

**Empire**  
Education Group

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September 6, 2007

INDEPENDENT REGULATORY  
REVIEW COMMISSION

BUSINESS  
LICENSING DIVISION

Ms. Hilarene Staller  
Administrator  
State Board of Cosmetology  
P.O. Box 2649  
Harrisburg PA 17105-2649

RE: Proposed Rulemaking/General Provisions Published August 25, 2007

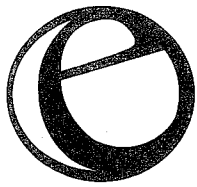
Dear Ms. Staller:

Attached please find comments in response to the Proposed Rulemaking/General Provisions published August 25, 2007. On behalf of Empire Education Group, Inc. we respectfully request that the Board review these comments in the interest of fairness and consider making the suggested modifications to address our concerns. We have made every effort to insure that the suggested changes are not in conflict with the underlying statute.

We understand how difficult it is to craft regulatory language and that in the course of approaching such a substantial project it is not uncommon to inadvertently produce regulations that carry with them many unintended consequences. It is imperative to correct such inequities that will otherwise create serious negative impact on our students, schools, industry and the people of the Commonwealth of Pennsylvania. We are available to assist your office in any way toward achieving the goal of fair and equitable regulations. Please feel free to contact me if you have any questions or require further information.

Sincerely,

Franklin K. Schoeneman  
Chairman & CEO



## **EMPIRE EDUCATION GROUP -- PA Regulations -- Comments 9/07**

7.31 -- The board should define or give examples of what would be acceptable as proof of 3 years work experience, such as copies of tax returns, etc.

7.32 And 7.35 -- Setting a limit of 1 year between taking written and practical or retaking after failure might make sense. However, the rule does not define what the consequences of failing to comply would be, i.e. requiring a brush up program, losing hours altogether and starting over, exceptions for mitigating circumstances, etc. The only exception seems to be in the case of transitioning from one exam provider to another. The board should grant itself more discretion and use the word "may" to impose sanctions. For example, "the board may require the applicant to take 100 hours of remedial training at a licensed school before retaking ..."

7.34 -- It should be clearly stated that live models are only required for esthetics and that mannequins are acceptable for other exams.

7.41(b) -- It should be clarified that all individual license including those applicable to schools do not have to be displayed but rather readily available for inspection. Since the previous section mentions "salon" it could be construed as only applicable to individuals licensed and working in salons.

7.120 (a) and section E Fiscal Impact -- The rationale seems to interpret the intent of the statute as being more restrictive than in fact it has been interpreted since the beginning of time. Restricting the pricing of clinic services in such a draconian fashion will have multiple unintended consequences and result in serious fiscal impact. School clinics have always generated a substantial share of revenue which has served as an offset to tuition charged to students. The following example may help to clarify the issue:

Consider a school of 75 students generating total revenue of \$750,000 with a net profit of 10% or \$75,000, and total clinic revenue of \$60,000. The proposed rule could easily result in reducing clinic revenue to \$10,000 and net profit of the institution to \$25,000. Since schools are held accountable to strict financial stability ratios by both federal regulations governing Title IV participation and NACCAS, such a substantial reduction in revenue and profit could result in loss of accreditation and Title IV eligibility. In addition reducing revenue by \$50,000 or almost 7 % could have a disastrous effect on the school's 90/10 ratio (requires schools to generate at least 10% of revenue from non Title IV sources), also resulting in loss of eligibility to participate in Title IV programs. In order for a school to avoid such serious consequences and to maintain its status as a viable business, it would have no alternative but to increase tuition by at least \$667.00 per student. This would create a serious impact and financial burden on all students.

The traditional approach to determining reasonable pricing for student services was to keep prices low enough to attract sufficient clients while affording students the opportunity to practice their skills before applying for licensure. Therefore, prices in schools have always remained lower than typical salon prices in order to achieve that goal. Clients are clearly advised that the services are rendered by students under the supervision of licensed instructors. There is no evidence that this goal is not being achieved. Accreditation standards and criteria require that cosmetology schools establish a recommended minimum number of practical services each student must perform in order demonstrate competency. If a school sets its prices unreasonably high, it will not attract a sufficient number of clients to allow students to achieve those standards.

Schools have always determined "reasonable costs of materials" by including the costs of delivering those materials and the related services to clients. Those costs include components in addition to product, such as costs of inventory control, equipment, facilities, utilities, insurance, licensing, accreditation and the cost of providing the supervision mandated by law to insure the safety of the public. The fact is that the materials cannot be delivered to the client without incurring the related costs. No school owner would consider, nor would the Board permit application of a chemical product on a client without sufficient malpractice insurance to provide adequate protection, a trained instructor to supervise, and a safe well-equipped facility. In fact the business would be subject to penalties imposed by the Board for not providing these safeguards. In addition, reasonable costs should include some profit component if they are to be considered reasonable. It is not reasonable to expect a business to not make a profit. Even including estimates of all such costs, schools have always maintained prices low enough to attract sufficient clients without pricing services so low as to present unfair competition to licensed salons. Implementing the proposed rule would actually result in unfair competition to existing salons.

Additionally we should consider that no such restrictions seem to apply to other educational institutions, which have students perform services on the public. For example, schools of dentistry operate clinics and charge for their services. Their prices are not restricted solely to the actual cost of the materials they use, but based on the total cost of delivering those materials and services. The same applies to culinary institutes, which operate student-staffed restaurants. They do not set prices based only on the actual cost of the ingredients of a meal but on the total cost of serving the meal.

Perhaps most important is the problem associated with forcing schools to charge less for the services than the costs associated with delivering those services, which inevitably would encourage schools to seek out the least expensive methodology. Contrary to current trends, which indicate that schools are spending more and more to create real world learning environments that simulate actual salon experiences, implementing the proposed rule would drive schools backward to create "bare bones" clinical settings that would offer minimal quality and variety of learning experiences that would detract from the students total leaning experience.

Since the current interpretation by schools is achieving the intended goals and has been accepted practice since the inception of the act governing services performed in schools, it should be permitted to continue. There is no evidence that warrants the proposed change in interpretation. On the contrary, it is clear that the proposed changes would create serious financial consequences to students and schools and also generate unfair competition to licensed salons. The statute merely states that the charges should be **based** on the reasonable cost of materials. It is entirely reasonable for the school to base those charges on all costs associated with the purchase and **delivery** of those materials and services. If the board determines through observation or substantial complaints that a school is exceeding those parameters, it could impose a penalty or require a school to explain how it arrived at a reasonable pricing model.

There is another aspect of this regulation that appears to be a problem. It refers to a student who has completed 300 hours being permitted to work on the public. Clearly, this is intended to refer only to cosmetology students since some programs are so short that by the time a student has completed 300 hours they are already graduated, as in manicuring and natural hair braiding programs. Manicuring students should be able to work on the public after 50 hours, and natural hair braider students and esthetician students after 75 hours.