CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Continuing Education

Rule Number(s): 4713-21-01, 4713-21-02, 4713-21-03, 4713-21-04; 4713-21-05; 4713-21-06; 4713-21-07; 4713-21-08; and 4713-21-09.

Date: November 6, 2012 Revised March 4, 2013

Rule Type:

X New

X Amended

☐ 5-Year Review

xRescinded

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.

Chapter 4713-21 was promulgated to ensure cosmetology professionals maintain their skills or even improve them by taking continuing education ("CE") courses. This chapter sets forth

standards and requirements for the continuing education courses, to make them as useful to the licensees as possible and to track licensees' completion of the courses. It also provides a means for a licensee, who, for whatever reason, escrowed a license, and didn't practice for a time, to return to the workforce as a practicing cosmetologist. Part of the chapter describes how to approve providers of continuing education. The Board added a requirement to the necessary hours for CE. At this time, the Board can mandate up to eight hours of CE. To this, the Board added the requirement that the Board mandates an independent contractor take up to two- hours of CE in business and tax as part of their required continuing education. R.C. 4713.39 permits the Board to promulgate rules to govern the independent contractors, who operate small businesses within the business of a licensed salon.

Almost all licensees of the Board either work for or own small businesses. For a small business person, one skill necessary to operate a business is a certain amount of knowledge as to how business works. All students of a branch of cosmetology receive very basic business education, because cosmetology is a business as well as a profession. Individuals, who have acquired a managing license, have taken as part of their schooling, courses in consumer and product safety, salon operation and procedures, salon supervision and management, product and service sales training, communication skills. Included in these broader topics are business skills, tax law, laws and rules, both of the Board and necessary business laws and rules. To obtain a managing license, R.C. 4713.30 requires that the applicant either have working knowledge of the profession or take courses for the managing license. Thus, as part of earning the license, the holder of a managing license has had basics of business and taxes and business law of business as the laws and rules of the board.

One of the key purposes of the managing license is to enhance the skills of members of the cosmetology profession. This is important, because from 1933 when the General Assembly passed the first cosmetology laws, salons are to be overseen by licensees holding managing licenses. By teaching them skills that the board is proposing to enhance with continuing education classes, the licensees can better meet requirements set forth in R.C. 4713.41. However, a managing license holder would generally not know when these laws change or are modified. Because tax laws, cosmetology laws and rules, and business models evolve, these managing license holders will have very needed skills updated and taught to them in continuing education courses. Given the nature of their businesses, they would have very few opportunities to find out important information that often times has changed substantially since it was first taught to them in a school of cosmetology. Up-to-date information about the laws and rules is very important for licensees to have in order to successfully run their businesses.

A salon is required under R.C. 4713.41 to have an individual holding a managing cosmetology license in charge of and in immediate supervision of a salon at all times when the salon is open.

It is important to remember that the Board licenses the physical property of the salon. Under the current law, the owner of a salon can have a profession other than that of a cosmetology professional. As long as the owner does not practice any branch of cosmetology in the salon and has someone with a managing license overseeing the salon's operation, the requirements of R.C. 4713.41 regarding salon management and operation have been complied with.

The independent contractor, whose right to operate is mandated under R.C. 4713.39, as mentioned above, essentially must have all the skills necessary to operate a salon and then a few other business skills in order to obtain initial licensure as he or she is essentially a business on its own. So the skills proposed in this section are first taught in the managing courses by schools of cosmetology, and now proposed to be enhanced through continuing education. R.C. 4713.62(B) sets forth the general requirements for the courses a continuing education provider may require in three distinct categories, enhancing the professional competency of the affected licensees, protecting the public and educating the licensees in the laws and rules regulating the practice of a branch of cosmetology.

Not clarified in the BIA is the new requirement under 4743.07 for Boards and agencies to offer training in trafficking. Sadly, the cosmetology profession has been used as a common vehicle for trafficked women and men snuck in and out of Ohio, and it was only recently that the Board has made an effort to alert its licensees as to the signs of this very serious crime. The mandatory training added to continuing education as well as to other educational opportunities will be designed to help that process and to try to protect innocents, a worthy goal that is a priority of state government. This, too, comes clearly under R.C. 4713.62(B)(4)(b), as it is the general public that will be protected as well, because some of the trafficked who try to practice cosmetology lack training in infection control and safety. Educating licensees and permit holders about trafficking has become a priority of Governor John R. Kasich, who in Executive Order 2012-06K, ordered state agencies to provide continuing education for licensed professionals in Ohio. The requirement that licensees have training about the trafficking problem complies with the law and The Governor's Executive Order.

