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Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Cosmetology

(2) I.D. Number (Governor's Office Use)

16A-4513

2529

IRRC Number:

2529

(3) Short Title

Removal of term "manager"

(4) PA Code Cite

49 Pa. Code, Chapter 7, §§ 7.1, 7.11 – 7.13, 7.31, 7.32c, 7.32g, 7.45, 7.51, 7.62 – 7.64, 7.111, 7.128 and 7.129

(5) Agency Contacts & Telephone Numbers

Primary Contact: Ruth D. Dunnewold, Senior Deputy Chief Counsel State Board of Cosmetology (717) 783-7200
Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Act 98 of 2002 eliminated the requirement that a cosmetology shop be managed by the shop's owner, a licensed manager, or a licensed cosmetology teacher, establishing instead the condition that every shop owner designate a person in charge of the shop in the owner's absence. The statutory change also requires the name of the owner or designated person in charge to be posted in a conspicuous place in the shop, and that the owner or designated person in charge be readily available to bureau inspectors during business hours. The Board revises its regulations to delete all now obsolete references to a shop "manager," and to address the other requirements related to the owner or the designated person in charge.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are made under section 11 of the Beauty Culture Law (act) (63 P.S. § 517).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law or court order, or federal regulation. However, because of the statutory elimination of the cosmetology shop manager by Act 98 of 2002, the Board's regulations are being amended to be consistent with the statute.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Upon implementation of Act 98, the Board in its internal operations eliminated the license category of manager and ceased enforcing the provisions of its regulations that refer to the manager or the manager license classification. While that brought the Board's practice into compliance with the statute, the language of the regulations does not coincide with the language of the statute. In order to eliminate this inconsistency, the Board needs to revise its regulations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Because the statute mandates that an owner designate a person in charge in the owner's absence, and this rulemaking implements that requirement, nonregulation is not an option.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Shop owners could benefit because they no longer have to hire a holder of a specialized manager license to oversee their shops in their absence. Instead, they can hire a general licensee, which could be less expensive. Presently, there are approximately 17,078 active cosmetology, cosmetician and manicurist shops licensed in the Commonwealth, and all of their owners are potential beneficiaries of this change.

Also, general licensees could benefit because they previously could not manage shops, but under this change, may now be designated as the person in charge of the shop in the owner's absence. There are approximately 116,352 active licensees who could be so designated.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

It is possible, but not highly likely, that those who previously held shop manager licenses could be adversely affected because that license class is no longer needed under the law. However, the Board in practice has treated those licensees as general cosmetology licensees, so those licensees can continue to operate as they have done in the past. The shop owners by whom they are employed would simply

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denote them as the designated person in charge, rather than as the shop manager. Accordingly, the Board perceives little adverse impact on the regulated community as a result of this statutorily-mandated change.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All cosmetology shop owners will be required to comply with this regulation. Presently, there are approximately 17,078 active cosmetology, cosmetician and manicurist shops licensed in the Commonwealth. While some of these may have more than one owner, that number approximates the number of persons required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Prior to initiating proposed rulemaking, the Board sent an exposure draft of the regulation to, and solicited comments on the draft from, various cosmetology-related interest groups and educational institutions within the Commonwealth, as well as to specific individuals who had previously asked the Board to keep them apprised of possible regulatory initiatives. The Board received comments from three commentators. Of these, one commented merely that the change appears to be correct, given the change in the statute; one commented that the change will have no adverse impact on cosmetology training programs throughout the Commonwealth; and the third questioned whether there should be minimum education requirements for shop owners, whether shop owners are exempt from licensure, and whether a trained and qualified manager is required in a shop every day.

Proposed rulemaking was published at 36 Pa.B. 1231 (March 18, 2006) followed by a 30-day public comment period. The Board did not receive any comments from the general public or from or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), the House Professional Licensure Committee (HPLC) or the Independent Regulatory Review Commission (IRRC).

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

For some shop owners, there may be no costs because they will be in charge of the shop themselves or will designate a person in charge who receives no additional compensation by reason of being in charge. For others, designating a person in charge may require additional remuneration to that person for the responsibilities entailed, and there would be a cost to the shop owner as a consequence. In yet other instances, there may be cost savings to the shop owner

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because they previously had to hire a licensee holding a manager license to manage the shop, but now need only have a regular licensee without the specialized license. Because any such costs or fiscal savings to shop owners will vary according to each individual owner based on the nature of the business arrangement made to designate a person in charge of the shop, the Board is unable to accurately estimate the costs or savings to shop owners associated with the rulemaking.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

There are no costs or savings to the Board associated with implementation of this regulation.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and 5 subsequent years.

