

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Barbers and Cosmetologists TITLE NUMBER: 3

CITE AUTHORITY: 30-27-1

AMENDMENT TO AN EXISTING RULE: YES NO

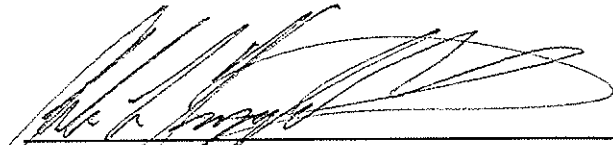
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Barbers and Cosmetologists

Address: 1716 Pennsylvania Ave. Suite 7
Charleston, WV 25302

Phone Number: 304-558-2924 Email: adam.l.higginbotham@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

NA

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

NA

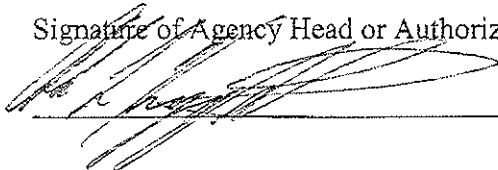
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule change is to update the language and clarify the rules and regulations of schools in the barbering or beauty culture.

Date: 7/30/2009

Signature of Agency Head or Authorized Representative





Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1716 Pennsylvania Avenue, Suite 7
Charleston, West Virginia 25302
Telephone: 304-558-2924
Fax: 304-558-3450

Date : July 30, 2009

To: Administrative Law Division of Secretary of State's Office

From: Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

Re: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

SUMMARY OF PROPOSAL

The changes to this rule update the terminology and clarify the rules and regulations for licensing schools of barbering and beauty culture.

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", written over a horizontal line.

Adam L. Higginbotham
Executive Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/30/2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Board of Barbers and Cosmetologists

1716 Pennsylvania Ave. Suite 7

Charleston, WV 25302

LEGISLATIVE RULE TITLE: _____

Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

1. Authorizing statute(s) citation _____
30-27-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
6/30/2009

b. What other notice, including advertising, did you give of the hearing?
Posted on web site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
7/30/2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

NA

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Adam L. Higginbotham, Director

1716 Pennsylvania Ave. Suite 7, Charleston, WV 25302

304-558-2924/304-558-3450/adam.l.higginbotham@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing or comment period:

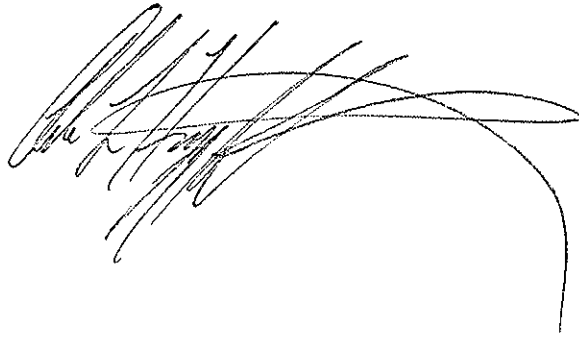
NA

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached NA

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a cursive, illegible name.

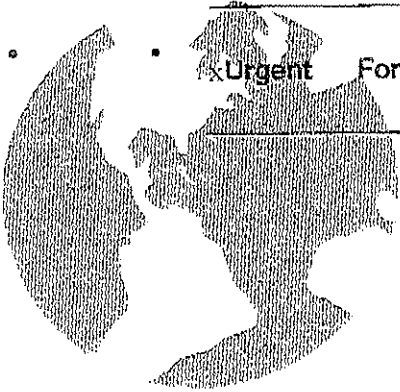
120 SOUTH THIRD STREET
CLARKSBURG WV 26301
FAX: 304 624-6465
PHONE: 304 624-6475

CLARKSBURG BEAUTY ACADEMY

To: Adam Higgenbotham **Fax:** 304 558-3450

From: Angela Policano **Date:** 07/23/2009

RE: Response to proposed rules **Pages:**3 (including cover)



Urgent For Review Please Comment Please Reply

Clarksburg Beauty Academy's Response to Proposed Rule Changes

To: Adam Higginbotham, Director
State Board of Barbers & Cosmetology
From: Angela Policano
Clarksburg Beauty Academy

Series 1 3-1-43

Qualification for Licensure

43.1 #d: graduated from a school of aesthetics or nail technology/manicuring.

