

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Cosmetic Therapy Continuing Education Requirements

Rule Number(s): 4731-1-08

Date: October 31, 2018

Rule Type:

New

5-Year Review

Amended

Rescinded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 rule sets out the continuing education requirements for renewal of a license to practice cosmetic therapy. The rule includes a chart showing the expiration dates of licenses based upon the first initial of the last name of the licensee, requires that records of completed continuing education be kept for possible audit by the Medical Board, decreases the required

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number of hours from twenty-five to twelve during the two-year licensure period, clarifies that a licensee who neither resides or practices in Ohio must complete continuing education to be eligible for renewal, sets out the requirements for a licensee to request a reduction in the number of hours required due to having been ill or out of the United States for more than six consecutive months, sets out the continuing education requirements for reinstatement or restoration of an expired license, and sets out the approved subject matter and providers of the continuing education. The proposed amendments include updating and clarifying the language, requiring that continuing education be maintained for two years instead of one, and adds language pertinent to licensees who are themselves or spouses of active duty members of the armed forces concerning renewing an expired license and earning continuing education credit.

Because amendments are made to more than fifty percent of the current rule, the current rule will be rescinded and a new rule 4731-1-08 adopted.

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

The rule is authorized by Sections 4731.05, 4731.15, 4731.155, and 5903.03, of the 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.

No, the rule does not implement a federal requirement.

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)?

Continuing education is an important tool that facilitates a licensed professional to stay current with the latest developments, skills, and new technologies in the field. Beginning in 1992, cosmetic therapists have been required to complete twenty-five hours of continuing education every biennium as a condition of licensure renewal. The proposed amendments reduce the required hours to twelve. Because there are only approximately one hundred seventy-four licensed cosmetic therapists, the market for continuing education is much smaller than for other professions. Recognizing this, the Board is proposing changes that it

hopes will make compliance easier to achieve. For example, the board will now recognize courses offered by professional organizations without regard to the number of members.

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

The success of this regulation can be measured in two respects. The first is whether more continuing education options become available to cosmetic therapists. The Board can consult with the cosmetic therapy organizations, cosmetic therapy schools, and cosmetic therapists to determine whether continuing education opportunities have increased. The second measurement of success is to determine the rate of compliance with continuing education requirements by conducting random audits of licensees.

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.

This is the second version of this rule to be filed with CSI in 2018. The rule was first filed in February 2018 but withdrawn on October 25, 2018. The first proposed rule amendments recommended by the Medical Board's staff were discussed in the public meeting of the Medical Board's Licensure Committee on October 11, 2017. The language approved by the committee was then sent to interested parties via email on October 16, 2017, and via email to all licensed cosmetic therapists on October 17, 2017. The interested parties sent notice included the Medical Board-approved cosmetic therapy training programs, representatives of cosmetic therapy associations, persons who specifically asked to be notified of rule activities relevant to cosmetic therapy, attorneys who appear before the Medical Board (including the attorney who represents the Cosmetic Therapy Training Center and the Society of Cosmetic Therapy Training), and governmental affairs representatives for numerous organizations. There were many comments not supportive of the proposed rule that was filed with CSI.

On June 4, 2018, Medical Board staff members met with invited cosmetic therapists to discuss continuing education issues, including what constitutes an approved course and the number of hours required. Attending were: Vickie Mickey, C.T., and Jo Melching, C.T., who are both owners of cosmetic therapy training programs; Amanda Nelson, C.T., and president of the Cosmetic Therapy Association of Ohio; Kristen Slack, C.T., and Antoinette

Sepsi, C.T., who are co-coordinators of cosmetic therapy continuing education courses at Lorain County Community College; and Louise Chaffins, the owner of an approved cosmetic therapy training program. The group agreed on subject matter, sources of course approval, and the number of hours to be required, and a draft rule reflecting the agreement was sent to the Medical Board's Licensure Committee.

On July 11, 2018, the Medical Board's Licensure Committee made some amendments to the rule. On July 18, 2018, the proposed rule was sent for comment to all licensed cosmetic therapists, the three Medical Board-approved cosmetic therapy training programs, persons who have requested notice of proposed action on rules applicable to cosmetic therapists, and individuals and organizations who receive notice of the Medical Board's proposed rule activities. Such individuals and organizations include attorneys who appear before the Medical Board (including the attorney who represents the Cosmetic Therapy Training Center and the Society of Cosmetic Therapy Training), and governmental affairs representatives for numerous organizations.

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

At the June 4th meeting, the group recommended that the number of continuing education hours be reduced from twenty-five to fifteen, with at least ten hours being completed in coursework that is clinically relevant to cosmetic therapy and approved by an approved national accrediting organization. Up to five hours could be in a subject that is not clinically relevant to cosmetic therapy, but which is relevant to maintaining a safe and effective practice.