For some shop owners, there may be no costs because they will be in charge of the shop themselves or will designate a person in charge who receives no additional compensation by reason of being in charge. For others, designating a person in charge may require additional remuneration to that person for the responsibilities entailed, and there would be a cost to the shop owner as a consequence. In yet other instances, there may be cost savings to the shop owner because they previously had to hire a licensee holding a manager license to manage the shop, but now need only have a regular licensee without the specialized license. Because any such costs or fiscal savings to shop owners will vary according to each individual owner based on the nature of the business arrangement made to designate a person in charge of the shop, the Board is unable to accurately estimate the costs or savings to shop owners associated with the rulemaking.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated						
Local Government						
State Government						

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Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Revenue						

(20a) Explain how the cost estimates listed above were derived.

Because the costs or savings to shop owners will vary according to each individual owner based on the nature of the business arrangements made to designate a person in charge of the shop, the Board is unable to accurately estimate the costs or savings to shop owners associated with the rulemaking.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 02-03 Actual	FY -2 FY 03-04 Actual	FY -1 FY 04-05 Projected	Current FY FY 05-06 Budgeted
Cosmetology Board	\$2,278,868.79	\$2,486,972.00	\$2,472,990.53	\$2,825,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Because the costs or savings to shop owners will vary according to each individual owner based on the nature of the business arrangements made to designate a person in charge of the shop, the Board is unable to accurately estimate the costs or savings to shop owners associated with the rulemaking.

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(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Board has been operating since the effective date of Act 98 of 2002 by simply eliminating the manager license classification administratively and ceasing to enforce its regulations pertaining to licensed managers. However, this nonregulatory alternative is not permanently acceptable because the language of the regulations (though not the Board's actual practice) is inconsistent with the statutory language, which has the potential to cause confusion in the regulated community.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because the statute mandates that an owner designate a person in charge in the owner's absence, and this rulemaking is designed to implement that requirement, no alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Other states have similar provisions requiring someone to be in charge of the salon at all given times. In the surrounding states, for example, that person varies from an individual holding a license specifically designated as a managing license (Ohio), to the owner or renter of an area (Maryland, New York), to an experienced practicing licensee (New Jersey), to simply a licensee (West Virginia). Delaware has no apparent requirement of that nature.

Since most states have some sort of requirement that a particular person be held responsible for the day to day operations of a shop or salon, regardless of what it is called or how it is structured, this provision should not put Pennsylvania at a competitive disadvantage with other states.

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(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The rulemaking amends the Board's existing regulations at 49 Pa. Code chapter 7 as follows. The term "manager" or "manager's" is deleted from § 7.1 (definitions), § 7.11(2) (related to types of individual licenses), § 7.12 (related to scope of a teacher's license), § 7.31(a) (related to the examination as a prerequisite to licensure), 7.32g(c) (related to issuance of temporary licenses), and § 7.128(b) (related to mandatory cosmetology curriculum). Similarly, § 7.13 (related to the scope of a manager's license), § 7.32c (setting forth requirements for the manager's examination), § 7.63 (pertaining to previous owner-managers), and § 7.129(d) (related to a school's manager curriculum), are deleted in their entirety, as is the second sentence of § 7.45 (related to retaking the examination), because these provisions are obsolete.

In § 7.51(a)(2) (related to application for a shop license), § 7.64(a) and (b) (related to responsibilities of the shop manager), and § 7.111(a)(2)(ii)(B) (related to application for a school license), the rulemaking substitutes the phrase "the designated person in charge of the shop in the owner's absence" for either the term "manager" or for a reference to the individual "managing the shop." Additionally, in § 7.62 (related to management of cosmetology shops), the rulemaking adds language to subsection (a) establishing the need for the designated person in charge of the shop in the owner's absence to be a licensee; deletes an obsolete portion of subsection (b); and adds two new subsections, (c) and (d), that vest certain responsibilities in both the owner and the designated person in charge of the shop in the owner's absence.

The regulations will not affect existing or proposed regulations of any other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews regulatory proposals at regularly scheduled public meetings. The Board has not scheduled public hearings or informational meetings regarding this regulation.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will change existing paperwork requirements related to the application for a shop license, which previously called for the name and license number of the individual who would be managing the shop. It will now, under the proposed changes to § 7.51(a)(2), require the name and license number of the person who will be the designated person in charge of the shop in the absence of the owner.

