

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: State Medical Board

Regulation/Package Title: Massage Therapy Continuing Education

Rule Number(s): 4731-1-24

Date: October 24, 2016

**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Rescinded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.*

In 2014 the Medical Board was given statutory authority to establish rules requiring massage therapists to complete continuing education for renewal. The proposed rule sets out the massage therapy license renewal requirements and the continuing education requirement,

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including the types of acceptable continuing education courses and providers. It also contains the required provisions concerning licensees who are in the armed forces.

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

The rule is authorized by Sections 4731.05 and 4731.155, Ohio Revised Code. It also implements Section 5903.10, Ohio 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.

**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 the standard for licensed professions in order to have the licensee remain abreast of new developments in the profession and to enhance current knowledge. The American Massage Therapy Association – Ohio Chapter has long lobbied for the initiation of a continuing education requirement for Ohio massage therapists in order to enhance the professional standing of massage therapists in Ohio.

The proposed rule notifies licensees, prospective licensees, educators, and the public about the processes and procedures for meeting the continuing education requirement as part of the renewal of the license.

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

The success of the rule will be measured by the number of massage therapy licensees who comply with the rule and anecdotal evidence of generally improved massage therapy practices.

**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.*

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The proposed rule was initially developed based upon the feedback received from the efforts to promulgate the rule in 2015 and with the input of the Massage Therapy Advisory panel. The advisory panel is made up of licensed massage therapists including those who own their business or who are employed massage therapists. However, massage therapy educators, representatives of massage therapy businesses, and other massage therapists routinely called into and participated in the telephone conferences scheduled to discuss the proposed rule. Telephone conferences were held on December 7, 2015 and February 22, 2016.

Once the rule was formulated, it was sent via email on March 11, 2016, to all licensed massage therapists for whom the Medical Board has email addresses, members of the massage therapy advisory panel, the American Massage Therapy Association – Ohio Chapter, approved massage therapy training programs in Ohio, the Council of Massage Therapy Schools, Ohio State Medical Association, Ohio Osteopathic Association, various professional organizations in the medical area, attorneys who appear before the Medical Board, and all other parties who have indicated an interest in rule activity by the Medical Board.

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

The massage therapy advisory panel was instrumental in the inclusion of “self-care” and business courses as acceptable coursework and in ensuring a full range of approved providers. There was disagreement among the panel members and other participants as to the appropriate number of credit hours to require.

Comments received from interested parties and licensees included support of the draft rule by the American Massage Therapy Association – Ohio Chapter. Other comments included a desire to be able to complete the continuing education coursework completely via home study courses; a request that the self-care course work not be limited to that which has direct application to the practice of massage therapy; comments that the required 24 hours is too many; there should not be a requirement for human trafficking awareness courses; there should be a waiver of continuing education requirements based upon age; the providers should be more than just the association and schools; instructors should earn continuing education credit for creating the courses; CPR/First Aid should be required; continuing education credit should be given for presentations to professional organizations or authoring a book or paper relating to massage therapy practice; and live webinars should be an accepted form.

The Medical Board carefully reviewed all comments received and re-affirmed the language of the rule as proposed. Of particular interest: the Medical Board did not increase the

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number of acceptable home study courses beyond the proposed 10 hours because it believes that life-long learning should involve live interactions with course instructors, which is not available via home study coursework. The proposed rule does not, however, limit the reliance on distance learning coursework.

The commenter who suggested that the requirement that “self-care” courses not have to be directly related to massage therapy provided examples of courses that should be considered. The listing included nutrition, meditation, yoga, tai chi, and other courses that address the mental and spiritual health as well as the physical health of the massage therapist. The Medical Board determined that as currently drafted the proposed language of paragraph (E)(1)(b) allows the licensee to earn credit for courses that facilitate the licensee’s continued provision of massage therapy, including the types of courses the commenter suggested.

The Medical Board also re-affirmed that twenty-four credit hours of continuing education every two years should be required. The decision was made based upon the statistics maintained by the Associated Body-Workers and Massage Professionals, which reflects that nineteen of the states that require continuing education for licensure renewal require at least twenty-four credit hours; fourteen require less. Also, the National Certification Board for Therapeutic Massage and Bodywork requires twenty-four hours of continuing education credit.

The requirement for continuing education courses to include human trafficking awareness training reflects the provisions of Section 4743.07, Ohio Revised Code.

The Medical Board believes the proposed rule provides a wide-range of acceptable providers that go extensively beyond just massage therapy schools and associations, and that it allows for a variety of learning options.

**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?**

The requirement for human trafficking awareness training is based upon the State of Ohio policy that emphasizes such awareness in all segments of society. See Section 4743.07, Ohio Revised Code. The determination of the number of hours of credit required and types of acceptable coursework areas was based on extensive research of requirements by other states and associations in the massage therapy profession. The requirement for courses in Ohio law and ethics is based upon the fact patterns for situations brought to the Medical Board’s attention by way of complaints filed against massage therapists.

