

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Medical Board of Ohio

Regulation/Package Title: Massage Therapy Rules

Rule Number(s): 4731-1-12 and 4731-1-16

Date: _____

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Rescinded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.

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

Rule 4731-1-12 sets out the application process and licensing examination for massage therapists. The proposed changes are to more than fifty percent of the current language, therefore, the current rule will be rescinded and the “amended” language adopted as a new rule.

Rule 4731-1-16 sets out the curriculum requirements for a massage therapy school to receive approved status from the Medical Board.

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

Rule 4731-1-12 is authorized by Sections 4731.05, 4731.16, and 4731.20 of the Revised Code.

Rule 4371-1-16 is authorized by Section 4731.05, 4731.19, and 4731.20 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, it 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)?

The public purpose of both rules is to protect the public by setting clear standards for entry level competencies for massage therapists. Massage therapists provide therapeutic massage as treatment for medical conditions, either without a physician’s prescription or according to a physician’s prescription.

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

The success of the Rule 4731-1-12 will be measured by the percentage of applicants who submit completed applications without having to be sent an “incomplete application” letter. The success of Rule 4731-1-16 will be measured by the percentage of applicants who attended a massage therapy program approved by the Medical Board and who passed the MBLEX in no more than two attempts.

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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 proposed language for the rules was reviewed by numerous organizations and individuals, including the Massage Therapy Advisory Committee, which is composed of massage therapists, a representative of the Ohio Council for Massage Therapy Schools (“Council of Schools”), representatives from the American Massage Therapy Association – Ohio Council, and interested massage therapists during telephone conferences that occurred on June 18, 2015 and November 9, 2015. The rules were discussed with the Council of Schools on October 5, 2015. The Council of Schools then solicited input from the massage therapy schools to be sent to the Medical Board on the contents of Rule 4731-1-16. By email on December 11, 2015, both proposed rules were sent to organizations and persons who have requested notice of Medical Board activities with rules. The listing includes the Ohio State Medical Association, Ohio Osteopathic Association, Ohio Podiatric Medical Association, American Massage Therapy Association – Ohio Chapter, Ohio Academy of Family Physicians, Academy of Medicine of Cleveland and Northern Ohio, governmental affairs representatives for numerous organizations, and state agencies such as the Nursing Board.

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

When it was originally proposed in 2012, Rule 4731-1-12 was controversial in that it recognized only one national examination as the examination required for licensure. At that time there were two national examinations: (1) the Massage and Bodywork Licensing Examination (“MBLEX”) and (2) the certification examination offered by the National Certification Board for Massage Therapy and Bodywork (“NCBMTB”). The Medical Board proposed to accept only MBLEX. However, the Medical Board agreed with JCARR members that the rule would immediately be reviewed by considering the acceptance of the NCBMTM examination as well. However, during the review process the NCBMTM withdrew its examination from consideration. As of February 2, 2015, the NCBMTM ceased giving the examination. The Medical Board originally proposed to amend the rule to accept a passing score on the NCBMTM that was received prior to February 2, 2015. The Federation of State Massage Therapy Boards, the owner of the MBLEX, and a few massage therapists objected by stating that the NCBMTM exam was obsolete and should not be accepted even in reciprocity since the Medical Board had not recognized the examination during the time it was given. The proposed recognition of the NCBMTM examination prior

to February 2, 2015 was removed. All comments on the current proposed amendments have been supportive of the proposal, which merely clarifies and simplifies the licensure application process and the examination application process.

Rule 4731-1-16, OAC, is the rule that sets forth the massage therapy curriculum requirements. The only proposed amendment to the rule is at Paragraph (A)(1). The language is clarified by breaking out the requirements based on the class enrollment date into outline form.

The question of what unit to use in designating the curriculum content was a matter of contention when this rule was reviewed a few years ago. However, input on the question was solicited via the Council of Massage Therapy Schools prior to submitting the proposed rule for Medical Board review. Although there are still massage therapy schools that advocate a change to quarters and semesters instead of clock hours of instruction, the majority of comments from massage therapy schools supported the continued use of clock hours. The problem with clock hours was explained by one commenter as being that programs that are less than 900 clock hours are considered “part time” for purposes of financial aid (and Ohio’s Massage Therapy curriculum requires only 750). The national standard for massage therapy curriculum is to use clock hours. When the proposed rule was circulated to interested parties in December 2015, three commenters supported the continued use of clock hours and one commenter advocated changing to quarter and semester hours.

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?

Proposed Rule 4731-1-12 requires passage of the only national entry level licensing examination for massage therapy licensure. Proposed Rule 4731-1-16 relies upon the national standard for massage therapy education in its use of clock hours instead of quarter and semester hours.

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?

Please refer to the discussion in response to Question 8.

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.*

Both Rule 4731-1-12 and Rule 4731-1-16 are performance based rules.

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 state agency that regulates massage therapy licensure in Ohio.

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.

The proposed rules have been amended to be clearer and more direct in language in an effort to promote their consistent application. The Medical Board will develop guidance documents should questions arise. The Medical Board staff meets regularly with the Ohio Council of Massage Therapy Schools to discuss any issues.

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 includes persons wishing to be licensed as massage therapists and all schools wishing to offer massage therapy education that will qualify students for Ohio licensure.

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

The adverse impact for persons wishing to obtain a massage therapy license includes the cost of education and the cost of the MBLEX examination. The adverse impact for massage therapy schools is the cost of creating coursework that meets the minimum curriculum requirements and developing informative materials for students.

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.