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Additionally, the regulation will change the existing paperwork requirements related to the application for a school license, at § 7.111(a)(2)(ii), which previously required an owner-applicant for a school license to submit a license application containing, among other things, the name of the school supervisor and proof that the supervisor has acquired either (A) 2500 hours of satisfactory experience as a cosmetology teacher or (B) 1250 hours of satisfactory experience as a cosmetology teacher and 1800 hours of satisfactory experience as a shop manager. The regulation would change that to require, as part of (B), that the 1800 hours be experience as a designated person in charge of a cosmetology shop, rather than as a shop manager.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Board reviews the effectiveness of its regulations on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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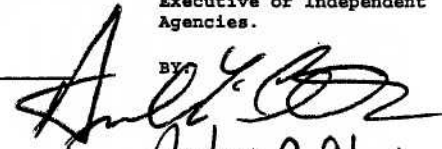
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BY: _____
(DEPUTY ATTORNEY GENERAL)

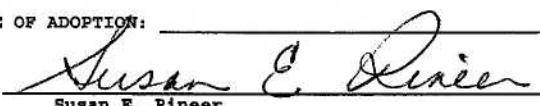
State Board of Cosmetology
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-4513

DATE OF APPROVAL _____

DATE OF ADOPTION: _____

BY: 
Susan E. Rineer

DATE OF APPROVAL
AUG 2 2006
(Deputy General Counsel
Chief Counsel,
Independent Agency
~~(Strike inapplicable title)~~)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 day after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF COSMETOLOGY
49 PA. CODE, CHAPTER 7
REMOVAL OF TERM "MANAGER"

The State Board of Cosmetology (Board) amends Chapter 7 to read as set forth in Annex A. The rulemaking removes the term "manager" and all references to a cosmetology shop manager license from the Board's regulations to conform them to the changes made to the act of May 3, 1933 (P.L. 242, No. 86) (Act 86) by the act of June 29, 2002 (P.L. 645, No. 98) (Act 98).

A. Effective Date

The amendments will be effective upon final-form publication in the Pennsylvania Bulletin.

B. Statutory Authority

Section 11 of Act 86 (63 P.S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by Act 86.

C. Background and Need for Amendment

The Board's existing regulations were promulgated under prior language of section 4.4 of Act 86 (63 P.S. § 510.4), dating back to 1976, that required either an owner or a licensed manager employed by the owner to manage a shop. Accordingly, the existing regulations include a manager license classification as well as related provisions addressing licensure and management issues. All of these regulations consistently refer to the manager and to the prior language of section 4.4 of Act 86 regarding management of shops.

Section 4.4 of Act 86 was amended by the act of October 18, 2000 (P.L. 607, No. 81) to, among other things, limit the need for a licensed shop manager in some circumstances, but that amendment did not eliminate the manager license classification. Subsequently, Act 98 amended section 4.4 again, entirely removing the requirement that a cosmetology shop be managed by the shop's owner, a licensed manager or a licensed cosmetology teacher. In its place, Act 98 established the requirements that every shop owner designate a person in charge of the shop in the owner's absence, that the name of the owner or designated person in charge be posted in a conspicuous place in the shop and that the owner or designated person in charge be readily available to Bureau inspectors during business hours.

Upon implementation of Act 98, the Board eliminated the license category of manager and no longer enforced the provisions of its regulations referring to the manager or the manager license classification. These amendments delete the now obsolete references and address the new requirements related to oversight of a shop by the owner or the designated person in charge.

D. Description of Amendments

The amendments to §§ 7.1, 7.11(2), 7.12, 7.31(a), 7.32g(c) and 7.128(b) delete the term "manager" or "manager's." Similarly, §§ 7.13, 7.32c, and 7.129(d) (related to scope of manager's license; requirements for manager's license; and curriculum requirements) are deleted in their entirety, as is the second sentence of § 7.45 (related to reexamination if the license is not current for 5 or more years), because these provisions are now obsolete.

In §§ 7.51(a)(2), 7.64(a) and (b), and 7.111(a)(2)(ii)(B) (relating to application for a shop license; responsibilities of shop manager; and application for a school license), the rulemaking substitutes the phrase "the designated person in charge of the shop in the owner's absence" for either the term "manager" or for a reference to the individual "managing the shop." Additionally, in § 7.62 (related to management of cosmetology shop), the rulemaking adds language to subsection (a) establishing the need for the designated person in charge of the shop in the owner's absence to be a licensee; deletes an obsolete portion of subsection (b); and adds two new subsections, (c) and (d), that vest certain responsibilities in both the owner and the designated person in charge of the shop in the owner's absence.