Response: I feel that allowing schools of aesthetics or nail technology would be a mistake. We would see schools going in all over the state and the quality of education would go down.

Series 2 – 2.1

Licensure of Instructors in Aesthetics & Nail Technology.

Response: I understand that having instructors specialized in their individual fields would be a good thing. However, it is not clear in the proposed rules that a Cosmetology Instructor could also teach the nail tech and aesthetic programs. These programs tend to have small enrollments and it would not be feasible for school to hire a nail tech instructor or aesthetic instructor to teach if they had a small enrollment.

I also have to mention that if nail tech and aesthetic schools were to be allowed to open in the state, having Master Nail Tech Instructors and Master Aesthetic Instructors would make it easier to acquire the 3 master instructors needed to open a school.

Series 2 – 3-2-3 Qualifications for Licensure as a Master Instructor

3.1.4 Be employed at a salon for at least two (2) years and with three years experience as an instructor.

Response: After talking with Adam, he assured me this is an error and will be corrected to read or instead of and.

Series 6 Fees

Response: I understand the need to increase fees in order to meet operation cost and the cost of monitoring continuing education, however with today's economy I feel it will be hard to get a fee increase passed.

Increasing the renewal fee to school from \$250.00 to \$500.00 annually does not sound like a big concern; however the board must be aware of the all the annual costs that accredited school pay to operate at the high standards that we operate. We pay fees to ACS, NACCAS, CCTC and we are required to have 2 audits each year, compliance audit of our Financial Aid Accounts and a Complete Audit of our School Account. These two audits cost the school over \$10,000.00 annually.

2.9-2.10 Initial license for Instructors and Annual renewal for Instructors

Response: Most instructors also keep their Cosmetology or Barbering License as well as their Instructor license active, therefore this would be a hardship on the Instructor that renews their own license.

Most schools, including Clarksburg Beauty Academy, pay for the renewal of their Instructors licenses as well are the initial licenses. This will be another large cost to school that will be renewing ten (10) instructors license each year.



State of West Virginia
Board of Barbers and Cosmetologists

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Telephone: 304-558-2924
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Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Adam L. Higginbotham
Director

Date: July 28th, 2009

To:  Larry and Angela Policano, Clarksburg Beauty Academy

From: Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

Re: Comments concerning proposed rules and regulations

Please find the responses to your questions in the exact order you sent your questions to the Board.

Issue # 1- The Board understands your point of view and will make appropriate corrections.

Issue # 2- A cosmetologist will still be allowed to teach nail and aesthetic courses to the full extent. However, this just allows the option to train, hire, and implement a specifically trained and licensed individual to teach nail or aesthetic courses. They still must meet the requirements of all other instructors.

Issue # 3- This was an error. The two years of salon experience will be omitted.

Issues # 4 and 5- The Schedule of Fees will be re-examined to find the appropriate levels. However, fee increases must be accomplished in areas to support the increasing cost of operations. The separation just from WV DHHR Public Health Division could increase expenses above \$42,000 annually. There are also the added costs of implementing continuing education, covering the increasing cost of health insurance and other insurance policies, rising utilities and general business materials.

The most recently submitted proposed changes will be posted on the Board's website by August 7th, 2009.

Should you have any further questions, please feel free to contact me.

TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND COSMETOLOGISTS

SERIES 3

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING AND BEAUTY CULTURE

§ 3-3-1. General

1.1. **Scope** - This legislative rule establishes general rules for the licensing of schools of barbering and beauty culture by the West Virginia Board of Barbers and Cosmetologists (hereinafter Board).

1.2. **Authority** - W. Va. Code § 30-27-1, et seq. **Related** - W. Va. Code § 30-27-1, et seq.