Persons wishing to obtain Ohio massage therapy licensure must complete an educational program that meets the curriculum requirements set out in Rule 4731-1-16. The cost of obtaining the education in Ohio depends upon the school and whether the student completes a program designed to meet the minimum educational requirements for Ohio licensure or completes a two-year associate degree program in

massage therapy. Information gathered by way of a survey conducted by the Ohio Council of Massage Therapy on behalf of the Medical Board found that current tuition at private sector schools runs from \$12,000 to \$16,095 and tuition at a state school runs from \$3,240 to \$10,293. Please be aware that at least one private school program includes the MBLEX application fee and licensure application fee in their tuition fees.)

The fee for the MBLEX is \$195, none of which is paid to the Medical Board.

The licensure application fee is \$150 (See Section 4731.19, ORC), with a \$100 renewal fee (See Section 4731.15, ORC).

The adverse impact for massage therapy programs is the cost incurred to develop and maintain courses that meet the minimum curriculum requirements of Rule 4731-1-16 and develop materials to provide required information to students. There is not reliable information upon which a monetary amount can be based.

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

Massage therapy is a limited branch of medicine. The rules inform prospective massage therapists, educators, and the public about the criteria used to measure the entry level competency for a massage therapist. The minimum curriculum requirements were developed several years ago by a committee consisting of practicing massage therapists and massage therapy educators. Improperly performed massage therapy can cause injury to the patient.

Regulatory Flexibility

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

Most massage therapist work as sole practitioners or in small businesses. The protection of the public requires that massage therapists meet the same competency criteria whether practicing as a sole practitioner or in a larger, but still small, business employing several massage therapists.

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?

There are no fines applicable to massage therapists or massage therapy schools. Paperwork violations are limited to failure to submit renewal applications. The requirement to renew a license cannot be waived.

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

The Medical Board provides information via email blasts to licensees, posting information on its website, and having a newsletter that is emailed to all licensees and others. If needed, the Medical Board will create guidance documents to explain information that is not clear. The Medical Board staff is available via telephone and email.

4731-1-12

**Application and examination for certificate to practice
massage therapy.**

- (A) No application shall be considered complete until the applicant has complied with the requirements of paragraph (A) of rule 4731-4-02 of the Administrative Code and the board has received the results of criminal records checks and any other forms required to be submitted pursuant to paragraph (A) of rule 4731-4-02 of the Administrative Code.
- (B) All applicants seeking a certificate to practice massage therapy who meet the requirements of section 4731.19 of the Revised Code, ~~shall file a written application under oath on a form prescribed by the board and provide such other facts and materials as the board requires~~ shall apply to the board in compliance with section 4731.19 of the Revised Code.
- ~~(1) Applications shall be accompanied by an application fee except as otherwise provided herein.~~
- ~~(2) An applicant who submits an application for the December, 2011 massage therapy examination administered by the board who fails to graduate prior to the examination making the applicant ineligible to take the board administered examination, may file an application for a certificate to practice after passing the MBLEx without paying an application fee.~~
- (C) Any person seeking a certificate to practice massage therapy shall have passed the MBLEx available through the federation of state massage therapy boards.
- (1) ~~Applicants for the examination will not be required to submit an application to the board or to demonstrate to the board that they meet the requirements to gain admission to the examination. Application will be~~ An applicant for the MBLEx shall made apply directly to the ~~ferederation~~federation of state massage therapy boards.
- (2) The passing performance for the examination as reported by the federation of state massage therapy boards shall constitute successful completion of the examination.

4731-1-16

Massage therapy curriculum requirements.

(A) To qualify to receive a certificate of good standing for a course of instruction in massage therapy, a school's course of instruction shall:

(1) Consist of both practical and theoretical instruction meeting one of the following requirements: covering a period of not less than one year and a minimum of six hundred clock hours. Beginning December 31, 2005, the course of instruction for classes enrolling on or after that date shall include a minimum of seven hundred fifty clock hours covering a period of not less than nine months;

(a) For classes enrolling no later than December 30, 2005, a period of not less than one year and a minimum of six hundred clock hours; or

(b) For classes enrolling on and after December 31, 2005, a minimum of seven hundred fifty clock hours covering a period of not less than nine months;

(2) Beginning with classes enrolling on or after December 31, 2005, teach at least the minimum required hours in the following subjects in dedicated clock hours, as appropriate to massage therapy:

(a) Anatomy and physiology; pathology: three hundred twenty-five clock hours;

(b) Massage theory and practical, including hygiene: three hundred twenty-five clock hours;

(c) Ethics: twenty-five clock hours, at least ten of which shall be in a class dedicated exclusively to ethics. For purposes of this rule, "ethics" shall be defined to include sexual boundary issues and impairment and chemical dependency issues;

(d) Business and law: twenty-five hours; and

(e) Such other subjects as the board deems necessary and appropriate to massage therapy: fifty clock hours; and

(3) Require that each student, prior to completing the course of instruction, perform, on a licensed massage therapist, at least one therapeutic massage. The school shall ensure that the student massage is evaluated as to whether the student demonstrates at least minimally acceptable competency.

- (B) Educational objectives shall be clearly defined and simply stated and shall indicate what the educational program can do for reasonably diligent students.
- (C) The course of instruction shall be outlined in detail showing major subjects and clock hours devoted to each subject, entrance requirements and occupational objectives.
- (D) A limited branch school shall submit for approval on an appropriate form its daily or weekly schedule of instruction. The approved schedule shall be made available whenever requested by the board.
- (E) Students may be given credit for off-site clinical activities. Such credit may not exceed ten per cent of the required clock hours in the theory and practical category of the program. The off-site clinical activities shall be conducted under the direction and on-site supervision of an appropriately licensed practitioner. The school shall be required to enter into a written affiliation agreement with a representative of the facility where the off-site clinical activities are being provided. The student participating in off-site clinical activities shall identify him or herself as a massage therapy student and shall obtain signed acknowledgement of receipt of that notice from the patient.