

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

Form #3

Do Not Mark In This Box

FILED

2012 JUN 29 PM 3: 52

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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: 30-27-8A

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

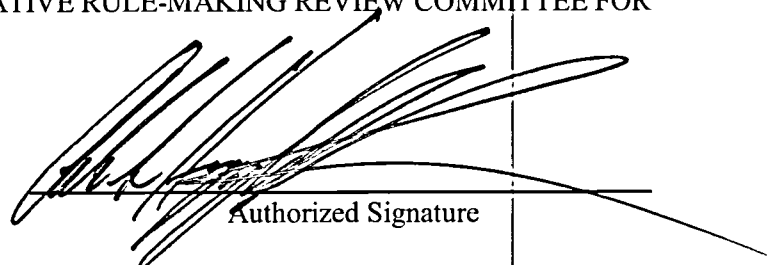
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: BARBER APPRENTICESHIP

\_\_\_\_\_

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



Earl Ray Tomblin  
*Governor*

**State of West Virginia**  
**Board of Barbers and Cosmetologists**  
1201 Dunbar Avenue  
Dunbar, WV 25064

p: 304.558.2924  
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*Director*  
Adam L. Higginbotham

*Board Members*  
Michael Belcher    Justina Gabbert  
Sarah Hamrick    Susan Poveromo  
Jim Ryan            Rick Stache

**MEMORANDUM**

To:                    Honorable Natalie Tennant, Secretary of State

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

Date:                 June 29<sup>th</sup>, 2012

Subject:             Series 1- PROCEDURES, CRITERIA AND CURRICULA FOR EXAMINATION AND  
                          LICENSURE OF BARBERS, COSMETOLOGISTS, NAIL TECHNICIANS, AESTHETICIANS,  
                          AND HAIR STYLISTS

---

A license to perform hair styling, which is separate from cosmetology, passed during the 2012 legislative session. This proposed rule creates the curriculum an individual must complete in order to earn a hair stylist license.

**FISCAL NOTE FOR PROPOSED RULES**

BARBER APPRENTICESHIP

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: BOARD OF BARBERS AND COSMETOLOGISTS

Address: 1201 DUNBAR AVENUE  
DUNBAR, WV 25064

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.

This rule will create additional expenses and revenue for the Board of Barbers and Cosmetologists Special fund.

Additionally, the jobs and businesses that will be created through this rule is unmeasurable to determine the revenue that may be generated through other state agencies.

**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	20,000.00	12,000.00	8,000.00
Personal Services			
Current Expenses	20,000.00	12,000.00	8,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	9,000.00	11,250.00	10,000.00

BARBER APPRENTICESHIP

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

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

The initial fiscal year impact will result in software changes to implement and manage this type of educational program, promotion of the new program, training staff, and other associated operational costs. The expense decrease will occur from not incurring the software changes after that first year and the promotion of the program will decline as more people become aware of the educational program and staff becomes knowledgeable about the program and its functions.

The \$9,000 initial revenue is based on 150 applicants into the barbering apprenticeship program at \$25.00 each and 150 master barbers offering the program at \$35.00 each within the first year . The second year of implementation is based on the decrease of applicants into the program to 100 at \$25.00 each (\$2,500) and with 150 first time licensees from the initial year of implementation at \$35.00 each (\$5,250) and 100 master barbers at \$35.00 each (\$3,500) for a total of \$11,250. The third year of implementation the program should reach level out to \$10,000.00

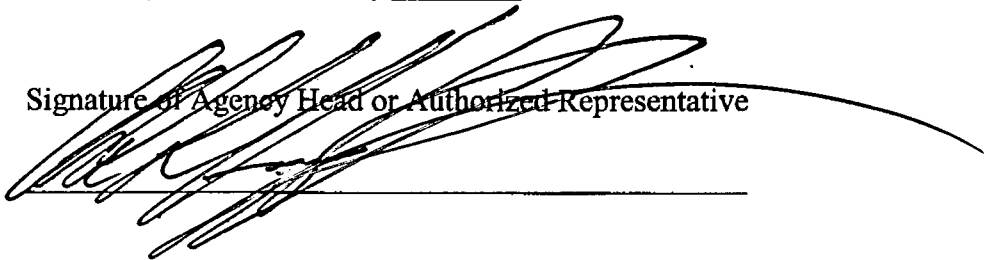
**MEMORANDUM**

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.

