

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Limited Branch Rules

Rule Number(s): 4731-1-03, 4731-1-04, 4731-1-05, 4731-1-06, 4731-1-07, 4731-1-09, 4731-1-10, 4731-1-15, and 4731-1-17

Date: September 25, 2017

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☐ Rescinded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.

The rules are applicable to the limited branches of medicine, which are cosmetic therapy, massage therapy, mechanotherapy, and naprapathy. Section 4731.15, Ohio Revised Code, states that the Medical Board shall adopt rules governing the limited branches of medicine. The rules establish and clarify the scopes of practice, eligibility for licensure, curriculum and other requirements for limited branch schools, licensure examinations, and continuing education for cosmetic therapists. It should be noted that pursuant to Section 4731.151, Ohio Revised Code, no new licensed to practice mechanotherapy or naprapathy could be issued after March 2, 1992.

4743-1-03: General prohibitions – The rule clarifies the activities that a limited branch practitioner may not engage in. No changes are proposed.

4731-1-04: Scope of practice: mechanotherapy. The rule sets forth the scope of practice of a mechanotherapist. The rule is amended by adding “electrical neuromuscular stimulation” at paragraph (C)(4) to conform with the wording of Section 4731.151, Ohio Revised Code.

4731-1-05: Scope of practice: massage therapy. The rule clarifies the scope of practice of massage therapy and the requirements applicable to the practicing massage therapist. It is amended to reflect that wallet cards are no longer issued.

4731-1-06: Scope of practice: naprapathy. The rule sets forth the scope of practice of naprapathy. It is proposed as a “no-change” rule.

4731-1-07: Eligibility of electrologists licensed by the Ohio state board of cosmetology to obtain licensure as cosmetic therapists pursuant to Chapter 4731. of the Revised Code and subsequent limitations -- No changes are proposed.

4731-1-09 Cosmetic therapy curriculum requirements – No changes are proposed.

4731-1-10 Distance education: Paragraph (E) is added to require the school’s renewal of the certificate of good standing two years from the date of issuance by demonstrating that the requirements for the initial certificate are met. The renewal requirement was inadvertently dropped from the procedures during an earlier rule review.

4731-1-15: Determination of standing of school, college, or institution.

Paragraph (E) is added to require renewal of the certificate of good standing two years from the date of issuance by demonstrating that the requirements for the initial certificate are met. The renewal requirement was inadvertently dropped from the procedures during an earlier rule review.

4731-1-17: Instructional staff in Ohio cosmetic therapy and massage therapy programs. Paragraph (B) is amended by striking “with certification by a recognized body of authority

or.” The language is stricken because there are no such “bodies of authority” identified by the Medical Board.

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

The rules are authorized by Sections 4731.05, 4731.15, 4731.151, and 4731.155, Ohio Revised Code.

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 rules do not implement a federal requirement or 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.

Not applicable.

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 purpose of the rules is to establish and clarify the procedures and requirements for licensure and practice by the four types of limited branch providers licensed by the Medical Board. The provisions of the Ohio Revised Code are directive, not prescriptive, as to regulation of limited branch providers. For example, Section 4731.19, Ohio Revised Code, states that one of the requirements for licensure is that the applicant provide evidence of having a diploma or certificate from a school, college, or institution in good standing as determined by the board, showing the completion of the required courses of instruction. Accordingly, Rule 4731-1-15 notifies schools, applicants, and the public of the requirements that must be met in order to a Medical Board approved school, Rule 4731-1-09 notifies them of the curriculum requirements for a Medical Board approved cosmetic therapy program, and Rule 4731-1-17 notifies them of the requirements for instructors in an approved school.

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

The success of the regulations will be measured by having rules written in plain language, licensee and school compliance with the rules, and minimal questions from licensees, medical practices, and schools regarding the provisions of the rule.

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 rules were in a package of twelve rules in Chapter 4731-1 that was sent to interested parties for comments on July 14, 2016. The proposed rules were sent to all Medical Board approved cosmetic therapy schools, Medical Board approved massage therapy schools, Ohio Cosmetic Therapy Association, American Massage Therapy Association – Ohio chapter, the organizations and individuals who have filed standing requests for notice of Medical Board rule activity, and persons who have requested notice of rule activity related to cosmetic therapy or massage therapy. Please note: Rules 4731-1-01, 4731-1-11, 4731-1-13, 4731-1-18, and 4731-1-19, which were in the package of twelve rules sent in July 2016, are not in this package but were submitted via a separate Business Impact Analysis on August 7, 2017.

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

The Cosmetic Therapy Association stated that they had reviewed all of the proposed rules and had no comment. For Rule 4731-1-05, one comment was submitted concerning the proposal to require continuing education for massage therapy licensure renewal. This comment was not relevant to the proposed rule. Three comments on Rule 4731-1-09 concerned the possibility of switching the cosmetic therapy license to a universal examination administered by an outside agency rather than the Medical Board. The comments were not relevant to the proposed rule. For Rule 4731-1-15, two technical comments were received and adopted: one noted that the Ohio Board of Regents is now the Ohio Department of Higher Education; the other noted that there was a typographical error. For Rule 4731-1-17, a school instructor supported the proposed amendment in paragraph (B). Also for Rule 4731-1-17, a school instructor suggested that the requirements for an instructor of business or ethics were unclear. Following a telephone conversation with the instructor to formulate acceptable language, the language was amended. The proposed language of Rule 4731-1-17(A) reflects the input of the instructor.

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?

No scientific data was used to develop the rules. The general framework of the rules has been in place since the late 1970s, with tweaks over the years to reflect changes in statute, procedures, or the problems identified by schools or licensees.

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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?