E. Summary of Comments and Responses to Proposed Rulemaking

Proposed rulemaking was published at 36 Pa.B. 1231 (March 18, 2006) followed by a 30-day public comment period. The Board did not receive any comments from the general public or from or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), the House Professional Licensure Committee (HPLC) or the Independent Regulatory Review Commission (IRRC).

F. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, any political subdivision or the private sector.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on March 8, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 1231, to IRRC and to the Chairpersons of the HPLC and SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were to be provided with copies of the comments received during the public comment period, as well as other documents when requested. However, the Board received no such comments, nor did IRRC, the HPLC or the SCP/PLC make any comments. Accordingly, in preparing the final-form rulemaking, the Board has made no changes from the proposed rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

I. Contact Person

Further information may be obtained by contacting Hilarene Staller, Board Administrator, State Board of Cosmetology, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-7130.

J. Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and no comments were received.
- (3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 36 Pa.B. 1231.
- (4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

K. Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 7, are amended to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the Pennsylvania Bulletin.

Susan E. Rineer
Chairperson

Annex A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 7. STATE BOARD OF COSMETOLOGY**

GENERAL PROVISIONS

§ 7.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Booth space—Any area in a cosmetology shop, cosmetician shop or manicurist shop separated or not separated which is designated to be used by a licensed teacher, [manager,] cosmetologist, cosmetician or manicurist.

* * * * *

§ 7.2. Fees.

Fees charged by the Board are as follows

* * * * *

Licensure of [cosmetology shop manager or] cosmetology teacher..... \$10

* * * * *

INDIVIDUAL LICENSES

§ 7.11. Types of individual licenses.

The following licenses are issued by the Board to qualified individuals under the act:

* * * * *

(2) [Manager.

(3)] Cosmetologist.

[(4)](3) * * *

[(5)](4) * * *

§ 7.12. Scope of teacher's license.

An individual holding a teacher's license is qualified, without further licensure, to perform the functions of a teacher, [manager,] cosmetologist, cosmetician or manicurist.

§ 7.13. [Scope of manager's license](Reserved).

[An individual holding a manager's license is qualified, without further licensure, to perform the functions of a manager, cosmetologist, cosmetician or manicurist.]

* * * * *

EXAMINATIONS

§ 7.31. Examination prerequisite for licensure; exception.

(a) Except as provided in subsection (b), an individual who wants to obtain a teacher's, [manager's] cosmetologist's, cosmetician's or manicurist's license listed in §§ 7.12—7.15 shall pass the examination required by the Board for that license.

* * * * *

§ 7.32c. [Requirements for manager's examination](Reserved).

[An applicant for the manager's examination shall:

- (1) Be 18 years of age or older.
- (2) Have completed a 10th grade education or its equivalent.
- (3) Possess a current cosmetology license.
- (4) Have done one of the following:
 - (i) Completed 300 hours of instruction in the cosmetology manager curriculum in a licensed school of cosmetology.

(ii) Acquired 18 months' experience as a full-time cosmetologist in a licensed cosmetology shop or shared shop.]

* * * * *

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

* * * * *

(c) The holder of a temporary cosmetologist's license shall practice under the supervision of a licensed teacher[, manager] or cosmetologist. The holder of a temporary manicurist's license shall practice under the supervision of a licensed teacher[, manager] or cosmetologist.

* * * * *

DISPLAY, LOSS AND RENEWAL OF LICENSES AND PERMITS

* * * * *

§ 7.45. Reexamination if the license is not current for 5 or more years.

The holder of a teacher's, cosmetologist's, cosmetician's or manicurist's license that has been expired or in escrow for at least 5 years shall retake and pass the practical part of the examination for that license before submitting a renewal application. [The holder of a manager's license that has been expired or in escrow for at least 5 years shall retake and pass the manager's examination before submitting a renewal application.]

* * * * *

LICENSURE AND MANAGEMENT OF SHOPS

* * * * *

§ 7.51. Application for a shop license.

(a) An owner-applicant for a shop license shall submit a license application to the Board with the following:

* * * * *

(2) The name and license number of the individual who will be [managing the shop] the designated person in charge of the shop in the absence of the owner.

* * * * *

§ 7.62. Management of cosmetology shop.