\_\_\_\_\_

Date: June 29, 2012

Signature of Agency Head or Authorized Representative



TITLE 3

2012 JUN 29 PM 3: 53

LEGISLATIVE RULES

WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 13

BARBER APPRENTICESHIP

**§3-13-1. General.**

1.1. Scope. -- This legislative rule establishes a barber apprenticeship.

1.2. Authority. -- W. Va. Code §30-27-8(a)

1.3. Filing Date. -- June 29, 2012

1.4. Effective Date. --

**§3-13-2. Definitions.**

2.1. "Barber Apprentice" means a permitted person seeking to learn barbering under a permitted master barber.

2.2. "Master Barber" means a permitted licensed barber that instructs and is responsible for a barber apprentice during the time of the apprenticeship.

2.3. "Barber Apprenticeship" means the program in which a master barber instructs a barber apprentice in the profession of barbering which include theory and practical instruction.

2.4. "Paying Customer" means an individual paying for services.

2.5. "Cosmetologist" means a person licensed under the provisions of this article 27 chapter 30 who engages in the practice of cosmetology.

**§3-13-3. Qualifications for a Barber Apprentice.**

**To be eligible to practice as a barber apprentice an applicant:**

3.1. Is at least eighteen years of age;

3.2. Is of good moral character;

3.3. Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the US Department of Education;

3.4. Has paid the application fee;

3.5. Has a certificate of health from a licensed physician;

3.6. Is a citizen of the United States or is eligible for employment in the United States; and

3.7. Has submitted completed application to the Board.

**§3-13-4. Qualification for a Master Barber Offering Barber Apprenticeship**

**To be eligible to be a master barber a licensee:**

4.1. Has had an active Barber license in West Virginia for at least five years;

4.2. Currently owns a licensed barber shop in West Virginia for at least five years with at least two barber chairs in the barber shop;

4.3. Is of good moral and responsible character;

4.4. Has consistent history of satisfactory inspections conducted by Board's agent at shop.

4.5. Has an individual license and barber shop license currently in good standing with the Board;

4.6. Has paid the application fee; and

4.7. Has submitted completed application to the Board.

**§3-13-5. Apprentice Requirements**

**To obtain a barber's license a barber apprentice:**

5.1. Shall complete 2,000 hours of apprenticeship training offered solely by a master barber as in Table 1 or in conjunction with a school teaching theory courses outlined in Table 2 prior to commencing practical work in a licensed facility or through a Board pre-approved online theory educational program for teaching theory courses outlined in Table 2.

5.2. Shall complete the curriculum listed in Table 1.

5.3. Shall obtain a work permit from the Board immediately after completing apprenticeship hours and while waiting to take the examination. A work permit can only be issued if the applicant is registered for the upcoming examination and can only be renewed once.

5.4. May receive compensation after earning no less than 600 hours of apprenticeship hours.

5.5. Shall obtain 100 hours of theory work focusing on General Professional Information, The Science of Barbering, and Professional Barbering categories, as indicated in Table 1, before commencing practical work on a mannequin. Applicant must also obtain at least 50 hours of practical work on a mannequin before practicing on a live individual in a licensed facility.

5.6. Shall use Milady Barbering Textbook or Pivot Point Barbering Textbook, less than 5 years from published date, for apprenticeship theory work.

5.7. Shall successfully pass each chapter review examination with at least a 70% and shall retain each examination for a period of two years after completion of apprenticeship program.

