



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: State Medical Board of Ohio

Rule Contact Name and Contact Information:

Kimberly Anderson; Kimberly.Anderson@med.ohio.gov; (614) 466-7207

Regulation/Package Title (a general description of the rules' substantive content):

Limited Branch of Medicine Rules

Rule Number(s): 4731-1-01, 4731-1-02, 4731-1-03, 4731-1-04, 4731-1-05, 4731-1-07, 4731-1-08; 4731-1-09; 4731-1-10; 4731-1-11; 4731-1-12; 4731-1-15; 4731-1-16; 4731-1-17; 4731-1-18; 4731-1-19

Date of Submission for CSI Review: 9/22/22

Public Comment Period End Date: 10/14/22

Rule Type/Number of Rules:

New/ 2 rules

No Change/ rules (FYR?)

Amended/ 6 rules (FYR? y)

Rescinded/ 10 rules (FYR? y)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

4731-1-01 Definition of terms – Proposed to amend

- Eliminates and revises several definitions

4731-1-02 Application of rules governing limited branches of medicine or surgery – Proposed to amend

- Removes the reference to the code of ethics for cosmetic therapists
- Updates terminology used from “certificate” to “license”

4731-1-03 General prohibitions – Proposed to amend

- Removes a reference to cosmetic therapists
- Updates terminology used from “certificate” to “license”

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4731-1-04 Scope of practice: mechanotherapy – Proposed to amend

- Corrects a typographical error

4731-1-05 Scope of practice: massage therapy – Proposed to amend

- Corrects typographical errors and substitutes “license” for “certificate”

4731-1-07 Eligibility of electrologists licensed by Ohio state board of cosmetology to obtain licensure as cosmetic therapists – Proposed to rescind

- Propose to rescind this provision related to cosmetic therapists

4731-1-08 Continuing cosmetic therapy education requirements – Proposed to rescind

- Propose to rescind the continuing education requirements for cosmetic therapists

4731-1-09 Cosmetic therapy curriculum requirements – Proposed to rescind

- Propose to rescind the curriculum requirements for cosmetic therapists

4731-1-10 Distance education – Proposed to rescind

- Propose to rescind requirements for distance education. Distance education is addressed to a lesser degree in proposed rule 4731-1-15.

4731-1-11 Application and examination for certificate to practice cosmetic therapy – Proposed to rescind

- Propose to rescind application and examination requirements for cosmetic therapists

4731-1-12 Application and examination for certificate to practice massage therapy – Proposed to amend

- Updates terminology used from “certificate” to “license”

4731-1-15 Determination of standing of school, college or institution – Proposed to amend

- Clarifies the education or licensure requirements for a license to practice massage therapy.

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- Permits only one-half of the required curriculum to be provided via distance education.
- Provides other means for which an out-of-state school can be recognized for purposes of obtaining a certificate of good standing.
- Deletes the following requirements:
 - (1) that the educational objectives be clearly defined and simply stated and shall indicate what the program can do for diligent students, and
 - (2) that the course of instruction be outlined in detail.

4731-1-16 Massage therapy curriculum requirements – Proposed to rescind

- Propose to rescind the curriculum requirements for massage therapists as they have now been codified in statute.

4731-1-17 Instructional staff in Ohio cosmetic therapy and massage therapy programs – Proposed to amend

- Propose to amend the rule that sets out the requirements of instructional staff in limited branch schools to make it more clear.

4731-1-18 Grounds for suspension, revocation or denial of certificate of good standing – Proposed to rescind

- Propose to rescind the rule that sets out the grounds for suspension, denial, or revocation of a certificate of good standing. The requirements have been moved to proposed rule 4731-1-15.