While the rules in this chapter only recently passed the five year review process, the Ohio State Board of Cosmetology ("Board") had concerns about the effectiveness of rules as they had been written previously. The Board decided to strengthen the rules to better protect the licensees taking the courses and those members of the general public using the services of the cosmetology profession. The proposed amendments and new rules will better ensure that the licensees receive the continuing education for which they have paid and the general public is better protected.

It was very widely perceived that the Board's former rules and CE process were not very sophisticated and generally not very valuable to the licensee. The intent of continuing education

is to assure that licensed professionals are keeping up their job skills in order to maximize their value to their clients and the people of Ohio. The former rules were inadequate to allow that, and The Board feels strongly that continuing education must be both rigorous and informational in order to justify it. These rules reflect years of feedback and opinion from the licensed public, the Board Staff, and Board Members themselves. These reforms will provide far higher value to the licensed community at the same cost.

Enhancing the skills of a managing licensee who also has acquired an independent contractor's license, therefore, is required by statute. To mandate that the individuals holding a managing license/independent contractor's license increase their knowledge of business and tax law as well as their skills fits right into the requirement for programs of continuing education set forth in R.C. 4713.62(B)(4). It certainly enhances the professional competency of the independent contractor, and, at the same time, protects the public if the licensee is required to have additional training in business skills, by which the licensee is provided with a more thorough understanding of commerce, policy, and law.

Ohio Adm. Code 4713-21-01. This rule essentially explains why continuing education courses are needed and what the rules in this chapter will do. The proposed change only clarifies the language used in the paragraphs.

Ohio Adm. Code 4713-21-02. The rule sets forth definitions of terms only used in this chapter. The proposed amendments to this rule are minor, such as changing the word "vocational" to "technical".

Ohio Adm. Code 4713-21-03. The continuing education requirements set forth in sections 4713.59, 4713.60 and 4713.61 of the Revised Code are further defined in this rule. In the proposed rule, independent contractors are to take two hours of CE as part of taking the required eight hours for a managing license. Independent contractors are small businesses. As explained above, R.C. 4713.62 mandates providers of continuing education enhance the educational skills of cosmetology professionals. While every student of a basic cosmetology license receives some business and professionalism and tax instruction, having education in those areas is essential for individuals who wish to receive a managing license under R.C. 4713.30. Instructors will continue to need to take an additional eight hours as will those who hold practicing licenses for both cosmetology and esthetics. The proposed rule allows the Board to determine how many hours, with eight as maximum, each licensee should take for each personal license.

Ohio Adm. Code 4713-21-04. The current rule indicates how a licensee, when renewing the license, is to complete a continuing education form furnished by the Board. The current rule requires the licensee to provide proof of satisfactory completion of the course work prior to the Board's renewal of the license. The proposed rule will simplify the procedure, mandating that the licensee maintain proof of the completion of the coursework required in case the Board decides to audit that particular licensee. However, the licensee would only fill out a Board-created form at the time of the renewal application indicating the completion of the required course hours.

Ohio Adm. Code 4713-21-05. There is no change proposed to this rule.

Ohio Adm. Code 4713-21-06. The current rule explains how a licensee whose license is in escrow or inactive can reactivate the license. The only changes to the current rule were stylistic.

Ohio Adm. Code 4713-21-07. Under the current rule, the Board is to inform licensees about their CE requirements through the Board's web page. The changes in the proposed rule are stylistic.