**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?**

If Ohio massage therapists are to be required to complete continuing medical education as a condition of licensure renewal, the requirements must be set out in rule. See Section 4731.155, Ohio Revised Code. In 2015, the Medical Board first proposed language for this rule that was withdrawn based upon numerous negative comments received. This proposed language reflects many of the comments received in 2015.

- 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. It states the licensure expiration chart, provides numerous options for the licensee to meet the requirement of completing continuing education, and sets out the procedure for late renewal of a license and extension of the continuing education period for licensees in the armed forces.

- 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 that licenses and regulates massage therapists.

- 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.**

All licensed massage therapists, approved massage therapy schools, and the American Massage Therapy Association – Ohio Chapter will receive notice of the rule via email. Notice will also be included in the e-newsletter that goes to all licensees. Medical Board staff members will be available to answer questions. Guidance documents will be developed to explain the rule.

### **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 massage therapists.

- 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 payment of course registration.

- 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 registration fee will vary depending on the subject matter, number of credit hours awarded, and other variances. Examples include the following:

Manual Therapy and Self-care Techniques: \$219 for 6 credit hours (See <https://www.summit-education.com/course/PSELEK.1/essential-manual-therapy-and-self-care-techniques#/liv>)

Numerous on-line courses ranging from \$15 to \$60 for a variety of credit hours: <https://www.amtamassage.org/courses/listing.html>

ACE Massage Cupping, level 1: \$120 for 12 credit hours. (See <https://aceinstituteonline.com/course/ace-massage-cupping-bodywork-therapy/>)

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

Continuing education is the standard for licensed professions in order to have the licensee remain abreast of new developments in the profession and to enhance current knowledge. Anecdotal information and information provided in complaints file with the Medical Board indicate a need for massage therapists to engage in life-long learning.

**Regulatory Flexibility**

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

No. Most massage therapists provide care in a small business. Clients/patients may be harmed by improperly performed massage therapy. It is important that all massage therapists enhance their knowledge and keep abreast of new developments in the profession.

**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 rule is not applicable to a business but to the individual licensee. It is the policy of the State of Ohio that continuing education for massage therapists is needed to facilitate public protection. Therefore, protecting the public requires enforcement of the continuing education requirements.

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

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An FAQ document will be created and circulated to licensees, massage therapy schools, and associations. Medical Board staff will be available to answer questions, as well.

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Massage therapy renewal and continuing education.

(A) For purposes of this rule:

- (1) "CMTE" means continuing massage therapy education approved by the board pursuant to this rule.
- (2) "Course" means a course, seminar, speaker session, on-line course, or webinar, or a home study course that requires passage of an examination in order to receive the award of the certification of completion.

(B) A massage therapy license expires according to the chart below:

<u>First Initial of Last Name</u>	<u>License Expiration Date</u>
<u>A - B</u>	<u>July of odd numbered years</u>
<u>C - D</u>	<u>April of odd numbered years</u>
<u>E - G</u>	<u>January of odd numbered years</u>
<u>H - K</u>	<u>October of even numbered years</u>
<u>L - M</u>	<u>July of even numbered years</u>
<u>N - R</u>	<u>April of even numbered years</u>
<u>S</u>	<u>January of even numbered years</u>
<u>T - Z</u>	<u>October of odd numbered years</u>

(C) Beginning two years after the effective date of this rule, an applicant seeking renewal or reinstatement of a massage therapy license shall have completed at least twenty four hours of CMTE during the current biennial licensure period.

(D) The CMTE requirement for persons licensed after the start of a biennial licensure period or for whom the license has been restored shall be computed in the following manner:

- (1) If the license is initially issued prior to the first day of the second year of the biennial licensure period, the licensee shall be required to earn twelve and one-half total hours;
- (2) If the license is issued on or after the first day of the second year of the biennial licensure period and prior to the first day of the eighteenth month of that period, the licensee shall be required to earn six total hours;
- (3) If the license is issued on or after the first day of the eighteenth month of the

biennial licensure period, the licensee shall not be required to earn any hours of CMTE credits for that period.

(E) Courses and providers

(1) Licensees shall complete at least twenty four hours of CMTE as follows during each renewal period:

(a) At least twelve hours in general massage courses that in the board's discretion are relevant to the practice of massage therapy. To be relevant to the practice of massage therapy, a course shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of massage, which shall include, but not be limited to, critical reasoning, interpersonal abilities, or performance skills;

(b) Although not required, self-care courses with direct application to the practice of massage therapy may be taken but shall be accepted for no more than four hours of the required hours;

(c) Although not required, business courses with direct application to the practice of massage therapy may be taken but shall be accepted for no more than four hours of the required hours;

(d) At least one hour in Ohio law related to the practice of massage therapy;

(e) At least one hour in professional ethics; and

(f) A course on human trafficking awareness approved by the board, completion of which shall result in one hour of CMTE credit.

