



Common Sense Initiative

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Business Impact Analysis

Agency Name: State Cosmetology and Barber Board

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Regulation/Package Title: Chapter 4713-8 – June 2019

Rule Number(s): 4713-8-03 (Amend), 4713-8-04 (Amend), 4713-8-05 (Amend),
4713-8-06 (Amend), 4713-8-07 (Amend)

Date: July 8, 2019

Rule Type:

New

Amended

5-Year Review

Rescinded

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 all regulations 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.

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.

4713-8-03 Standards relating to competent practice as a cosmetologist. (Amend):

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This rule sets for the standards for safe and effective practice as a cosmetologist and provides clarity on the scope of practice. The rule is being amended to correct an internal citation error caused by a separate amendment of rule 4713-1-01. The amendment also changes a prohibition on providing certain services based on FDA device classification to a prohibition based on the physical impact of the service. It also includes a non-exhaustive list of prohibited services to provide clarity for Board licensees.

4713-8-04 Standards relating to competent practice as an esthetician. (Amend):

This rule sets for the standards for safe and effective practice as an esthetician and provides clarity on the scope of practice. The rule is being amended to correct an internal citation error caused by a separate amendment of rule 4713-1-01. The amendment also changes a prohibition on providing certain services based on FDA device classification to a prohibition based on the physical impact of the service. It also includes a non-exhaustive list of prohibited services to provide clarity for Board licensees.

4713-8-05 Standards relating to competent practice as a hair designer. (Amend):

This rule sets for the standards for safe and effective practice as a hair designer and provides clarity on the scope of practice. The rule is being amended to correct an internal citation error caused by a separate amendment of rule 4713-1-01.

4713-8-06 Standards relating to competent practice as a natural hair stylist. (Amend):

This rule sets for the standards for safe and effective practice as a natural hair stylist and provides clarity on the scope of practice. The rule is being amended to correct an internal citation error caused by a separate amendment of rule 4713-1-01.

4713-8-07 Standards relating to competent practice as a manicurist. (Amend):

This rule sets for the standards for safe and effective practice as a manicurist and provides clarity on the scope of practice. The rule is being amended to correct an internal citation error caused by a separate amendment of rule 4713-1-01.

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

4713-8-03: R.C. §§ 4713.08(A)(1), 4713.08(A)(20).

4713-8-04: R.C. §§ 4713.08(A)(1), 4713.08(A)(20).

4713-8-05: R.C. §§ 4713.08(A)(1), 4713.08(A)(20).

4713-8-06: R.C. §§ 4713.08(A)(1), 4713.08(A)(20).

4713-8-07: R.C. §§ 4713.08(A)(1), 4713.08(A)(20).

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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.

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)?

These rules establish minimum standards of safe and effective practice and clarification on scope of practice. This is necessary for the Board, licensees, and the public to evaluate appropriate professional practice.

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

The success of the regulation will be measured through inspection and staff, licensee, and public feedback.

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 Board placed these rules on its website requesting input and comments from all interested parties. Additionally, notification of these proposed rule changes was emailed to all entities and persons currently on our interested parties list, along with a response email address.

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

The Board received 25 comments on the rules in this package. All 25 of these comments were different individuals sending the same, copied message commenting on the following rules:

4713-8-03 (Amend) and 4713-8-04 (Amend): The comments state that the amended language creates a double standard and will negatively impact salons offering these services under the direction of a licensed physician in Ohio. The comments did not lead

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to any changes in the proposed amended rule language since the comments show that there is some misunderstanding and confusion as to the scope of practice for licensed cosmetologists and estheticians in Ohio and a need for clarity.

First, it must be noted that the services listed in the proposed rule language are already prohibited under the Board's laws and rules. Paragraph (D) of current rules 4713-8-03 and 4713-8-04 indicate that cosmetologists and estheticians "shall not provide any service that claims to have a medical or healing benefit. The scope of practice is limited to beautification, relaxation, and non-invasive services only." Paragraph (FF) of existing rule 4713-1-01 defines "non-invasive" as "confined to the nonliving cells of the epidermis specifically the stratum corneum (outer) layer. Living cells must never be altered, cut or damaged." All of the practices noted in the proposed amendments alter or damage living tissue and are therefore beyond the scope of practice of cosmetology and esthetics, and likely constitute the practice of medicine. They also likely violations the prohibitions found in R.C. 4713.14(R) and 4713.15 on Board licensees attempting to treat or cure any disease or ailment.

Next, contrary to what is noted in the comments, the proposed rule language should not have any effect on salons under the direction of a licensed physician since the supervision of a licensed physician does not expand the scope of practice for cosmetologists and estheticians. Paragraph (H) of rule 4713-8-03 and paragraph (G) of rule 4713-8-04 state that cosmetologists and estheticians "working under the direct supervision of a licensed physician shall provide only services within their scope of practice as set forth in Chapter 4713. of the Revised Code and the rules promulgated thereunder." In addition, a licensed physician who delegates a medical procedure or treatment, not a simple medical task, to a licensed cosmetologist or esthetician may violate the rules of the Medical Board of Ohio found in Chapter 4731-23 of the Administrative Code.

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?

Rules 4713-8-03 through 4713-8-07 of the Administrative Code rely upon prevailing and acceptable standards determined through expert input and published resources setting out the current body of knowledge and criteria to provide effective services. The Board also sought input from Board members, a product expert, and the Medical Board of Ohio in developing the rule language.

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?

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The Board did not consider alternative regulations because one of the proposed amendments simply corrected a citation, and the other is consistent with the Board statutory scopes of practice and the Board's existing definition of "non-invasive" in rule 4713-1-01.

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.

These regulations are largely performance-based. The rules set forth standards and licensees have flexibility on how and what services they may perform within those standards.

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

The Board is the sole entity tasked with the regulation of barbering and the branches of cosmetology in Ohio. The Board also sought input from the Medical Board of Ohio to prevent any scope of practice overlap.

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.

This rule will be posted on the Board's website and notification, with detail, will be sent to all regulated persons and businesses that may be impacted.

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;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- 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 rules do include prohibitions on services that may be provided, but this is based on the licensee's statutory scope of practice. Allowing licensees to provide services that are outside their scope, or within the scope of another licensed profession (i.e. the practice of medicine) would place the public at a significant risk of harm.

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

The regulatory intent is justified by the need to protect the public. In addition, the rule provides a benefit to Board licensees by providing additional clarification of prohibited services. This is beneficial because many devices that are outside of the scope of practice are still specifically marketed to cosmetologists and estheticians in Ohio.

Regulatory Flexibility

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

The rules apply evenly to businesses of all sizes.

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 Board will apply its violation guidance matrix if an individual receives notice of a violation of these rules. The matrix permits an individual in violation of these rules to correct the issue(s) and receive a warning.

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

There are no special resources required to comply with these rules.