5.8. Shall complete apprenticeship program within 24 months of commencing studies.

5.9. Shall have direct supervision from the registered Master Barber while performing services.

5.10. Shall work with Master Barber to ensure accurate record keeping including but not limited to daily hours attended, number of customers serviced, hours spent learning theory, and other information to assist with ensuring completion of the apprentice program. A Board created and required records form will be issued to apprentice and Master Barber. Tracking of hours, services, and education progress will be indicated on the form.

5.11. Shall keep all records on file at the Master Barber's shop for inspection by the Board or its agents.

5.12. Shall have access to all records pertaining to his/her apprenticeship within three days of request from Master Barber.

5.13. Shall submit to questions from Board's agent pertaining to sanitation steps and processes used.

5.14. Shall submit an application for registration for licensure after completing apprenticeship and passing the barber examination.

### **§3-13-6. Master Barber Requirements**

#### **To be a master barber a licensed barber shall:**

6.1. Follow the curriculum listed in Table 1 if apprentice follows Table 1 for licensure.

6.2. Promote good attendance from applicant that would ensure completion of the barber apprenticeship within 24 months of commencing studies.

6.3. Ensure apprentice completes at least 150 hours and is professionally competent before practicing on a live individual in a licensed facility.

6.4. Grade and oversee completion of theory work and written examinations.

6.5. Oversee and check all practical work performed during the apprenticeship.

6.6. Use Milady Barbering Textbook or Pivot Point Barbering Textbook, less than 5 years from published date, for apprenticeship theory work.

6.7. Keep accurate records to include name of apprentice(s), daily hours attended, number of customers serviced, hours spent learning theory, and other information to assist with ensuring completion of the apprentice program.

6.8. Submit monthly records on a form created by the Board electronically as mentioned in 6.7 to the Board.

6.9. Have no more than two apprentices at any time.

6.10. Assume professional responsibility over apprentice at all times while apprentice is in the shop and must have direct supervision over apprentice while apprentice is performing services.

6.11. Perform frequent practical demonstrations for apprentice to include haircuts, shaves, styling, and other techniques commonly used by licensed barbers. Demonstrations may be done on paying customers or mannequin. Master Barber will determine when an apprentice is ready to perform on paying customer, provided that, apprentice has completed at least 350 hours of the apprenticeship program.

6.12. Submit to inspection of shop, apprentice documents, and other required records ensuring compliance with this rule and other rules created by the Board.

6.13 Earn 4 hours of continuing education every calendar year in accordance to series 11.

### **§3-13-7. Master Barber's Shop Requirements**

7.1. Shop shall have at least two working barber chairs.

7.2. Shop shall maintain proper equipment in good repair and products to perform daily services typically offered in a barber shop.

7.3. Shop shall have and post a sign clearly visible to the public indicating a barber apprentice is on staff and shall have service prices indicating the cost for barber apprentice.

### **§3-13-8. Cosmetologist Requirements for Barber Apprenticeship**

**A cosmetologist who wants to obtain licensure as a barber through an apprentice program shall:**

8.1. Submit application to the Board;

8.2. Pay the applicable issuance fee;

8.3. Have a West Virginia license in good standing;

8.4. Complete 20 hours of apprenticeship in shaving and its techniques with 2 hours being in theory and 18 hours being in practical work and demonstration observations;

8.5. Complete 60 hours of apprenticeship in clipper technique and style with 5 hours being in theory and 55 hours being in practical work and demonstration observations;

8.6. Complete the total 80 hour apprentice program within 6 months of commencing studies; and

8.7. Sit for the barber examination and must pass within 6 months of completing apprenticeship.

**§3-13-9. Revocation of Master Barber and Barber Apprentice Permit**

9.1. The permit of a Master Barber and Barber Apprentice may be revoked or suspended by the Board for any reason specified in W.Va. Code §30-27.1 et seq.

**§3-13-10. Administrative Due Process**

10.1. Those persons adversely affected by the enforcement of this rule have the right to request a hearing in a manner pursuant to the provisions of W.Va. Code §30-27-1 et seq.

