

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Selected Limited Branch Rules

Rule Number(s): 4731-1-01, 4731-1-11, 4731-1-13, 4731-1-18, and 4731-1-19

Date: _____

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☒ Rescinded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.

This packet contains rules relevant to the cosmetic therapy licensure examination and to the certificate of good standing for massage therapy and cosmetic therapy schools.

The Medical Board has decided to change from a Medical Board administered licensing examination for cosmetic therapy licensure to the Certified Clinical Electrologist ("CCE")

examination prepared by The Society for Clinical & Medical Hair Removal. This packet contains the rules that are needed to institute the requirement that CT applicants take and pass the CCE examination.

4731-1-01: Definitions: This rule defines terms used in all of the rules in Chapter 4731-1, OAC. Paragraph K is added to define “CCE examination.”

4731-1-11 Application and examination for certificate to practice cosmetic therapy:

The current rule will be rescinded and a new rule will be adopted to include the following changes:

- Paragraph (A) adds clarifying language.
- Paragraph (B) is amended to simplify.
- Paragraph (C) is amended by deleting references to the Board examination and adding language specific to the CCE examination.

4731-1-13: Examination failure; additional training. This rule is only applicable for cosmetic therapy licensure examinations administered by the Medical Board. The rule is proposed to be rescinded as no longer needed when the CCE examination is used instead of the examination currently administered by the Medical Board.

4731-1-18: Grounds for suspension, revocation or denial of certificate of good standing;

hearing rights. This rule is applicable to both massage therapy and cosmetic therapy schools.

- Paragraph (A)(7) is amended to refer to the CCE examination.

4731-1-19: Probationary status. This rule is applicable to both massage therapy and cosmetic therapy schools.

- Paragraphs (A) and (A)(1) are amended to refer to the CCE examination.
- Paragraphs (A)(1)(a) and (A)(1)(b) are amended by changing the word “licensure” to “examination.” This clarifies that all scores – passing and failing – are factored into the average overall examination score for all first time test takers from that school to determine whether the school demonstrates minimally adequate performance.
- Paragraph (A)(2) is amended to clarify the massage therapy licensure examination referenced.
- Paragraph (A)(2)(a) changes the word “licensure” to “examination” to clarify that all scores - passing and failing - are factored into the average overall examination score for all first time test takers from that school to determine whether the school demonstrates minimally adequate performance.
- Paragraphs (B)(1)(a) and (b) and (B)(2)(a) also change the word “licensure” to “examination” to clarify that all scores are factored into the average.

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

The rules are authorized by Sections 4731.05, 4731.15, and 4731.16 of the Ohio Revised Code ("ORC").

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. They are not needed 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.

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)?

Rules 4731-1-01, 4731-1-11, and 473-1-13 notify prospective cosmetic therapy applicants, operators of cosmetic therapy training schools, prospective employers of cosmetic therapists, and the public of the requirements that establish eligibility for a cosmetic therapy license. Section 4731.16, ORC, requires that if the Medical Board determines that the cosmetic therapy licensure examination is to be one administered by an entity other than the Medical Board, it must do so in a rule promulgated under Chapter 119., ORC.

Rules 4731-1-18 and 4731-1-19 also reflect the mandate in Section 4731.16, ORC, that the Medical Board determine the standing of the schools, colleges, or institutions giving instruction in massage therapy and cosmetic therapy. The rules clarify for massage therapy and cosmetic therapy schools criteria by which the Medical Board will determine whether the students of a school have demonstrated minimally adequate performance on examinations so that the school is in good standing or, if the school is on probation, whether action should be proposed to refuse to renew, revoke, or suspend the "good standing" status of the school.

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

The success of the rules will be measured by having rules written in plain language, applicant and licensee compliance with the rules, and minimal questions from applicants, cosmetic therapy schools, and the public regarding the provisions of 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 rules were originally part of a package of twelve rules in Chapter 4731-1 sent to interested parties for comments on July 14, 2016. At that time the Medical Board was discussing the possibility of, but had not yet determined to, changing to a cosmetic therapy licensure examination administered by an outside entity instead of administering its own licensure examination. It was also discussing the possibility of eliminating the “hands-on practical” aspect of the Medical Board administered examination --- which would not require any amendment to Rule 4731-11-13 as it existed at that time. At that time, rules 4731-1-01, 4731-1-13, 4731-1-18, and 4731-1-19 were proposed with no changes from the currently effective rules. Rule 4731-11-11 was proposed with language to clarify the application process and the application fee for retaking a portion of the cosmetic therapy licensure examination administered by the Medical Board. 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.

However, the Medical Board continued to study the proposal to move to a cosmetic therapy licensure examination administered by an outside entity. On April 12, 2017, the Medical Board's Licensure Committee discussed the question of whether to move to the “CCE” examination prepared by The Society for Clinical & Medical Hair Removal. Cosmetic therapists who had voiced interest in this issue had been notified of the agenda item and were in attendance. There was support for the change. The Committee then voted to recommend changing the licensure examination to the CCE. The Medical Board adopted the recommendation on April 12, 2017 and directed that the rules be amended as necessary to institute the change.

Rules 4731-1-01, 4731-1-11, 4731-1-13, 4731-1-18, and 4731-1-19 were amended to implement moving to the CCE examination and were then sent to interested parties on May 17, 2017. The rules were sent to all cosmetic therapists for whom the Medical Board had an email address, Ohio Cosmetic Therapy Association, American Massage Therapy Association – Ohio Chapter, all Medical Board approved cosmetic therapy schools, 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.