Ohio Adm. Code 4713-21-08. This rule describes the procedure a person must follow to become a CE provider. The proposed rule requests an outline rather than a curriculum and copies of the credentials to support the qualifications of each educator and each person developing the course. The application must be submitted thirty days before the anticipated date of the course offering for demonstration or seminar workshops and 45 days for online and correspondence courses. Proposed paragraph (B)(2) states that the courses are to further professionally educate board licensees in the services they provide to their clients, to improve the services available to the consumers of cosmetology services in Ohio. The proposed rule creates requirements for on-line courses to test students more frequently during the course and to randomize the questions to scramble their content. The thought behind this change was to make the on-line courses more challenging and to encourage the CE student to learn more. Correspondent courses were mandated to be more rigorous, so a course for eight hours of credit will take more than forty-five minutes to complete, thus maximizing the value of the actual course work. A provider of CE must offer certain areas of education, as set forth in R.C. 4713.62(B). The courses are to enhance the "professional competency" of the licensee. In other words, those who are independent contractors under R.C. 4713.39 and hold managing licenses issued according to R.C. 4713.30 have business skills that need to be updated to help them maintain their professional competency. R.C. 4713.62 mandates the teaching of classes on topics resulting in the protection of the public. The sanitation laws and updates on them protect the public. The required under R.C. 4743.07 classes on recognizing trafficking victims may save a life as well as help the general public.

Finally, R.C. 4713.62(B)(4) mandates licensees be taught the Board's rules and laws in continuing education classes.

Ohio Adm. Code 4713-21-09. The rule sets forth the criteria for the continuing education courses, for course instructors and what would be eligible. Most of the changes proposed are stylistic. A licensee, who attends a CE course in person, shall receive CE credit for the course. Passage of an examination by a licensee, is not to be a requirement for successful completion of a continuing education course that is attended, in person, by the licensee. Correspondence and Internet continuing education courses shall contain an examination to verify the course material has been reviewed, and a licensee shall pass the examination with a score of at least seventy-five percent to receive CE credit for the course.

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

   R.C. 119.03, R.C. 4713.08, R.C. 4713.09

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.**

   The regulation does not implement a federal requirement.

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

   Federal requirements do not apply to these rules.

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 Board is statutorily required to require continuing education and to restore inactive and forfeited licenses.

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

   To measure the impact of the new, clearer rules on the licensed population and on small business, the Board will track the number of violations among those who have held a license for more than two years. The goal will be to see if the continuing education classes, governed by proposed rules designed to improve the chance that a provider will actually provide the required hours of education, decrease the number of licensees who violate scope of practice rules, licensing rules or sanitation 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.

All Board approved CE providers were e-mailed the first draft of these rules including the out-of-state providers such as Christopher M. Calabucci and Jerry Gardner from Elite Continuing Education in Ormond Beach, Florida, a correspondence course provider for the Board. Mr. Gardner and Mr. Calabucci wrote letters and phoned in suggested changes to the rules regarding the correspondence courses. In addition, all members of the Board were contacted. The Board members, with the exception of two of the members, by statute must be an owner of a proprietary cosmetology school, affiliated with a career technical school teaching cosmetology, a salon owner, a managing cosmetologist, an independent contractor in the cosmetology profession or otherwise involved in the profession of cosmetology. In addition, representatives of all of Ohio's career technical schools and proprietary schools were consulted. The school leaders consulted included Don Yearwood, President, CEO and Owner of the Dayton school, Carousel Beauty College, President of the Private School Association, and Treasurer and team leader of business affairs of the American Association of Business Schools. Tim Hornsby, an owner of the Cincinnati-based Hornsby Group, Director of the American Association of Cosmetology Schools and an owner-evaluator of the National Accrediting Commission of Career Arts & Sciences ("NACCAS") also participated. The administrative leadership of the Columbus-based Salon Schools Group not only responded to the e-mails but also called a meeting on October 11, 2012 to speak with key staff involved with the rewriting of the rules to discuss proposed changes. The Salon Schools Group individuals involved were James Rogers, Chairman, Sue Carter Moore, President, Bobby Lott, Vice President and a Commissioner of NACCAS and Luke Hanks, an owner and the Association's General Manager. Salons were also consulted about this rule. Elizabeth Murch, Executive Director of the Ohio Salon Association commented extensively both in writing and in person. Lisa Wilkins Doran, the Vice-President of Operations for Salon Lofts, e-mailed suggestions for changes. Ms. Doran also met in person on October 11, 2012 with key staff people to discuss the rule changes. With Ms. Doran at the meeting were Robert J. Tannous, Attorney at Law at Porter Wright Morris & Arthur and William Fitzgibbon, a partner at Larr Policy Consulting, LLC. Tammy Hurley, Studio 33 Salon and Spa, sent back the forms and met in person with one of the individuals revising the rules. Steve Thompson, a former Board President, current Board member and one of the founders of the Ohio Independent Cosmetologists and Barbers Association has commented on the rules. For

Chapter 4713-21, the stakeholders were first e-mailed a draft version of the proposed rules and forms to respond and request changes to the rules on September 14, 2012. The rules and the forms were also posted on the Board's web page about ten days later, and the same stakeholders were informed that the rules also could be accessed through the Internet. The stakeholders were given a ten day period from the posting of the rules on the Internet to respond with any thoughts or questions.