**TABLE 1**

<b>General Professional Information</b>	<b>Theory Work</b> 100 Clock Hours	<b>Practical Work</b> 0 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> <li>• Professional Development</li> <li>• Effective Communication</li> <li>• Human Relations</li> <li>• Business Management/Ownership</li> <li>• State Law</li> <li>• Sanitation in the Licensed Facility</li> <li>• Sanitation Processes and Guidelines</li> <li>• First Aid</li> <li>• General Infection Control</li> </ul>		

<b>Introduction into Barbering</b>	<b>Theory Work</b> 3 Clock Hours	<b>Practical Work</b> 0 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> <li>• Course Outlines</li> <li>• History of Barbering</li> <li>• Study Skills</li> <li>• Professional Image as a Student and Future Licensee</li> </ul>		

<b>The Science of Barbering</b>	<b>Theory Work</b> 200 Clock Hours	<b>Practical Work</b> 150 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> <li>• Microbiology</li> <li>• Infection Control Specifically to Barbering</li> </ul>		

- Implements, Tools, and Equipment
- Anatomy and Physiology
- Chemistry
- Electricity
- Properties and Disorders of the Skin, Hair, and Scalp

<b>Professional Barbering</b>	<b>Theory Work</b> 150 Clock Hours	<b>Practical Work</b> 1,397 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Treatment of the Hair and Scalp</li> <li>• Shaving and Facial Hair Design</li> <li>• Men’s Haircutting and Styling</li> <li>• Men’s Hair Replacements</li> </ul>		

<b>Total Barbering Program</b>	<b>Theory Work</b> 453 Clock Hours	<b>Practical Work</b> 1,547 Clock Hours
<b>TOTAL HOURS- 2,000</b>		

TABLE 2

<b>General Professional Information</b>	<b>Theory Work</b> 100 Clock Hours	<b>Practical Work</b> 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Professional Development</li> <li>• Effective Communication</li> <li>• Human Relations</li> <li>• Business Management/Ownership</li> <li>• State Law</li> <li>• Sanitation in the Licensed Facility</li> <li>• Sanitation Processes and Guidelines</li> <li>• First Aid</li> <li>• General Infection Control</li> </ul>		

<b>Introduction into Barbering</b>	<b>Theory Work</b> 3 Clock Hours	<b>Practical Work</b> 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Course Outlines</li> <li>• History of Barbering</li> </ul>		

- Study Skills
- Professional Image as a Student and Future Licensee

The Science of Barbering	Theory Work 200 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Microbiology</li> <li>• Infection Control Specifically to Barbering</li> <li>• Implements, Tools, and Equipment</li> <li>• Anatomy and Physiology</li> <li>• Chemistry</li> <li>• Electricity</li> <li>• Properties and Disorders of the Skin, Hair, and Scalp</li> </ul>		

Professional Barbering	Theory Work 150 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Treatment of the Hair and Scalp</li> <li>• Shaving and Facial Hair Design</li> <li>• Men's Haircutting and Styling</li> <li>• Men's Hair Replacements</li> </ul>		

Total Barbering Theory by school/online	Theory Work 453 Clock Hours	Practical Work 0 Clock Hours
<p><b>TOTAL HOURS of THEORY 453 hours</b></p>		

**TABLE 3**

The Science of Barbering/General Professional Information (continued)	Theory Work 0 Clock Hours	Practical Work 150 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Microbiology</li> <li>• Infection Control Specifically to Barbering</li> <li>• Implements, Tools, and Equipment</li> <li>• Anatomy and Physiology</li> <li>• Chemistry</li> <li>• Electricity</li> <li>• Properties and Disorders of the Skin, Hair, and Scalp</li> <li>• Sanitation in the Licensed Facility</li> </ul>		

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Sanitation Processes and Guidelines</li> <li>• First Aid</li> <li>• General Infection Control</li> </ul> |
|---|

<b>Professional Barbering</b>	<b>Theory Work</b> 0 Clock Hours	<b>Practical Work</b> 1,397 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> <li>• Treatment of the Hair and Scalp</li> <li>• Shaving and Facial Hair Design</li> <li>• Men's Haircutting and Styling</li> <li>• Men's Hair Replacements</li> </ul>		