(a) A cosmetology shop shall be managed by [a licensed manager or teacher unless the owner of the shop is operating as manager under section 4.4 of the act (63 P.S. § 510.4)] the shop owner or, in the absence of the shop owner, a person in charge designated by the shop owner.

(b) [If the manager or teacher who manages the shop is unable to be present in the shop during a specific period, such as breaks, days off, vacation or illness, not to exceed 3 months, a licensed cosmetologist may serve as temporary manager. If the absence is to exceed 2 weeks, the manager shall notify the Board in writing of the absence. A notice identifying the temporary manager shall be displayed in the shop. A temporary manager assumes the responsibilities of shop manager as set forth in § 7.64(b) (relating to responsibilities of shop manager).] The designated person in charge shall be a licensed cosmetologist.

(1) In the case of a cosmetician shop, the designated person in charge may be either a licensed cosmetologist or a licensed cosmetician.

(2) In the case of a manicurist shop, the designated person in charge may be either a licensed cosmetologist or a licensed manicurist.

(c) Both the owner and the designated person in charge are responsible for posting the name of the owner or designated person in charge in a conspicuous place in the shop as required by section 4.4(b) of the act.

(d) The owner or designated person in charge of the shop shall be readily available in person to Bureau inspectors during regular business hours.

§ 7.63. [Previous owner-managers](Reserved).

[(a) Those beauty shop owners operating as their own managers prior to September 15, 1975, may continue to manage their own shops. The owners shall obtain a certificate of prior management from the Board and shall request this certificate by February 1, 1977.

(b) A certificate of prior management shall be on display.]

§ 7.64. Responsibilities of shop [manager]owner or designated person in charge.

(a) The primary responsibilities of a shop [manager]owner and designated person in charge are the administration of the business and personnel affairs of the shop and to assure compliance within the shop [of]with all laws of the Commonwealth, this chapter and the Pennsylvania Human Relations Act (43 P.S. §§ 951—963).

(b) A shop [manager]owner or designated person in charge will be subject to disciplinary action by the Board for a violation of the act or this chapter committed by a licensed [employe] employee of the shop, if the [manager]owner or designated person in charge had knowledge of, or control over, the violation or should have had knowledge or control.

* * * * *

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

* * * * *

(2) The name, signature and license number of the school supervisor, together with proof that the supervisor meets the following qualifications:

* * * * *

(ii) Has done one of the following:

* * * * *

(B) Acquired [1250] 1,250 hours of satisfactory experience as a cosmetology teacher and [1800] 1,800 hours of satisfactory experience as [a manager]the designated person in charge of a cosmetology shop.

* * * * *

§ 7.128. Mandatory offering of cosmetology curriculum.

* * * * *

(b) A school may offer instruction in the curriculum for teachers, [managers,] cosmeticians, and manicurists prescribed in § 7.129.

§ 7.129. Curriculum requirements.

* * * * *

(d) [A school's manager curriculum, excluding electives, shall comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

MANAGER CURRICULUM

	Recommended Hours
Career Development	50
Money Management	25
Salon Management	150

Salon Advertising	25
Merchandising	50
	Total 300

(e) A school's cosmetician curriculum, excluding electives, [shall] must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

* * * * *

[(f)](e) * * *

* * * * *

PUBLIC COMMENTATORS FOR 16A-4513

There were no public comments received relating to Regulation 16A-4513.

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
JOHN F. MIZNER, ESQ.,
MURRAY UFBERG, ESQ.,
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



RECEIVED

MAY 18 2006

Office of Chief Counsel

PHONE: (717) 783-5417
FAX: (717) 783-2664
lrrc@lrrc.state.pa.us
http://www.lrrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 17, 2006

Susan E. Rineer, Chairperson
State Board of Cosmetology
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4513 (IRRC #2529)
State Board of Cosmetology
Removal of Term "Manager"

Dear Chairperson Rineer:

The Independent Regulatory Review Commission has reviewed your proposed regulation. We have no objections, comments, or recommendations to offer on this regulation. If you deliver the final-form regulation without revisions, and the committees do not take any action, it will be deemed approved.

Sincerely,

Kim Kaufman
Executive Director
wbg

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

DEPT. OF STATE
OFFICE OF
THE SECRETARY

2006 MAY 18 AM 10: 25

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Regulation 16A-4513
State Board of Cosmetology

PROPOSAL: Regulation 16A-4513 amends Pa. Code, Chapter 7, regulations of the State Board of Cosmetology. The regulation implements Act 98 of 2002. That statute deleted the term “manager of a cosmetology shop” and the requirement that shops be under the direction of a cosmetology shop manager. The statute substitutes the term “designated person in charge of the shop.”