(2) A course in any of the following subject matters is not acceptable for meeting the continuing education requirement:

(a) A course in a subject area outside of the massage therapy scope of practice.

(b) A course in cardio-pulmonary resuscitation ("CPR").

(3) A CMTE course that is relevant to the practice of massage therapy shall be deemed approved as meeting the continuing education requirements when it is provided by one of the following:

(a) An entity or person approved as a continuing education provider by the "National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB");

- (b) A state or national professional massage therapy association comprised of more than fifty persons licensed to practice massage therapy;
  - (c) A massage therapy school approved by the board pursuant to this chapter of the Administrative Code;
  - (d) The "Ohio Council of Massage Therapy Schools";
  - (e) A health department or hospital which offers programs which have been previously approved for continuing medical education credits, continuing nursing education credits, or continuing physical therapist education credits when the program is relevant to massage therapy practice;
  - (f) A course approved for continuing nursing education credits by the Ohio board of nursing or continuing physical therapist education credit by the Ohio occupational therapy, physical therapy, and athletic trainers board when the course is relevant to massage therapy practice; or
  - (g) A course that is part of a curriculum of a university, college, or other educational institution when the course is relevant to massage therapy practice. Such a course shall be allotted continuing education credit at the rate of fifteen continuing education hours for each semester hour or ten continuing education hours for each quarter hour of school credit awarded.
- (4) A CMTE course used to satisfy the continuing education requirements of a massage therapy licensing agency in another jurisdiction may be applied to fulfill the continuing education requirements under this rule if the course is relevant to massage therapy practice.
- (5) Home study coursework which meets the requirements of this rule and is offered by a provider recognized in paragraph (E)(3) of this rule shall be accepted for no more than ten hours of the required continuing education when the course requires the passage of an examination over the subject matter before written notification of credit is granted by the provider.
- (6) Request for approval of a CMTE course:
- (a) A massage therapist seeking approval of a CMTE course, seminar, or speaker session that is not deemed approved pursuant to paragraph (E)(3) of this rule may request that the board approve the course by submitting in writing, at least three months in advance of the course registration date, the following information:

    - (i) Title, location, and date of the course;

- (ii) The name of the sponsor or provider of the course;
    - (iii) Course objectives and content;
    - (iv) Course hours;
    - (v) Name of each instructor; and
    - (vi) Educational background and experience of each instructor.
  - (b) The board shall notify the massage therapist of the decision as to whether the board approved the course in sufficient time for the massage therapist to register prior to the deadline.
  - (c) The massage therapist shall seek re-approval of the course from the board if there is a change in subject matter, length of the course, or instructor for the course.
  - (d) The board reserves the right to deny recognition of the credits earned if the course has not received prior approval by the board.
  - (e) The board shall not grant approval of a home study course under this paragraph.
- (F) An expired license to practice as a massage therapist shall be renewed upon payment of the biennial renewal fee provided in section 4731.15 of the revised code and without a late fee or re-examination if the holder meets all of the following requirements:
- (1) The licensee is not otherwise disqualified from renewal because of mental or physical disability;
  - (2) The licensee meets the requirements for renewal under section 4731.15 of the Revised Code;
  - (3) Either of the following situations applies:
    - (a) The license was not renewed because of the licensee's service in the armed forces, or
    - (b) The license was not renewed because the licensee's spouse served in the armed forces, and the service resulted in the licensee's absence from this state.
  - (4) The licensee or the licensee's spouse, whichever is applicable, has presented satisfactory evidence of the service member's discharge under honorable

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conditions or release under honorable conditions from active duty or national guard duty within six months after the discharge or release.

(G) Extension of the continuing education period based on active duty service:

(1) The holder of a massage therapy license may apply for an extension of the current continuing education reporting period in the manner provided in section 5903.12 of the Revised Code by submitting both of the following:

(a) A statement that the licensee has served on active duty, whether inside or outside of the United States, for a period in excess of thirty-one days during the current continuing education reporting period; and

(b) Proper documentation certifying the active duty service and the length of that active duty service.

(2) Upon receiving the application and proper documentation, the board shall extend the current continuing education reporting period by an amount of time equal to the total number of months that the licensee spent on active duty during the current continuing education reporting period. Any portion of a month served shall be considered one full month.

(3) The board shall consider relevant education, training, or service completed by a licensee as a member of the armed forces in determining whether a licensee has met the continuing education requirements needed to renew the license.

(H) For purposes of this rule "armed forces" means any of the following:

(1) The armed forces of the United States, including the army, navy, air force, marine corps, and coast guard;

(2) A reserve component of the armed forces listed in paragraph (H)(1) of this rule;

(3) The national guard, including the Ohio national guard or the national guard of any other state;

(4) The commissioned corps of the United States public health service;

(5) The merchant marine service during wartime;

(6) Such other service as may be designated by Congress; or

(7) The Ohio organized militia when engaged in full-time national guard duty for a period of more than thirty days.