4731-1-19 Probationary status of a limited branch school – Proposed to rescind

- Propose to rescind the rule that permits a certificate of good standing to be placed on probation if graduates' performance on the applicable licensing exam fall below certain thresholds.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

4731-1-01: Authorized by 4731.05, 4731.15, 4731.16; Amplifies: 4731.15, 4731.16

4731-1-02: Authorized by 4731.05, 4731.15; Amplifies: 4731.15, 4731.22

4731-1-03: Authorized by 4731.05, 4731.15; Amplifies: 4731.15, 4731.17

4731-1-04: Authorized by 4731.05, 4731.15, 4731.151; Amplifies: 4731.151

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4731-1-05: Authorized by 4731.05, 4731.15, 4731.20; Amplifies: 4731.04, 4731.15

4731-1-12: Authorized by 4731.05, 4731.15, 4731.16, 4776.03; Amplifies: 4731.16, 4731.17, 4731.171, 4731.19, 4776.02

4731-1-15: Authorized by 4731.05, 4731.15; Amplifies: 4731.16, 4731.19

4731-1-17: Authorized by 4731.05, 4731.15; Amplifies: 4731.16, 4731.19

- 4. 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.

No, the regulation does not implement a federal requirement.

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

Not applicable.

- 6. 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 Medical Board is the only agency which regulates massage therapists, a limited branch of medicine and the regulations are necessary in order to set forth massage therapy scope of practice and to clarify educational requirements. In addition, cosmetic therapy, another limited branch of medicine is no longer regulated by the Medical Board and the rule package rescinds the rules related to the regulation of cosmetic therapy.

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

The success of these regulations will be measured by the rules being written in plain, understandable language, licensee compliance with the rules, and minimal questions from licensees about the proposed rule requirements.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

In June 2021, the proposed rules were circulated to interested parties, including the American Massage Therapy Association, the Cosmetic Therapy Association, the Ohio State Medical Association, the Ohio Osteopathic Association, the Ohio Hospital Association and the Academy of Medicine of Cleveland and Northern Ohio. The rules were reviewed by the Massage Therapy Advisory Committee on February 7, 2022.

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

A comment was received from the Massage Therapy Program at the Cuyahoga Community College, raising concerns with Rules 4731-1-15, 4731-1-16, and 4731-1-17. The comments were reviewed by the Medical Board and referred to the newly formed Massage Therapy Advisory Council which held its first meeting on February 7, 2022. The MTAC members were provided copies of the rules and the comments received. The MTAC members and other representatives from the massage therapy community provided comments which were shared with the Medical Board in April 2022. The Medical Board made changes to Rules 4731-15 and 4731-17 based upon the comments received, including the following:

4731-1-15(C)(1)(3) and 4731-1-15(C)(2)(e)-Reinstating requirement for massage therapy students to complete at least one massage on a licensed massage therapist;

4731-1-15(D)-Requiring notification to students regarding criminal charges, arrests, and convictions and the disqualifying offense list and explanatory statement on the Medical Board's website;

4731-1-15(I)-Reinstating the requirement for a two year renewal for the certificate of good standing;

4731-1-17(C)(2) and (3)-Changing from proposed to rescind to amending the language regarding the qualifications for instructors at massage therapy schools.

11. 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?

These rules deal with massage therapy scope of practice and educational requirements. The Board sought the expertise of the Massage Therapy Advisory Council, comprised of massage therapists.

12. 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?

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The Board accepted many of the alternatives proposed by interested parties and the Massage Therapy Advisory Council.

- 13. 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.

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

The Medical Board is the state agency responsible for regulating massage therapists.

- 15. 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 and notice of the rules will be circulated to the interested parties. Medical Board staff members will be available to answer questions regarding the rules. Board staff will be made aware of the rule changes so that the rules can be fairly, consistently, and predictably applied to the regulated community.

Adverse Impact to Business

- 16. 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; and**

The impacted business community are primarily massage therapists.

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

The adverse impact includes licensure application and renewal fees for massage therapist. In addition, the adverse impact would include attendance at a massage therapy school that meets the Medical Board's license eligibility requirements.

- 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 fee for an initial license to practice massage therapy is \$150 and the cost for renewal is \$100 every two years.

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

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The proposed rules are being streamlined to minimize the adverse impact to the regulated business community. During the initial comment period, the Medical Board received recommendations from massage therapists and massage therapy educators that some of the requirements that were proposed to be removed, should be reinstated in the rules.

Regulatory Flexibility

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

No, the regulation does not provide exemptions or alternative means of compliance for small business. All massage therapists are required to meet the educational requirements for licensure and follow the rules with respect to scope of practice.

19. 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?

Due process requires the Medical Board to consistently apply its rules to massage therapy applicants and licensees.

20. 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.