<b>Total Barbering Practical with Master Barber</b>	<b>Theory Work</b> 0 Clock Hours	<b>Practical Work</b> 1,547 Clock Hours
<b>TOTAL HOURS-1,547</b>		



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

June 29th, 2012 afternoon

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- 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

1201 Dunbar Avenue

Dunbar, WV 25064

304-558-2924

adam.l.higginbotham@wv.gov

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- 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)

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- 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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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## **K. Gene Nelson, Jr.**

121 Rocky Step Road  
Scott Depot, WV 25560

May 30, 2012

Honorable Natalie E. Tennant  
West Virginia Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Boulevard East  
Charleston, WV 25305-0770

Dear Madam Secretary:

I would like to address my concerns with the WV Board of Barbers and Cosmetologist recent filing for the implementation of emergency rules for the Barber Apprenticeship [3 CSR 13] and offer explanation as to why their request should be denied forthwith.

I would first like to start with the letter of explanation submitted by the Director, Mr. Adam L. Higginbotham, on the board's behalf.

In this letter the board and Mr. Higginbotham offer nothing more than smoke screen explanations as to why 3 CSR 13 should be implemented as an emergency rule.

It is a fact that the only barber school in the state is located in Charleston, WV. This facility exceeds the minimum requirements for a school of barbering as outlined in §3-4-4 of 3 CSR 4 titled Operation Standards for Schools of Barbering and Beauty Culture. These minimal facility requirements allow for the accommodation of up to 15 students to be enrolled at one time. Just the initial investment would cost about \$150,000; and financial aid would not be available to students for at least two years. These requirements are not very friendly to individuals who may like to open and operate a barber school on a smaller scale cash only basis. Barber schools are an occupational training traditionally taught in for-profit institutions. Regulations which raise entrance barriers make it difficult to open and run such a business.

This board has failed to exercise other options within their power to encourage the opening of additional barber schools or satellite barber schools throughout the state, so more citizens can conveniently attend a barber school. This board has within its power the ability to promulgate rules to reduce the current minimal requirements for opening a barber school. For example the minimal facility requirements could allow for accommodation of 5 students to be enrolled at one time. Such an action on this board's part would create new barbering schools, or should I say new businesses within the state. This board has the ability to lay the foundation for

additional businesses within the state which actually promotes and encourages people to open their own business within the state.

The board and Mr. Higginbotham wish for you and other readers to believe that the primary reason that no other barber schools have opened within the state is because of a and I quote *"...troubling and confusing rules of a tiered instructor program that severely limited the number of barber instructors and weighting the necessity of having multiple "master" instructors from the top of the instructor tier as the only option of opening a school."* I do concede that this 20 + year rule was a barrier. However, the board and Mr. Higginbotham further wish for you and other readers to believe that during the 2011 legislative session that they introduced rules [3 CSR 2] that made the process of obtaining an instructors license easier. Unfortunately, the passage of [3 CSR 2] during the 2011 legislative session, has done nothing but create a higher and intimidating barrier making an instructors license more difficult to obtain in any profession within the industry. To my knowledge since the effective date of this rule, this board has failed to license all applicants that seek employment as an instructor with any of the privately owned schools both barbering and cosmetology within the state.

During the 2010 legislative session the board did introduce rules [3 CSR 2] that actually simplified the licensing of individuals as an instructor and eliminated the one year shop experience. However, this board did not nor were they willing to introduce such legislation prior to the school owners meeting with then Governor Joe Manchin, to discuss their many concerns and issues with the Board of Barbers and Cosmetologist. Every school owner was supportive of its passage, because it enabled both barbering and cosmetology school owners to hire talented individuals as student instructors providing them with a minimum of 375 hours of student teaching time under the direct supervision of a master instructor prior to taking their licensing examinations administered by the board.