1.3. **Filing Date** - ~~May 11, 1992~~

1.4. **Effective Date** - ~~July 1, 1992~~

~~1.5. **Repeal and Replace Former Regulations** - This rule repeals and replaces the former Rule titled "Rules and Regulations for Licensing Schools of Barbering and Beauty Culture", 3 CSR 5, filed December 7, 1990, and effective July 1, 1991.~~

§ 3-3-2. Licensing Standards

2.1. **General Policy** - A license for a school of barbering or beauty culture shall be issued only when it is clear that the public safety, health and welfare is adequately and sufficiently protected by the conditions surrounding the establishment of the proposed school, and when the issuance of such license would be in the best interest and protection of public health. Therefore, licenses shall be issued only when the applicant has proven to the satisfaction of the Board that:

(a) The applicant is professionally competent,
(b) financially responsible, ~~and~~
(c) adequate physical facilities will be available for the school, ~~and~~
~~(b)~~ (d) That the applicant has contracted or the employment of ~~two (2)~~ three (3) or more licensed ~~senior~~ instructors, or in the instance of a school purchased or opened after the effective date of this rule, has contracted for the employment of ~~three (3)~~ two (2) or more licensed master instructors.

2.2. **Professional Competency** - Each applicant must provide evidence of ~~his or her~~ their background of training or experience in barbering or beauty culture and/or education and/or business management, ~~as the case may be, as will support a finding by the Board of professional competency and managerial ability~~ so as to provide a substantial likelihood of the continued successful operation of the proposed school.

2.3. **Financial Responsibility** - The applicant must prove to the satisfaction of the Board:

(a) The ability to finance the construction and equipping of the proposed school and
(b) The purchase of a surety performance bond made payable to West Virginia Board of Barbers and Cosmetologists in the amount of ~~fifty thousand dollars (\$50,000)~~ (\$100,000), to be renewed annually for five (5) consecutive years. The Board may, by not less than 3/4 majority vote of its membership, accept other alternate forms of security, payable to the West Virginia Board of Barbers and Cosmetologists in the amount of ~~fifty thousand dollars (\$50,000)~~ (\$100,000) per school to guarantee full instruction to students who enroll at the school. In the event the applicant should default in providing such instruction, a refund from the surety bond, or other form of security, shall be made to the student if that student has prepaid, according to the number of hours of instruction lacking. State or county schools not charging tuition shall be exempt from the bonding requirement.

2.4. **Facilities** - The applicant must show that the intended premises for the proposed school are adequate and sufficient so as to insure proper facilities for teaching a minimum of fifty (50) students at all times and that the proposed school will be properly fitted and equipped.

§ 3-3-3. Applications for Licenses

3.1. **General Form and Content** - Applications for a license shall be in writing, ~~made under oath, and are sufficient if made either in letter form or on forms made available by the Board.~~ notarized, and on forms provided by the Board.

~~Applications shall be addressed to: West Virginia Board of Barbers and Cosmetologists, West Virginia Department of Health, 1800 Washington Street East, Charleston, West Virginia, 25305.~~

The application shall contain at least the following:

- 3.1.1. The name of the applicant(s);
- 3.1.2. The place at which the applicant(s) will conduct its operations and whether the property is owned or leased by the applicant;
- 3.1.3. If such applicant(s) is a partnership or association, the name and addresses of the partners or governing board;
- 3.1.4. If the applicant(s) is a corporation, the names and resident addresses of its officers and directors;
- 3.1.5. A copy of a proposed floor plan of the school, which arrangement shall have at least ~~two (2) classrooms~~ one classroom for each subject taught and a room for clinical and demonstration work;
- 3.1.6. A list of the equipment proposed to be installed;

- 3.1.7. A report from the state fire marshal indicating that the floor plan, equipment installation and premises will meet all rules and regulations pertaining to fire safety;
- 3.1.8. The background of all persons connected with the Applicant(s) as either owner(s), manager or instructor relative to: (1) Training and experience in barbering or beauty culture, and (2) business and managerial training, experience or ability;
- 3.1.9. An applicant's ~~financial~~ profit/loss statement certified to by a ~~qualified~~ licensed public accountant and a surety performance bond instituted consistent with the provisions of subsection 2.3 of this rule;
- 3.1.10. A statement setting forth the applicant's general operating plan for the school;
- 3.1.11. A list of the names of the licensed master instructors and instructors to be employed in the school;
- 3.1.12. Copies of proposed: (1) Advertising to be used in the opening of the school, (2) Student contracts, and (3) Daily and monthly time sheets to be used in recording student activities in the school.
- 3.1.13 Be handicapped accessible.