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

In 2016, the seven comments on the subject rules were received from interested parties. Four comments opposed changing the licensure examination to one administered by an outside entity, a matter that was under discussion but not proposed at that time. One

comment supported the rules as proposed. Two comments suggested ways to further clarify Rules 4731-1-13, 4731-18, and 4731-1-19. The suggestions for clarification of the three rules were incorporated into those rules.

As discussed above, in 2017 Rules 4731-1-01, 4731-1-11, 4731-1-13, 4731-18, and 4731-1-19 were further reviewed in order to implement the Medical Board's decision to no longer administer its own cosmetic therapy licensure examination, but to instead use one administered by an outside entity. One comment was received. The comment, on behalf of a cosmetic therapy school and the Society of Cosmetic Therapy Training, objected to the cost of the CCE examination, stated that the CCE examination is not widely enough used by other state licensing boards, opined that the CCE examination focuses on the application of lasers instead of electrolysis (which is the basic scope of practice of a cosmetic therapist), named a different vendor preferred for administering the licensure examination, and stated that the Medical Board should continue to administer its own examination so that it will continue to have regulatory authority over cosmetic therapy practice.

The comments were reviewed by the Medical Board's Licensure Committee and the Medical Board on July 12, 2017. The Medical Board did not incorporate any of the comments into the proposed rules. While the cost of the CCE examination is higher than the fee for the Medical Board examination, cost is not the only consideration when determining an appropriate licensure examination. The Medical Board's examination has been unchanged since at least 2008. The questions are rotated, but the question bank itself is stale. The Medical Board does not have the technical expertise to compile a more current question bank or psychometric expertise to validate its examinations. The cost of hiring outside professionals to do so would result in a higher examination fee. See Section 4731.16, Ohio Revised Code, for the Medical Board's authority to set the examination fee in rule. The Society for Clinical & Medical Hair Removal has through documentation and conversation assured the Medical Board that the CCE examination covers only electrolysis and does not cover laser hair removal. The CCE examination is also more easily adapted to the particular needs for Ohio than the one preferred by the commenter. The Medical Board will retain full oversight over practice of cosmetic therapy in Ohio after the change to an examination administered by an outside entity. Currently the Medical Board regulates the practice of nine professions. It administers the licensure examination for only one of them: cosmetic therapy.

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 rule or outcomes. However, the Medical Board investigated examinations offered by three different entities before determining that the CCE best meets the needs for Ohio. The examinations investigated included the one preferred by the cosmetic therapy school and the Society of Cosmetic Therapy Training as discussed in paragraph 8, above.

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. Once the Medical Board decided to move to a licensure examination by an outside vendor it was necessary to amend the rules as presented.

- 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 prescriptive in that they require passage of the CCE examination. However, the rule are otherwise performance-based.

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

The Medical Board is the only agency that licenses cosmetic therapists and massage therapists. The rules do not duplicate any other Ohio 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 posted on the Medical Board's website, information concerning the rules will be included in informational materials e-mailed to licensees, and notices will be sent to associations, individuals, and groups. 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 regulations.

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;**

For Rules 4731-1-11 and 4731-1-13, the affected community consists of applicants for cosmetic therapy licenses.

For Rules 4731-1-18 and 4731-1-19, the affected community consists of massage therapy schools and cosmetic therapy schools.

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

For applicants for cosmetic therapy licenses, the adverse impact is the cost of the CCE examination.

For massage therapy and cosmetic therapy schools, the adverse impact of committing one of the violations in Rules 4731-1-18 or 4731-1-19 is having their certificate of good standing being placed on probation, suspended or revoked. Rule 4731-1-19 does not impose additional adverse impact, but provides the criteria that must be met by a school that has been placed on probation. The rule is amended to clarify the criteria.

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.

According to the website of The Society for Clinical and Medical Hair Removal, the application fee is \$250.00 for persons who are not members of the entity. See <https://www.scmhr.org/cert/certified-clinical-electrologist-cce>. The examination fee for the current Medical Board administered examination is \$100.00.

A massage therapy or cosmetic therapy school that is placed on probation will undoubtedly have a decrease in enrollment. Having a certificate of good standing suspended or revoked with result in the loss of all tuition income from those students.

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

The purpose of the Medical Board is to protect the public via effective regulation of specified medical professionals, such as cosmetic therapists and massage therapists. The proposed rules set standards for applicants and schools so that persons who are licensed by the Medical Board will provide services within the minimal standards of care.

Regulatory Flexibility

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

The rules do not provide exemptions or alternative means of compliance for small businesses. Almost all cosmetic therapists and most massage therapy or cosmetic therapy schools qualify as a small business.

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 or financial penalties for violation of the rules. Failure to comply with Rule 4731-1-11 will result in the application being denied or abandoned for failure to submit all required information. Rules 4731-1-18 and 4731-1-19 provide a means by which a school would be placed on probation, giving it time to correct deficiencies, prior to further

action under Rule 4731-1-19 whereby the certificate of good standing could be suspended or revoked.

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

The Medical Board routinely answers questions concerning Medical Board statutes and rule requirements. Where appropriate, guidance documents, such as FAQs, are published.