Regulation 16A-4513 is proposed rulemaking which was published in the Pennsylvania Bulletin on March 18, 2006.

ANALYSIS: Act 98 of 2002 provides that an owner of a cosmetology shop designate a person in charge of the shop in the owner’s absence. The name of the owner or designated person in charge of the shop must be posted in a conspicuous place, and either the owner or the designated person in charge must be available to inspectors during regular business hours. Section 4.4(a) of the Cosmetology Law. The statute also deleted the language that required cosmetology shops to be under the direction of a cosmetology shop manager if the shop provided services by persons other than licensees with ownership interests.

Section 11 of the Cosmetology Law authorizes the board to promulgate regulations regarding the conduct of persons, copartnerships, associations, and corporations affected by the Cosmetology Law. The board is seeking to implement Act 98 of 2002 by deleting references to cosmetology shop managers where it appears in the board’s regulations. The term “person designated in charge” is being substituted where the term “manager” is found in the regulations. The references to the manager’s exam and course of study are also being deleted.

In addition, the regulation provides:

- a cosmetology shop be managed by the shop owner or, in the absence of the shop owner, a person in charge designated by the shop owner
- the designated person in charge must be a licensed cosmetologist
- in the case of a cosmetician shop, the designated person in charge may be either a cosmetician or cosmetologist
- in the case of a manicurist shop, the designated person in charge may be either a cosmetologist or a manicurist
- the owner and the person designated in charge are responsible for posting the name of the owner or designated person
- the owner or designated person in charge must be available to inspectors during regular business hours

Recommendation: It is recommended the House Professional Licensure Committee take no formal action until final regulations are promulgated.

Professional Licensure Committee
House of Representatives
May 2, 2006



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF COSMETOLOGY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7130

September 15, 2006

The Honorable Alvin C. Bush, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Cosmetology
16A-4513:Removal of Term "Manager"

Dear Chairman Bush:

Enclosed is a copy of a final rulemaking package of the State Board of Cosmetology pertaining to removal of the term "manager."

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Susan E. Rineer, Chairperson
State Board of Cosmetology

SER/CWF:kmh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gerald S. Smith, Senior Counsel in Charge
Department of State
C. William Fritz, II, Counsel
State Board of Cosmetology
State Board of Cosmetology

(b) *Change of ownership, name or location.* A change of ownership, name or location of the school within or following the 5-year period after initial licensure does not negate or postpone the requirement for accreditation within 5 years of initial licensure.

(c) *Biennial renewal.* After initial accreditation, a licensed cosmetology school shall maintain accreditation as a condition of biennial renewal of the school license.

[Pa.B. Doc. No. 06-425. Filed for public inspection March 17, 2006, 9:00 a.m.]

[49 PA. CODE CH. 7]

Removal of Term "Manager"

The State Board of Cosmetology (Board) proposes to amend Chapter 7 (relating to State Board of Cosmetology) to read as set forth in Annex A. The proposed rulemaking removes the term "manager" and all references to a cosmetology shop manager license from the Board's regulations to conform them to the changes made to the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) by the act of June 29, 2002 (P. L. 645, No. 98) (Act 98).

A. *Effective Date*

The proposed amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Section 11 of Act 86 (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by Act 86.

C. *Background and Need for Proposed Amendments*

The Board's existing regulations were promulgated under prior language of section 4.4 of Act 86 (63 P. S. § 510.4), dating back to 1976, that required either an owner or a licensed manager employed by the owner to manage a shop. Accordingly, the existing regulations include a manager license classification as well as related provisions addressing licensure and management issues. All of these regulations consistently refer to the manager and to the prior language of section 4.4 of Act 86 regarding management of shops.

Section 4.4 of Act 86 was amended by the act of October 18, 2000 (P. L. 607, No. 81) to, among other things, limit the need for a licensed shop manager in some circumstances, but that amendment did not eliminate the manager license classification. Subsequently, Act 98 amended section 4.4 of Act 86 again, entirely removing the requirement that a cosmetology shop be managed by the shop's owner, a licensed manager or a licensed cosmetology teacher. In its place, Act 98 established the requirements that every shop owner designate a person in charge of the shop in the owner's absence, that the name of the owner or designated person in charge be posted in a conspicuous place in the shop and that the owner or designated person in charge be readily available to Bureau of Professional and Occupational Affairs inspectors during business hours.