On June 11, 2018, the Medical Board's Licensure Committee reviewed the recommendations. The Licensure Committee determined that the appropriate number of total hours of required coursework is twelve hours of clinically relevant coursework approved by an approved national accrediting organization. The basis for the changes is that they will result in fewer total hours of required coursework, but still protect the public by providing cosmetic therapists with avenues to improve their skills and also to update their knowledge in respect to practice standards and modern-day requests for services.

The proposed rule was then sent for comment on July 18th, as described in question 7 above. Twelve cosmetic therapist submitted comments, with some cosmetic therapists submitting multiple comments. There were no comments against reducing the total number of hours from twenty-five to twelve, and seven of the comments explicitly stated support. However, there was one comment that CTs who have practiced thirty to forty years or who are over the age of sixty-five should be exempt from taking continuing education. Several comments

urged the acceptance of a broader scope of subjects. Suggested topics included: transgender hair removal, patient history and consultation, new technology, topical agents, massage review, legal outlook, disinfection and sterilization, business topics; removal of a listing of specific topics from the rule in favor of more general statements of acceptable subject areas; courses in skin care, diet, fitness, and physical and mental health; massage therapy; and up to two hours for coursework in self-care and business. Several commenters, including persons who had attended the June 4th meeting, opposed the provision requiring all courses to be approved by one of two recognized national organizations. Several commenters urged that courses offered by electrology schools, health departments, associations, hospitals, and colleges should be continued to be recognized. One commented that the rule should require the approving bodies to be accredited by the International Association for Continuing Education and Testing. One commenter also urged that the terminology should be changed from “hours” to continuing education units. For example, ten hours of continuing education is recorded as one continuing education unit. The commenter also noted that paragraph (J) was not amended to reflect the decrease in required hours. There was also a request for clarifying language for items included in the “approved topics.”

The Medical Board made the following changes to reflect comments: The number of hours was not changed from twelve. The language of some paragraphs was clarified. Paragraph (N) was amended to list the topics for acceptable continuing education to include massage of the face, neck, scalp, or shoulders (as included in the definition of cosmetic therapy in Section 4731.04, Ohio Revised Code); list the providers deemed approved as college or universities, state or national cosmetic therapy or electrology professional association, cosmetic therapy school, health department or hospital offering courses approved for nurse continuing education credit, and a provider accredited by the International Association for Continuing Education and Training; allow courses to be taken in-person, webinar, or on-line; and require that evidence of completion be obtained and maintained by the cosmetic therapist. The language concerning Board approval of courses not otherwise deemed approved was deleted.

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?

Scientific data was not used. The subject matter for acceptable courses and the listing of approved providers reflect comments from the licensees.

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?

The Medical Board first considered the rule that was filed with CSI in February 2018. Based on the negative comments on the proposal the Medical Board then drafted a rule that, as discussed above, reflected comments received from cosmetic therapists, school owners, and continuing education coordinators at a June 2018 meeting. Finally, the Medical Board has arrived at the version being filed, which reflects comments received on the version of the rule that resulted from the June 2018 meeting.

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 rule is performance-based. The rule requires that certain actions, such as completion of continuing education, be taken. However, while the rule specifies acceptable continuing education subjects and providers, it does not specify what courses must be taken and from which of the listed providers.

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 authorized to regulate cosmetic therapy licensing.

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.

Notice of the rule will be sent to all licensed cosmetic therapist and included in the e-news that is sent to all Medical Board licensees. The staff who are involved in auditing continuing education will be trained on the cosmetic therapy continuing education requirements and the need to apply the rule consistently.

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 composed of licensed cosmetic therapists. There are currently one hundred seventy-four licensed cosmetic therapists in Ohio.

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

The nature of the adverse impact is the cost of continuing education coursework and licensee time for compliance.

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 following are examples of available continuing education courses:

- A two-hour webinar entitled Human Anatomy for Hair Removal Professionals offered by the Society for Clinical and Medical Hair Removal costs \$100.00 (<https://www.scmhr.org/event/human-anatomy-for-hair-removal-professionals/>).
- A one-hour home study course entitled “Psoriasis and Electrology: An Overview” offered by the Society for Clinical and Medical Hair Removal costs \$25.00 (<https://www.scmhr.org/product/psoriasis-and-electrology/>).

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

Incorrectly performed electrolysis can cause lasting skin damage or spread infection. Also, Ohio cosmetic therapist may perform laser hair removal under the supervision of a physician, and as the service becomes more in demand for removal of hair from more sensitive areas of the body it is essential that cosmetic therapist be trained to perform the service safely and effectively.

Regulatory Flexibility

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

There is no exemption or alternative means of compliance for small businesses. All cosmetic therapists practice is via 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?

The only time paperwork is required to be submitted to the Medical Board is if the licensee is randomly selected for audit of continuing education hours. Failure to submit the required documentation does not constitute a paperwork violation but would be an indication that the licensee has not completed the required continuing education.

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

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Medical Board staff members routinely answer telephone and email inquiries concerning its laws and rules. Where appropriate, the Medical Board creates guidance documents to explain rules, which are then posted on the Medical Board's website. Medical Board staff members are also available to make presentations upon request.