The current rule [3 CSR 2] not only reestablishes but drastically increases the required shop experience to 5 years, which is 4 additional years than was required in the previously mentioned 20 + year old rule that was in effect prior to the 2010 legislative session. It also eliminates the 375 hours of teaching experience as a student teacher prior to examination and once again prevents schools from hiring talented people, because all applicants must pass an intimidating interview process and instructor licensing examinations prior to their being hired by a school. The elimination of student teaching requirements places the applicant and their potential employer at a severe disadvantage. The WV Department of Education must see some value in student teaching if they require individuals seeking a teaching certificate for the first time to complete student teaching under supervision. With the current rule [3 CSR 2] the board has removed necessary educational training proven to be beneficial, prior to being licensed as an instructor, making themselves [the board] the gatekeeper, preventing schools from hiring and training talented individuals as instructors.

If the board and Mr. Higginbotham truly desired to simplify the licensing process for people wishing to become instructors and to assist schools in hiring instructors to replace those retiring, they would have modified their rules [3 CSR 2] passed during the 2010 legislative

session and introduced to the 2011 legislative session rules creating a two tiered instructor program [student instructor and instructor], by eliminating all language referring to a master instructor. These current rules [3 CSR 2] do absolutely nothing to promote the licensing of instructors, rather it has discouraged instructors more so now than it did prior to the 2010 legislative session.

In paragraph 7 the board and Mr. Higginbotham slander the owner of the state's only barber school with a serious and tarnishing accusation and openly admits it is based on hearsay. If hearsay is not admissible in a court of law, then is hearsay permissible in the process of approving or disapproving an emergency rules? The inclusion of this allegation towards this one individual simply exposes the board's and Mr. Higginbotham's animosity towards many of the cosmetology school owners as well.

Furthermore if this board and Mr. Higginbotham were sincere in providing resources to all West Virginians, then why did they attempt to introduce rules [3 CSR 3] during the 2010 legislative session that would have increased the required surety bond from \$50,000.00 to \$100,000.00 to be renewed each year by a school? This legislation was also introduced after the school owner had their meeting with then Gov. Joe Manchin and could be construed as attempted retaliation by the board and Mr. Higginbotham against all school owners.

The board and Mr. Higginbotham point out that the counties of Monongalia, Berkley, Jefferson, and Morgan do boarder surrounding states and that West Virginians are leaving the state to obtain their *professional education*. As a barber and a Master Educator I am truly thankful that those citizens are crossing state lines in order to receive a quality education from competent instructors who are required to complete continuing education in initial education. As a citizen of this state, I am outraged that because of the boards continued refusal to consult with or even listen to any of the industries educators within our own state since their hiring of Mr. Higginbotham as the director. It is this very lack of cooperation that forces citizens to cross over state lines, because the board restricts educational opportunities.

The board and Mr. Higginbotham wish for you and other readers to believe that those citizens that have obtain their professional education from another state are opening their businesses there also, is absolutely absurd. It is a given that a few may have done so, but as a barber having firsthand knowledge as to why students chose to become barbers, I can say with no uncertainty or hesitation that the majority will return to practice the profession and/or open their businesses here in West Virginia.

Secondly, I would like to address the purposed rules [3 CSR 13] submitted by the Director, Mr. Adam L. Higginbotham, on the board's behalf.

**§3-13-2.2** Definition of a: "Master Barber" means a permitted licensed barber that instructs and is responsible for a barber apprentice during the time of the apprenticeship.