Upon implementation of Act 98, the Board eliminated the license category of manager and no longer enforced the provisions of its regulations referring to the manager or the manager license classification. This proposed rule-

making amends the Board's regulations to delete the now obsolete references and to address the new requirements related to oversight of a shop by the owner or the designated person in charge.

D. *Description of Proposed Amendments*

The proposed amendments to §§ 7.1, 7.11(2), 7.12, 7.31(a), 7.32g(c) and 7.128(b) delete the term "manager" or "manager's." Similarly, §§ 7.13, 7.32c and 7.129(d) (relating to scope of manager's license; requirements for manager's examination; and curriculum requirements) are deleted, as is the second sentence of § 7.45 (relating to reexamination if the license is not current for 5 or more years), because these provisions are now obsolete.

In §§ 7.51(a)(2), 7.64(a) and (b) and 7.111(a)(2)(ii)(B) (relating to application for a shop license; responsibilities of shop manager; and application for a school license), the proposed rulemaking substitutes the phrase "the designated person in charge of the shop in the owner's absence" for either the term "manager" or for a reference to the individual "managing the shop." Additionally, in § 7.62 (relating to management of cosmetology shop), the proposed rulemaking adds language to subsection (a) establishing the need for the designated person in charge of the shop in the owner's absence to be a licensee; deletes an obsolete portion of subsection (b); and adds subsections (c) and (d), that vest certain responsibilities in both the owner and the designated person in charge of the shop in the owner's absence.

E. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, any political subdivision or the private sector.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 8, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Hilarene Staller, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4513. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS

§ 7.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Booth space—Any area in a cosmetology shop, cosmetician shop or manicurist shop separated or not separated which is designated to be used by a licensed teacher, [manager,] cosmetologist, cosmetician or manicurist.

* * * * *

§ 7.2. Fees.

Fees charged by the Board are as follows:

* * * * *

Licensure of [cosmetology shop manager or] cosmetology teacher..... \$10

* * * * *

INDIVIDUAL LICENSES

§ 7.11. Types of individual licenses.

The following licenses are issued by the Board to qualified individuals under the act:

* * * * *

(2) [Manager.

(3)] Cosmetologist.

[(4)](3) * * *

[(5)](4) * * *

§ 7.12. Scope of teacher's license.

An individual holding a teacher's license is qualified, without further licensure, to perform the functions of a teacher, [manager,] cosmetologist, cosmetician or manicurist.

§ 7.13. [Scope of manager's license] (Reserved).

[An individual holding a manager's license is qualified, without further licensure, to perform the functions of a manager, cosmetologist, cosmetician or manicurist.]

EXAMINATIONS

§ 7.31. Examination prerequisite for licensure; exception.

(a) Except as provided in subsection (b), an individual who wants to obtain a teacher's, [manager's] cosmetologist's, cosmetician's or manicurist's license listed in §§ 7.12—7.15 shall pass the examination required by the Board for that license.

* * * * *

§ 7.32c. [Requirements for manager's examination] (Reserved).

[An applicant for the manager's examination shall:

(1) Be 18 years of age or older.

(2) Have completed a 10th grade education or its equivalent.

(3) Possess a current cosmetology license.

(4) Have done one of the following:

(i) Completed 300 hours of instruction in the cosmetology manager curriculum in a licensed school of cosmetology.

(ii) Acquired 18 months' experience as a full-time cosmetologist in a licensed cosmetology shop or shared shop.]

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

* * * * *

(c) The holder of a temporary cosmetologist's license shall practice under the supervision of a licensed teacher[, manager] or cosmetologist. The holder of a temporary manicurist's license shall practice under the supervision of a licensed teacher[, manager] or cosmetologist.

DISPLAY, LOSS AND RENEWAL OF LICENSES AND PERMITS

§ 7.45. Reexamination if the license is not current for 5 or more years.

The holder of a teacher's, cosmetologist's, cosmetician's or manicurist's license that has been expired or in escrow for at least 5 years shall retake and pass the practical part of the examination for that license before submitting a renewal application. [The holder of a manager's license that has been expired or in escrow for at least 5 years shall retake and pass the manager's examination before submitting a renewal application.]

LICENSURE AND MANAGEMENT OF SHOPS

§ 7.51. Application for a shop license.

(a) An owner-applicant for a shop license shall submit a license application to the Board with the following:

* * * * *

(2) The name and license number of the individual who will be [managing the shop] the designated person in charge of the shop in the absence of the owner.

