



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Charley Yaniko, State Cosmetology and Barber Board

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: August 30, 2019

RE: **CSI Review – Standards Relating to Competent Practice as a Cosmetologist, Esthetician, Hair Designer, Natural Hair Stylist and Manicurist (OAC 4713-8-03, 4713-8-04, 4713-8-05, 4713-8-06, and 4713-8-07)**

On behalf of Lt. Governor Jon Husted, 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 Board as provided for in ORC 107.54.

Analysis

This rule package contains five amended rules proposed by the State Cosmetology and Barber Board (the Board). The rule package was submitted to the CSI Office on July 10, 2019, and the public comment period was held open through July 25, 2019. One comment was received during this time. The Board provided its response on July 29, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on July 10, 2019.

These rules set standards relating to competent practice and scope of practice for cosmetologists, estheticians, hair designers, natural hair stylists, and manicurists. The amendments to OAC 4713-8-05, 4713-8-06, and 4713-8-07 are to correct citation errors caused by a separate amendment to OAC 4713-1-01.

The amendments to OAC 4713-8-03 and 4713-8-04 change a prohibition on cosmetologists and estheticians providing services based on United States Food and Drug Administration (FDA)

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device classification to a prohibition based on the physical impact of the service. Specifically, instead of prohibiting the use of any device classified as a Class II or Class III medical device by the FDA, the amendment prohibits providing services that ablate, damage, or alter any living cells. The amendment gives examples of such services, including cryosculpting/coolsculpting, removal of skin tags, moles, or angiomas, microneedling, and plasma/fibroblast skin tightening.

The Board solicited feedback from interested parties by placing the rules on its website requesting input, as well as emailing notification of the proposed changes to all entities and individuals on its interested parties list, including salon owners, schools, the Salon Association, the Ohio Barber and Beauty Alliance, the State Medical Board of Ohio, and anyone else who has requested to be included.

The Board received 25 comments on the rule package. All of the comments received were the same message from different individuals regarding OAC 4713-8-03 and 4713-8-04. The comments stated that the amended rules create a double standard and will negatively impact salons offering these services under the direction of a licensed physician.

The Board contends that the services listed in the amended rule are already prohibited under the Board's existing laws and rules. The Board states that OAC 4713-8-03 (D) and 4713-8-04 (D) require that cosmetologists and estheticians shall not provide any service that claims to have a medical or healing benefit, and that the scope of practice is limited to beautification, relaxation, and non-invasive services only. Further, the Board states that OAC 4713-1-01 (FF) defines "non-invasive" as confined to the nonliving cells of the epidermis specifically the stratum corneum (outer) layer, and that living cells must never be altered, cut or damaged. The Board asserts that all of the practices listed in the amendment alter or damage living tissue and are therefore beyond the scope of practice of cosmetology and esthetics under current laws and rules.

Additionally, the Board states that the amendment should not have any effect on salons under the direction of a licensed physician, because the supervision by a licensed physician does not expand the scope of practice for cosmetologists and estheticians. The Board cites OAC 4713-8-03 (H) and 4713-8-04 (G), which state that cosmetologists and estheticians working under the supervision of a licensed physician shall provide only services within their scope of practice.

One comment was received during the CSI public comment period. The Ohio Barber and Beauty Alliance stated that coolsculpting is a non-invasive practice, and that prohibiting it would cost salons \$2,000 to \$6,000 in profit per session, in addition to the cost of the machine (which they noted is \$60,000). The Alliance suggested that rather than eliminating the practice, the Board should require a licensed cosmetologist or esthetician to obtain training certification from the

manufacturer and affiliate with a medical doctor to assure safe procedures. The Board noted that coolsculpting devices that are properly registered with the FDA are classified as Class II medical devices, and the scope of practice for a cosmetologist or esthetician is limited to beautification, relaxation, and non-invasive services only.

The rules impact licensed cosmetologists, estheticians, and salons. The amendments clarify scope of practice by using examples of the types of services that are outside the scope of practice for cosmetologists and estheticians. The Board states that the rules protect the public by helping to ensure that cosmetologists and estheticians do not perform services that fall outside their scope of practice or within the scope of another licensed profession.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the State Cosmetology and Barber Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.