Prior to 2011 every professional barber license issued in West Virginia stated either the individual was a "Master Barber" [1800 hours] "Master Barber/Perm" [2000 hours]. I completed the 2000 hour barber/perm program and was licensed as a Master Barber/Perm, up until the time I renewed my license in 2011, which indicated that I was licensed as a Barber/Perm. I along with every barber I know was stripped of the title of Master. Then in 2012 when I renewed my license I was outraged when it said I was licensed only as a Barber, along with every barber I know that was originally licensed as a Master Barber/Perm. During a public board meeting I asked why my license states that I am only licensed as a barber? The reply I received from the board's president was because they did away with the barber/perm curriculum. And was told by another board member that I was not permitted to do color, which I quickly informed them that I was a barber licensed to do both perms and color and demanded that they either issue me a corrected license or a letter stating such. To Mr. Higginbotham's credit he did intervene and informed the member's that I was correct and stated he would issue a new license, which I did receive. However, no other barber that I have spoken with since that time has ever received a corrected license. This board stripped the title of master barber away from every barber in the state who has been in practice for years and giving it as a temporary title to a barber just because he has taken on an apprentice[ref. §3-13-4 of 3 CSR 13]. I am licensed as a barber and an instructor in excess of 5 years. I am certified as a master educator and not entitled to be called a master barber. I ask what is this board's logic?

This board is and has been since their appointment in violation of state code §30-27-4d, which specifically states there must be one licensed aesthetician and one licensed nail technician. However, those seats were filled by licensed cosmetologist making a total of 4 licensed cosmetologists. Then if you add in the 1 licensed barber crossover with majority of his education is in cosmetology and then factor in that his business is a cosmetology shop performing mostly cosmetology services. It does not take a rocket scientist to figure out what this board, heavily weighted with cosmetologist member's is actually trying to do with West Virginia's barbers. During the 2009 legislative session the majority of the current board members wanted to introduce a code change that if it had passed would have had 4 cosmetologists, 1 barber, 1 citizen member, and one additional member, which I believe was to represent the nail techs. Therefore, if the change in code had passed it would most likely have consisted of 5 cosmetologists, 1 barber, and 1 citizen member. Again it does not take a rocket scientist to perform the elementary math required to conclude that this board would have been heavily weighted with cosmetologist.

During the 2012 legislative session Mr. Higginbotham on the behalf of this cosmetology weighted board introduced rules [3 CSR 1] changing the curriculum requirements for both cosmetology and barbering. Barbering is one of the oldest professions in the world, with a fascinating history that most people outside of the profession find interesting. Barbers provided medical and dental service in conjunction with their traditional services. It is these traditional services I would like to point out. Barbers have always been licensed to offer both men and women with haircuts, face shaves, face treatments, scalp treatment, shampoos, and hair tinting/bleaching, which is most commonly referred to as color. Those members serving

on the board of barbers and cosmetology sometime between the yearly 70's and late 80's recognized that barbers were not educated in what was then a rapidly growing trend of men desiring perms. Those members at that time established the 2000 hour Master Barber/Perm curriculum, which provided the necessary education needed for barbers within this state to meet the needs of their patrons during the trend of the time. In doing so the board members at that time made West Virginia one of, if not the nation's leader in education for a barber. A barber having received 2000 hours of education could go virtually anywhere in the nation and only be required to take that state's law exam to receive their license in order to practice the profession within that state, because West Virginia's 2000 required hours exceeded that state's requirement. The progressive actions of the board then, expanded the education and potential earnings of a barber, while maintaining the traditional services. Then the members serving on the board during the late 90's, realizing that perms were not considered a traditional service of a barber, established the 1800 hour Master Barber Stylist curriculum, which eliminated all practical education, but continued to maintain the required education in theory concerning perms. By doing so the board of the 90's offered barber students an option, which continued to make West Virginia one of the nation's leaders in the education of barbers.

The rules [3 CSR 1] pertaining to barbering, which became effective on August 29<sup>th</sup> are repeated in the proposed emergency rules [3 CSR 13]. Through the passage of rules [3 CSR 1] This cosmetology weighted board and Mr. Higginbotham have recklessly and intentionally destroyed the barbering profession in this state. They have abolished both the 1800 hour and 2000 hour curriculums leaving students without a choice, replaced it with a 1200 hour curriculum, no longer making West Virginia a national leader, only after attempting to introduce an 800 hour curriculum. They have reduced the potential earnings for a barber, simply by eliminating the traditional services of women's haircuts, face treatments, hair tinting/bleaching [color], and perms from the curriculum. Barbers who complete the 1200 hour curriculum and wishing to offer all of the traditional services of a barber are being forced to enroll in a cosmetology program to complete their education as a traditional barber. When asked, Mr. Higginbotham admitted in a public board meeting that none of the schools educator's were ever consulted concerning the curriculum changes. No member of this board is an educator and Mr. Higginbotham is not a licensed professional within the industry nor has he had any education within the industry. Therefore, I fail to understand their assumption that just because they are authorized, that they are actually qualified to make curriculum changes without seeking advice from the educators within the industry. It is for this very reason that school owners and industry educators have requested the board to create an educator seat on the board. The board has never been receptive to this request.