3.2. **Time of Filing** - Application for a license shall be filed with the Board at least sixty (60) days prior to the Board meeting at which the application is requested to be considered.

3.3. **Board Action** - Upon the filing of an application and the payment of the required investigative fee, the Board shall issue a license if it finds that the applicant(s) has/have and will comply with the provisions of these rules, and the operation of the school would be within the best interests of the public's safety, health and welfare. This license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended by the Board.

3.4. The Board shall approve or deny every application for licensure within ninety (90) days from the applicant's filing of all required information.

3.5. If the application is denied, the Board shall within thirty (30) days, thereafter, file in its office, a written decision and findings of fact with respect to the evidence and reasons supporting the denial, and immediately serve a copy of the decision upon the

applicant.

3.6 The process, applicable fees, and required documentation for buying an existing school and/or relocating a current school shall be the same as indicated in 3-3-3. 3.1-3.5 of this rule.

§ 3-3-4. Licenses

4.1. **Contents and Display of License** - The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee; if the licensee is a partnership or association, the names of the members thereof; if a corporation, the date and place of its incorporation. The license shall be kept conspicuously posted in the place of business and is not transferable or assignable.

4.2. **Issuance of More than One License to Same Licensee** - Not more than one (1) place of business shall be maintained under the same license but the Board may issue more than one (1) license to the same licensee: Provided, that for each license the applicant shall comply with all the provisions of this rule governing the original issuance of a license.

4.3. **Investigation of Business** - The licensee shall keep, and make available to the Board upon request, such books, accounts and records as will enable the Board to determine whether the licensee is complying with the rules of the Board, and submit to interviews, inspections, investigations, and applicable fines.

4.4. **Revocation or Suspension of License** - The Board shall, upon ten (10) days notice to the licensee stating the contemplated action and the general grounds therefore, revoke or refuse to renew any license issued under these rules if it finds that:

4.4.1. The licensee has failed to pay the annual fee or to comply with any demand, ruling or requirement of the Board made pursuant to and within the authority of the Board;

4.4.2. The licensee has knowingly violated any provision of the W. Va. Code § 30-27-1 et seq. or any rule promulgated by the Board.

4.4.3. Felony or misdemeanor conviction in direct or indirect actions by the school owner, administrators, managers, board of directors, or key interested parties.

4.5. Any licensee may surrender his or her license by delivering the license to the Board with a written notice that he or she thereby surrenders such license. Surrender of a license shall not affect the civil or criminal liability of the licensee for acts committed prior to such surrender.

4.6. No revocation, suspension or surrender of any license

shall impair or affect the obligation of any preexisting lawful contract between the licensee and any student enrolled in licensee's school.

4.7. Every license issued hereunder shall remain in full force and effect unless surrendered, revoked or suspended in accordance with the provisions of this rule and W. Va. Code § 30-27-1 et seq.: Provided, that the Board shall have authority on its own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the Board in refusing originally to issue a license under this rule.

4.8. Whenever the Board revokes or suspends a license it shall immediately file in its office a written order to that effect along with findings of fact containing the evidence and reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

§ 3-3-5. Administrative Due Process

5.1. Those persons adversely affected by the enforcement of this rule shall have the right to request a contested case hearing in a manner pursuant to the provisions of West Virginia Code § 29A-5-1 et seq.

~~§ 3-3-6. Severability~~

~~6.1. If any provision of this rule, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end, the provisions of this rule are severable.~~

