



MEMORANDUM

TO: Jim Trakas, The Ohio State Board of Cosmetology

FROM: Meredith Rockwell

DATE: June 17, 2013

RE: **CSI Review – Tanning (OAC Chapter 4713-19)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The Ohio State Board of Cosmetology submitted a rule package to the CSI Office for review consisting of 14 rules that comprise Chapter 4713-19 of the Ohio Administrative Code (OAC). All 14 rules are being amended and are being reviewed under the five-year rule review requirement found in ORC 119.032. The rules generally set forth requirements for the operation of tanning facilities. The public purpose of the rules is to protect customers of tanning facilities from injury and disease.

The package was initially submitted to the CSI Office in late November 2012, and comments were due by December 1, 2012. Due to the extensive nature of the changes, the Board and the CSI Office engaged in ongoing discussions, and ultimately the Board made additional changes to the rules and BIA. The revised versions were submitted to the CSI Office on January 8, 2013.

The CSI Office received no comments on this rule package. During stakeholder outreach conducted by the Board, the Board addressed concerns raised by stakeholders. One Board member questioned the need to regulate tanning facilities in any fashion, but ultimately the Board voted in support of moving this rule package forward.

The BIA explains that the businesses impacted by this rule package are tanning facilities, tanning certificate providers, and tanning certificate holders. The primary adverse impacts are time and money expended maintaining the tanning facilities and equipment, time expended maintaining records, and time and money maintaining permits, certificates, and training. The Board feels the impacts are justified, because the rules protect consumers from injury and disease and the tanning industry supports the regulations, because legitimate tanning facilities easily comply with the requirements.

Finally, the Board states violations may result in fines, but the Board often permits a smaller fine for minor violations for those businesses the Board feels are working diligently to comply. Furthermore, the Board issues written warnings for minor infractions and refrains from charging those as actual violations.

While most of the rules in this package are justified by the protections afforded the consumers, one area of concern to the CSI Office is OAC 4713-19-01. While Ohio Revised Code 4713.14(Q) states that no person can operate a tanning facility that is offered to the public *for a fee or other compensation* without a permit, the Board has chosen to narrow this requirement in the rule. While the rule does not affirmatively describe who must obtain a permit, it does state that tanning beds in residences used solely by the immediate family do not require a permit to operate. This would imply that any other tanning beds do require permits, including tanning beds in residences that are used by friends or extended family of the owner. This effectively creates businesses where none exist. The ORC is clear – to be required to obtain a permit the tanning bed must be “offered to the public for a fee or other compensation.” For those reasons, this office feels that the rule exceeds the scope of the statute, and places an unjustified burden on those tanning bed owners who are not operating as businesses.

In November 2012, the Cosmetology Board submitted rule packages to the CSI Office for review consisting of eleven Administrative Code chapters, which represents all or nearly all of the Board’s rules. Most of these rules were overdue for the five-year reviews required by ORC 119.032. This comprehensive review proved to be a daunting challenge, and resulted in incomplete and incorrect submissions, multiple revisions to both the rules and BIAs, and inadequate justifications for a number of adverse business impacts. As a result, since that time, the Board staff and CSI Office have been in frequent discussion about the rules and the changes required for approval.

Given the need to move forward with the completion of the five-year reviews, we will recommend the Board proceed with filing the rules with the Joint Committee on Agency Rule Review, provided that certain specific concerns are addressed. It is the intention of the CSI Office to remain engaged with the Board to further evaluate the rules and seek the appropriate balance based on the Board’s role in protecting the public. Moreover, we encourage the Board to establish staggered

review dates for future five-year reviews, to ensure that each chapter receives the scrutiny and attention it deserves.

Recommendations

Upon review of the revised BIA and rules, the CSI Office makes the following recommendation:

1. Revise OAC 4713-19-01 to require tanning bed operators to obtain permits only when the use of those beds is offered to the public for a fee or compensation.

Conclusion

Based on the above comments, the CSI Office concludes that the Board should not proceed with the formal filing of this package with the Joint Committee on Agency Rule Review until OAC 4713-19-01 is revised to conform with the recommendation stated above.

cc: Mark Hamlin, Director of Regulatory Policy