Alternative regulations were not considered. The general framework of the rules has been in place since the late 1970s, with tweaks over the years to reflect changes in statute, procedures, or the problems identified by schools or licensees. The schools, in particular, need consistency for purposes of planning for future performance.

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 rules are performance-based. The rules set the required outcomes without dictating the process the applicant, licensee, or school must use to achieve compliance.

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

The rules do not duplicate any existing regulations because the Medical Board is the only agency that regulates the practices of massage therapy, cosmetic therapy, naprapathy, and mechanotherapy. Massage therapy and cosmetic therapy schools are required to hold a certificate issued by the Ohio Department of Higher Education, State Board of Career Colleges and Schools Registration, or the Ohio Department of Education, Division of Career/technical Adult Education, but the Medical Board rules do not overlap the language of the rules of those agencies. The approved schools are extremely cognizant of needing to maintain approval by both the appropriate certifying agency and the Medical Board and communicate any possible conflicts to the Medical Board.

In addition, the language stricken from 4731-1-17(B) was done only have consultation with the State Board of Career Colleges and Schools Registration. The language had been included in the current version of the rule based on the language of that agency's rules.

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 rules will be available from the Medical Board's website. Information on the rules will be emailed to licensees and to all approved massage therapy and cosmetic therapy schools, all persons/organizations that submitted comments on the proposed rules, Ohio Cosmetic Therapy Association, American Massage Therapy Association – Ohio chapter, Society of Cosmetic Therapy Training, the organizations and individuals who have filed standing requests for notice

of Medical Board rule activity, and persons who have requested notice of rule activity related to cosmetic therapy or massage therapy.

Medical Board staff members will be provided information that will facilitate consistent and predictable application of the rules to the regulated community.

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 made up of massage therapy schools, cosmetic therapy schools, massage therapists, and cosmetic therapists. There is no adverse impact on mechanotherapists or naprapathists.

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

For schools, the adverse impact is the cost for instructional staff, curriculum that meets the requirements, and other requirements for holding a certificate of good standing.

For massage therapists, the adverse impact is the cost of attending an approved school.

For cosmetic therapists, the adverse impacts include the following. For a person who was originally licensed as a cosmetic therapist by the Cosmetology Board under Chapter 4713., there is a cost to undergo additional training should the person choose to apply systemic friction, stroking, slapping, and kneading or tapping of the face, neck, scalp, or shoulders. This is because those services were not included in the the scope of practice during the time the profession was licensed by the Cosmetology Board. There is also the cost of attending a Medical Board approved cosmetic therapy school.

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.

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For schools, the cost for a certificate of authorization from the Ohio Department of Higher Education is an annual fee ranging from \$2000 to \$6000, based upon the student population. <https://www.ohiohighered.org/academic-program-approval>. The cost of a certificate of registration by the State Board of Career Colleges and Schools Registration is based upon the tuition revenue (<http://scr.ohio.gov/SchoolForms.aspx>) and ranges from \$150 with a \$300 renewal fee to \$800 with a \$1,600 renewal fee. The certificate of program authorization fee for a certificate program is \$150 per year, the Associate Degree is \$225 per year. Whether there is a fee associated with the certificate of authorization from the Ohio Department of Education was not discernable from the website of the Ohio Department of Education. However, a vocational training program is required to meet the standards in Chapter 3301-61, Ohio Administrative Code. (<http://codes.ohio.gov/oac/3301-61>) The cost of hiring or contracting with instructors who meet the requirements of the rules is information that is not readily available and depends upon qualifications and supply.

The cost of tuition and fees for massage therapy school depends upon the school, however, examples include the following:

- American Institute of Alternative Medicine -- \$13, 882.50
(<https://www.aiam.edu/prospective-students/school-of-massage/>);
- Knox County Career Center -- \$10,451.00
(<http://www.knoxtechnicalcenter.com/massage-therapy.html>);
- Cuyahoga Community College – \$3,554

(<http://www.tri-c.edu/programs/health-careers/massage-therapy/frequently-asked-questions.html#q4>).

The cost for tuition and fees for the three approved cosmetic therapy schools include the following:

- Ohio Medical Electrology Institute: \$15,100.00
(<http://www.electrologyschool.com/ProgramTuition.html>);
- Cosmetic Therapy Training Program: \$16,745.00
(<http://www.cosmetictherapytraining.com/pdf/Enrollment-Agreement.pdf>);
- Southeastern School of Electrology: \$7,600
(http://sselaser.org/?page_id=169).

There is no available information that breaks out the cost of taking coursework on systemic friction, stroking, slapping, and kneading or tapping of the face, neck, scalp,

or shoulders as is required by Rule 4731-1-07 for a cosmetic therapist originally licensed by the Cosmetology Board. However, it is believed that the impact is not significant because all of the affected individuals must have been originally licensed no later than February 1, 1993. There are currently seventeen individuals who hold an active license with this credential denotation, and it is believed that those interesting in gaining the ability to provide the pertinent services would have already obtained the training.

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

The Medical Board has a statutory mandate to regulate the limited branches of medicine. The rules implement the purpose of such regulation: to protect the public from the harm that could be caused by insufficiently educated practitioners or those who would practice beyond the extent of their limited medical education and training.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance for small businesses. The vast majority of limited branch practitioners practice in a small business. The public needs to have the same safety protections no matter the size of the business through which the practitioner delivers the service.

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 are no fines imposed for paperwork violations and first-time offenses. A school that does not meet the requirements for “good standing” may be placed on probation and provided an opportunity to come into compliance. See Rule 4731-1-19, which is included in the rule packet filed with CSI on August 7, 2017.

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

Medical Board staff members are available by telephone and e-mail to answer questions. Medical Board staff members also give presentations to groups and associations who seek an update on practice regulations.