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

   Most of the stakeholders were pleased with the rule changes as proposed. For example, Sue Carter Moore wrote "All the rules are good. The on-line really needs to be elevated, and this is a step in the right direction to making it meaningful for the licensees." The first draft sent out eliminated the correspondence courses, because some stakeholders and Board investigators said that the courses had uniformly provided licensees material that was too easy. Christopher M. Calabucci and Jerry Gardner from Elite Continuing Education, a provider of correspondence courses, protested strongly. After working with Mr. Calabucci and Mr. Gardner, the Board staff developed new rules to strengthen the correspondence courses offered to licensees. All stakeholders agreed to the changes.

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?**

   The Board did not use substantial scientific data to develop the rules as they are not data driven. CE is required for many professions in Ohio, including lawyers, to help licensees maintain and improve skills necessary to help the public and be a useful member of the licensed community. The scientific data used came from the United States Department of Education concerning the rates of reading comprehension and words per minute and hour, that helped establish the proposed standards.

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?**

    The Board considered increasing the hours required for CE for each licensee to ten for each two year time period. The Salon Association protested that this was too harsh a requirement. As a result, the requirement dropped back to eight hours. The Board considered mandating ten questions for each hour of internet or correspondence course: several stakeholders protested that ten questions per hour would be too difficult for them to write and for students to take, so the number of questions was reduced to six per hour of credit requested.

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.**

    No. The Board thought a structure for licensees and providers would better ensure that courses would improve and update the knowledge of the licensees, thereby protecting the general public.

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

    There are no other organizations or boards regulating continuing education for cosmetology professionals. Therefore, the rules are not duplicated.

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 plans a massive educational program to ensure the cosmetology professionals in Ohio are aware of the changes as well as of those rules will not be changing. The new and amended rules will be widely published, on the Board's web site and in professional magazines. In addition, the Board's inspectors and investigators will be retrained as to how to enforce the rules. The staff members at the Board overseeing the administrative violation program will continue to watch to make certain that all license holders in Ohio are treated in a similar manner.

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 rules affect all licensees and all CE providers who wish to offer CE to Ohio licensees.
    b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
       Licensee fees, fees for providers, cost of attending CE, problems renewing a license for those who do not comply, penalties for violations of rules and time spent complying with the rules.

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.

The individual providers set the cost for the CE to licensees. However, the providers will pay $100 or $250, depending upon the type of provider, to be able to provide services to the licensees of Ohio. Hopefully, no one will violate the rules and have to pay the fine. The cost of violations depends upon the nature of the violation and the number of times an individual has violated a particular provision of the law or rules.

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

Most of the changes to Chapter 4713-21 were stylistic or language improvements. The rules for providers were changed to strengthen the CE program. The changes were instituted because licensees and inspectors have complained that some of the courses lack substance. These individuals have reported that some correspondence courses advertised as sufficient to meet the eight hour requirement can be completed, questions and all within forty-five minutes. Others have complained about lack of content in live courses. Still others have said that they have taken and passed the examination for several of the eight hour on line courses without sitting through the eight hour course. CE courses are supposed to updates the skills and knowledge of licensees. The course providers need to offer courses that actually update skills and knowledge of the Board's licensees.

Regulatory Flexibility

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

Almost all licensees of this Board own or are employees of small businesses. For those over sixty-five and for those who just became licensees, the CE requirements are waived. Should someone be ill, on active duty in the military or have another situation that has made following some of the rules difficult, the Board may grant a waiver from some of its requirements, depending upon the licensee's circumstances.

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 Board investigators and inspectors write up all violations, but only the repeat violations or the more serious first-time violations are actually charged. Minor infractions are not charged, but a warning is issued.

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

The Board's website provides comprehensive information pertaining to continuing education, restoration and reinstatement of licenses. All forms are posted on the Board's website. A list of state approved CE courses that are open to the public is maintained there as well.