* * * * *

§ 7.62. Management of cosmetology shop.

(a) A cosmetology shop shall be managed by [a licensed manager or teacher unless the owner of the shop is operating as manager under section 4.4 of the act (63 P. S. § 510.4)] the shop owner or, in the absence of the shop owner, a person in charge designated by the shop owner.

(b) [If the manager or teacher who manages the shop is unable to be present in the shop during a specific period, such as breaks, days off, vacation or illness, not to exceed 3 months, a licensed cosmetologist may serve as temporary manager. If the

absence is to exceed 2 weeks, the manager shall notify the Board in writing of the absence. A notice identifying the temporary manager shall be displayed in the shop. A temporary manager assumes the responsibilities of shop manager as set forth in § 7.64(b) (relating to responsibilities of shop manager).] The designated person in charge shall be a licensed cosmetologist.

(1) In the case of a cosmetician shop, the designated person in charge may be either a licensed cosmetologist or a licensed cosmetician.

(2) In the case of a manicurist shop, the designated person in charge may be either a licensed cosmetologist or a licensed manicurist.

(c) Both the owner and the designated person in charge are responsible for posting the name of the owner or designated person in charge in a conspicuous place in the shop as required by section 4.4(b) of the act.

(d) The owner or designated person in charge of the shop shall be readily available in person to Bureau inspectors during regular business hours.

§ 7.63. [Previous owner-managers] (Reserved).

[(a) Those beauty shop owners operating as their own managers prior to September 15, 1975, may continue to manage their own shops. The owners shall obtain a certificate of prior management from the Board and shall request this certificate by February 1, 1977.

(b) A certificate of prior management shall be on display.]

§ 7.64. Responsibilities of shop [manager] owner or designated person in charge.

(a) The primary responsibilities of a shop [manager] owner and designated person in charge are the administration of the business and personnel affairs of the shop and to assure compliance within the shop [of] with all laws of the Commonwealth, this chapter and the Pennsylvania Human Relations Act (43 P.S. §§ 951-963).

(b) A shop [manager] owner or designated person in charge will be subject to disciplinary action by the Board for a violation of the act or this chapter committed by a licensed [employe] employee of the shop, if the [manager] owner or designated person in charge had knowledge of, or control over, the violation or should have had knowledge or control.

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

* * * * *

(2) The name, signature and license number of the school supervisor, together with proof that the supervisor meets the following qualifications:

* * * * *

(ii) Has done one of the following:

* * * * *

(B) Acquired [1250] 1,250 hours of satisfactory experience as a cosmetology teacher and [1800] 1,800 hours of satisfactory experience as [a manager] the designated person in charge of a cosmetology shop.

* * * * *

§ 7.128. Mandatory offering of cosmetology curriculum.

* * * * *

(b) A school may offer instruction in the curriculum for teachers, [managers,] cosmeticians and manicurists as prescribed in § 7.129.

§ 7.129. Curriculum requirements.

* * * * *

(d) [A school's manager curriculum, excluding electives, shall comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

	Recommended Hours
MANAGER CURRICULUM	
Career Development	50
Money Management	25
Salon Management	150
Salon Advertising	25
Merchandising	50
	Total 300

(e) [A school's cosmetician curriculum, excluding electives, shall] must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

* * * * *

[(f)] (e) * * *

* * * * *

[Pa.B. Doc. No. 06-426. Filed for public inspection March 17, 2006, 9:00 a.m.]

STATE BOARD OF MEDICINE
STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CHS. 16 AND 17]
Athletic Trainers

The State Boards of Medicine and Osteopathic Medicine (Boards) propose to amend the regulations providing for the certification and regulation of athletic trainers in Chapters 16, 18 and 25 to read as set forth in Annex A.

A. Effective Date

The proposed amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 51.1(d) of the Medical Practice Act of 1985 (63 P.S. § 422.51a(d) and section 7.1 (d) of the Osteopathic Medical Practice Act (63 P.S. § 271.7a(d)) (medical prac-

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4513
 SUBJECT: REMOVAL OF TERM "MANAGER"
 AGENCY: DEPARTMENT OF STATE – STATE BOARD OF COSMETOLOGY

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2006 SEP 15 AM 11:02
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/15/06	<i>Rosa Lieberman</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/15/06	<i>Charlotte C. Kiser</i>	
9-15-06	<i>Jim Jensen</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9-15-06	<i>L. Cook</i>	
9/15/06	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)