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
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Because amendments are made to more than fifty percent of the current rule, the current rule will be rescinded and a new rule 4731-1-08 adopted.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 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/](https://www.scmhr.org/event/human-anatomy-for-hair-removal-professionals/)).


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?**
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.
Continuing cosmetic therapy education requirements for registration or renewal, reinstatement, or restoration of a license to practice cosmetic therapy.

(A) "License registration renewal" is the extension of a current license by fulfilling the requirements of division (C) of section 4731.15 and section 4731.155 of the Revised Code and the continuing education requirements of this rule.

(B) "License reinstatement" is the return reactivation of a license which has lapsed or been in a suspended or inactive status for two years or less for any reason including a failure to comply with division (C) of section 4731.15 and section 4731.155 of the Revised Code of the Revised Code or the continuing education requirements of this rule.

(C) "License restoration" is the reactivation of a license which has lapsed or been in a suspended or inactive status for more than two years for any reason including a failure to comply with division (C) of section 4731.15 of the Revised Code or the continuing education requirements of this rule.

(D)(E) On or before the expiration dates established in table 1 of this rule, each applicant for license registration renewal shall certify to the board that since the start of the applicant's registration period, the applicant has completed twenty-five twelve hours of "Continuing Cosmetic Therapy Education" (hereinafter "CCTE") less any reduction in hours allowed by the board under paragraph (JK) or (KL) of this rule.

Table 1

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

All applicants who file apply for license reinstatement shall certify to the board
that in the preceding two years registration period, they have completed the twenty-five twelve hour CCTE requirement less any reduction in hours allowed by the board under paragraph (J) or (K) or (L) of this rule.

(F) All applicants who apply for license restoration shall have completed twelve hours of CCTE within the preceding two years from the date of the application.

(G) If a person has not completed the requisite hours of CCTE, that person is not eligible for license renewal, or license reinstatement, or restoration until such time as those hours have been completed. Any CCTE undertaken after the end of a registration period and utilized for purposes of registering or reinstating reinstatement or restoration of a suspended license cannot also be utilized to meet the CCTE requirement for the current registration period.

(H) Persons who are residing or practicing outside Ohio, who are not working in the cosmetic therapy profession, or who are retired from practice, but who wish to register or reinstate their licenses to practice cosmetic therapy in Ohio, are not exempt from the CCTE requirements of section 4731.155 of the Revised Code and this chapter of the Administrative Code out of the state who wish to renew or reinstate their license to practice cosmetic therapy in Ohio must complete the required CCTE within the registration period even though not currently residing or practicing in Ohio.

(I) The certification required by paragraphs (C) and (D) of this rule shall be evidence of completion of the CCTE requirement as set forth in section 4731.155 of the Revised Code, this rule, provided that:

(1) The board may randomly select applications for verification that all CCTE requirements have been met. Persons whose applications are selected shall submit additional documentation of compliance with CCTE requirements as the board may require.

(2) Applicants shall keep detailed records of CCTE hours taken. Records of all CCTE undertaken shall be retained by the applicant for one year after the end of the registration period.

At a minimum, the following information must be retained:

(a) Description of the CCTE activity;

(b) The location of the CCTE activity;

(c) The dates of attendance;

(d) The hours of each CCTE activity; and
(e) Any available documentation of the completion of the CCTE activity.

All records of CCTE activity shall be kept available for agents of the board for review.

(2) Failure to maintain evidence of completion and supporting documentation as required by paragraph (N) of this rule rebuts the presumption established in paragraph (I) of this rule that the CCTE requirements have been completed.

(H) Failure to maintain records rebuts the presumption established in paragraph (G) of this rule that the CCTE requirements have been completed.

(J) Nothing in this rule shall limit the board's authority to investigate and take action under section 4731.22 of the Revised Code.

(K) Reduction of hours can be granted on an individual basis to those who have been ill for more than six consecutive months or out of the United States for more than six consecutive months during the registration period. The applicant will have the burden of establishing that that person's illness or absence affected that person's reasonable opportunity to participate in CCTE activities. One half hour will be subtracted from the CCTE requirement for each month which is approved for reduction of hours. Applications Requests for reduction of hours are available upon written request must be made in writing to the state medical board. Applications should be completed by the applicant and submitted to the board at least sixty days prior to the end of the registration period.

(L) The CCTE requirement for persons licensed after the start of a registration 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 registration period, the licensee shall be required to earn six total hours;

(2) If the license is issued on or after the first day of the second year of the registration 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 registration period, the licensee shall not be required to earn any hours of CCTE credits for that period.

(L) A person who files an application for registration within the time and in the manner
provisions by sections 4731.15 and 4731.155 of the Revised Code and rule 4731-1-11 of the Administrative Code shall not be required to discontinue practice merely because of the failure of the board to act on that person’s application.

