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

October 24, 2007

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

Re: Regulation #16A-4514 (IRRC #2628)
State Board of Cosmetology
General Revisions

Dear Chairperson Rineer:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

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 P. Michael Sturla, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission

on

State Board of Cosmetology Regulation #16A-4514 (IRRC #2628)

General Revisions

October 24, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the August 25, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Cosmetology (Board) to respond to all comments received from us or any other source.

1. Section 7.1. Definitions. - Implementation procedures; Clarity.

The definition of "school of cosmetology" mirrors the statutory definition of the same term found in the Cosmetology Law (63 P.S. §§ 507-526) (Law). Both definitions list a school district as an entity that could be considered a "school of cosmetology." We have two concerns.

First, what is meant by the term "school district"? We understand that the Board intends a school district to include an area vocational-technical school. We recommend that the final-form regulation include a definition of "school district."

Second, Section 7.113a, pertaining to accreditation by a nationally-recognized accrediting agency, requires all schools to be accredited. Is there a process available for school districts to become accredited? Is there a need for school districts to become accredited? We ask the Board to consider how it will implement Section 7.113a as it relates to school districts and make the necessary adjustments to its regulations.

2. Section 7.31. Examination prerequisite for licensure; exceptions. - Implementation procedures.

Subsection (c) allows applicants to obtain a natural hair braider license without examination if certain conditions are met. The exemption from examination will expire one year after the effective date of the regulation. Subsection (c)(ii) states that the Board will accept certain information without penalty for failure to comply with the licensing provisions prior to September 5, 2006, the effective date of Act 99 of 2006. It is our understanding that the Board is not imposing penalties for non-compliance at this time, but penalties will be imposed one year from the effective date of the final-form rulemaking. We recommend that the regulation be amended to provide the regulated community with notice of the nature of these penalties.

3. Section 7.32. Deadline for examination applications. - Clarity.

Subsection (c) states that a first-time examinee must complete and pass both the theoretical and practical portions of the exam within one year. Does the phrase “within 1 year” mean within one year of completing the necessary course work or within one year of passing one portion of the exam? This issue should be clarified in the final-form regulation.

4. Section 7.32.d. Requirements for cosmetologist examination. - Reasonableness.

Subsection (d) requires applicants seeking credits for educational credit to complete the total 1,250 training hours, including those completed in the field for which the applicant is seeking credit, within four consecutive years. What is the need for this provision?

5. Sections 7.32e. Requirements for esthetician examination. - Clarity.

Subsection (a)(2)(ii) states that applicants who, among other things, have “received training from or under the auspices of the Bureau of Rehabilitation in the Department of Labor and Industry” would be eligible to take the examination. We are aware that this language comes directly from the Law and that the existing regulation found at § 7.32d, pertaining to requirements for cosmetologist examination, contains identical language. What is meant by “under the auspices”? This language also appears in §§ 7.32f(a)(2)(ii) and 7.32h(a)(2)(ii).

6. Section 7.41. Display of licenses. - Clarity.

Subsection (b) states that: “[a]n individual license shall be readily available for inspection...,” however it does not specifically state whose license should be available: the salon owner, the individual working in the salon, or both. In addition, it is unclear from this language whether a school also would be required to display its license. The final-form regulation should clarify these issues.

7. Section 7.43. Expiration and renewal of licenses. - Implementation procedures.

Subsection (c) requires a natural hair braider licensee to provide proof that certain requirements have been met. What kind of proof would be necessary? This should be explained in the final-form regulation.

8. Section 7.94. Sanitary use of supplies. - Reasonableness; Clarity.

Subsection (c) adds language that prohibits a spatula or similar utensil from coming in contact with the hair of a client. With various existing methods of color treatment that may require spatulas to administer the product, the Board should clarify how it is possible for these tools to avoid contact with hair.

9. Section 7.111. Application for a school license. - Clarity.

Subsection (a)(2)(ii)(B) requires an owner-applicant for a school license to acquire 1,250 hours of “satisfactory experience” and 1,800 hours of “satisfactory **work** experience” and deletes language that states the experience relates to being in charge of a cosmetology shop. (Emphasis added.) The quoted terms are vague. We recommend that the final-form regulation specify the type of experience that would be considered acceptable.

10. Section 7.120. Work done by students on the public. - Fiscal impact; Reasonableness; Implementation procedures.

Subsection (a) states the following:

A school may permit students who have completed at least 300 hours of instruction to work on the public, if the charges for the students' services are based on the reasonable cost of materials **used on the client** only.

We have two concerns. First, commentators believe the language being added to this subsection, “used on the client,” will have a significant fiscal impact on cosmetology schools because it will prevent them from incorporating any overhead costs into the prices charged. According to the Pennsylvania Association of Private School Administrators: “[s]tudent clinic overhead costs have always been covered by the clients who use the clinic services.” Commentators believe this change will lead to higher tuition prices for students. It is also noted that a decrease in clinic revenue could result in the loss of accreditation and Federal grant eligibility for students.

We acknowledge that the new language, if enforced, will have a significant impact on the regulated community. We recommend that the Board work with the regulated community on the development and implementation of the final-form regulation to mitigate potential effects it may have.

Our second concern pertains to the 300-hour requirement. Has the Board considered revising the 300-hour requirement of this section to accommodate the limited licensure categories included in the proposed rulemaking? Why or why not?

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INDEPENDENT REGULATORY
REVIEW COMMISSION



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INDEPENDENT REGULATORY REVIEW COMMISSION
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To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200 or 3-3394 (Cynthia)
Fax: 7-0251
Date: October 24, 2007
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Cosmetology's regulation #16A-4514 (IRRC #2628). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cynthia K. Montgomery Date: 10/24/07