefit the public and address the issue?**

- Who is advocating for the proposed regulation? Who is opposed?
- Does the issue impact more than one profession? If so, has the board/association for the effected professions been consulted?

#### **7. Would the regulation introduce a barrier to entry into a profession or occupation?**

- If yes, would the regulation result in a lack of market competition and/or greater costs or quality of care to society as a whole?
- What would be the impact of the regulation on consumer choice?
- Would the regulation create barriers to access related to geography, income, or culture?
- Is the profession attempting to establish title protection that will disadvantage current professionals in the market without an obvious benefit to the public?

#### **8. How will the regulation be administered by DOPL and how will the cost of the regulation be financed?**

While originally intended for legislation, Dr. Schmitt's book contains further explanation and background information regarding many of the concepts outlined above. It is available for purchase from CLEAR at <https://www.clearhq.org/page-1721424>.