(M) If the board proposes to refuse to register, renew, reinstate, or restore a license for failure to meet the CCTE requirements of section 4731.155 of the Revised Code, or because of a failure to meet any of the requirements of rule 4731-1-11 of the Administrative Code, the applicant shall be entitled to a hearing on the issue of such proposed denial. Notice and hearing requirements incident to such proposed denial will be in compliance with the provisions of Chapter 119. of the Revised Code.

(N) Board approval of courses

(1) A course, seminar, or speaker session shall be deemed approved by the board if the board, in its discretion, determines it is:

(a) Relevant to the clinical practice of cosmetic therapy; and

(b) Offered by one of the following entities:

(i) A college or university approved by the state department of education;

(ii) A state or national professional cosmetic therapy or electrology association comprised of more than fifty persons licensed to practice cosmetic therapy or electrolysis;

(iii) A cosmetic therapy school approved by the board pursuant to this chapter of the Administrative Code; or

(iv) A health department or hospital which offers programs which had been previously approved for continuing medical education (CME) credits or for continuing nursing education credits (CNE).

(2) Home study coursework which meets the criteria of paragraph (N)(1) of this rule and which requires the individual seeking credit to take a written examination over the subject matter may be used to fulfill up to ten hours of the required CCTE each biennial registration period. The individual seeking to fulfill a portion of the required CCTE through home study coursework must have received written notification from the sponsoring entity that that person has been awarded a specified amount of CCTE credit.

(3) Request for board approval of CCTE course.

(a) If a course, seminar, or speaker session is not deemed approved pursuant
to paragraph (N)(1) of this rule, a cosmetic therapist 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 on an application form provided by the board:

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

(ii) Sponsoring agency;

(iii) Course objective and content;

(iv) Hours of study;

(v) Name of each instructor; and

(vi) Educational background and experience of each instructor.

(b) At least one month in advance of the course registration date, the board shall notify the cosmetic therapist by mail of the decision as to whether the board approved the course.

(c) A change in subject matter, length, or instructor of a course requires reapproval by the board.

(d) If a cosmetic therapist has not received prior approval for continuing education units, the board reserves the right to deny recognition of the credits earned.

(e) Home study coursework shall not be considered for approval by the board under this division.

(4) Notwithstanding any other provision of this rule, courses, seminars, speaker sessions or home study coursework relating to office management, marketing, billing, or other similar topics are deemed not relevant to the clinical practice of cosmetic therapy.

(N) CCTE course requirements:

(1) All hours of CCTE shall be:

(a) In one or more of the following subject matter areas

   (i) Laser hair removal;

   (ii) Electrolysis/ETB/hair removal;

   (iii) Sterilization and hygiene;
(iv) Professional ethics;
(v) Blood borne pathogens;
(vi) Endocrinology;
(vii) Anatomy and physiology as it relates to the dermis;
(viii) Diseases of the skin;
(ix) Cosmetic therapy law;
(x) Massage of the face, neck, scalp, or shoulders.

(b) Offered by one of the following entities:

(i) A college or university approved by the state department of education;
(ii) A state or national professional cosmetic therapy or electrology association;
(iii) A cosmetic therapy school approved by the board pursuant to this chapter of the Administrative Code;
(iv) A health department or hospital which offers program which had been previously approved for continuing medical education (CME) credits or for continuing nursing education credits (CNE); or

(v) A provider accredited by the international association for continuing education and training.

(2) CCTE courses may be completed via in-person, webinar, or on-line.

(3) A cosmetic therapist shall obtain evidence of completion (i.e., a certificate) from the provider of the CCTE for all CCTE hours that are successfully completed. In the event that evidence of completion includes hours of education in a subject not included in paragraph (N)(1) of this rule, the cosmetic therapist shall only claim the hours that meet the requirements of this rule. Cosmetic therapists shall also retain supporting documentation of all of the following:

(a) Description of the CCTE activity;

(b) The location of the CCTE activity.
(c) The date of attendance;

(d) The hours of each CCTE activity.

(4) Evidence of completion and supporting documentation shall be retained by the applicant for renewal for one year after the end of the registration period.

(O) An expired license to practice as a cosmetic 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 applicable, has presented satisfactory evidence of the service member's discharge under honorable conditions or release under honorable conditions from active duty or national guard duty within six months after the discharge or release.

(P) Extension of the continuing education period based on active duty status:

(1) The holder of a cosmetic 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.

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

(3) Upon receiving the application and proper documentation, the board shall act in accordance with section 5903.12 of the Revised Code.

(Q) For purposes of this paragraphs (O) and (P) of this rule, "armed forces" has the same
meaning as in section 5903.01 of the Revised Code and "reporting period" has the same meaning as in section 5903.12 of the Revised Code.