This rule [3 CSR 13] §3-13-14.2 specifically states that the master barber offering barber apprenticeship must own a barbershop for a minimum of five years. There are many barbershops owned by individuals that are not licensed barbers, rather they rent to other licensed barbers. Why isn't a licensed barber who booth rents not permitted to accept an apprentice, provided they have the shop owner's permission?

**§3-13-14.1** specifically states that the master barber offering barber apprenticeship must have had an active license within the state for at least 5 years. Therefore, I see no reason why ownership of a barbershop for 5 years is a necessary requirement. As long as the barbershop meets the facility requirements, the time of ownership would have no bearing on the training processes of an apprentice. Furthermore, there is no provision made for individuals who have instructor licenses, who have already or later may decide to return to the shop environment to take on an apprentice. What a great benefit for the apprentice if his/her, master barber were in fact an actual educator within the profession.

Apprentice Requirements **§3-13-5.1** states the apprentice shall complete 2000 hours of training, with 453 hours in theory and 1,547 hours in practical. It further states that the 453 hours of theory may be obtained through a school or an online board approved program. This is a direct conflict with the requirements of the master barber in **§3-13-6.4** requiring them to grade and oversee completion of theory work and written examinations. How can the master barber insure that the apprentice actually completes the required 453 hours of theory online. Furthermore, who can with certainty say that the apprentice actually was the one who took any online examinations and not another individual? For example it is known that past members of the board have caught individuals intentionally setting for a licensing examination intended for another individual. Since, such a case has been a problem in a face to face setting, just imagine the potential abuse of online theory exams. Such abuse would place the public's health and safety in jeopardy even if the applicant were to pass his/her licensing examination.

Cosmetologist Requirements for Barber Apprenticeship **§3-13-8** is absolutely ridiculous and deliberate jeopardizes the public's health and safety by requiring only 80 hours of training. A cosmetologist wishing to obtain a barbers license currently must complete 300 hours in an educational facility, which has been said not to be enough time by many that have completed the course. **§3-13-8.4** allows 2 hours of theory and 18 hours of practical totaling 20 hours of training for shaving with a straight razor. In the educational environment we spend in excess of 80 hours just teaching shaving, because of safety alone. When shaving a patron the straight razor is passed across both the patrons carotid arteries and jugular veins, which if cut can be life threatening.

Here again we have a board with no background in education believing because they are authorized to do so, they are qualified to establish curriculum without consulting any of the industries educators within the state.

As I pointed out earlier the current board, heavily weighted with cosmetologist and a barber crossover who's loyalties lie with the cosmetology side of the industry, along with Mr. Higginbotham, have with their curriculum changes in rule [3 CSR 1] along with their currently proposed rule [3 CSR 13], intentionally removed all the traditional and profitable services from the barber curriculum, which are a part of the cosmetology curriculum. Likewise, it has been heard by many, that it is the intention of the board and Mr. Higginbotham to close the states only barber school. Although, this statement is merely hearsay, the actions by this board and Mr. Higginbotham demonstrates a desire on their part to see the extinction of professional

barbering throughout West Virginia. If they were truly sincere in wanting to encourage new professional barbers and new businesses within the state, they would not limit a barbers earnings potential by eliminating traditional services, but rather would have preserved those traditional services within the curriculum, allowing each individual barber to retain control of their own financial destiny, by determining which services they offered in their business.

In the salutation of Mr. Higginbotham's letter, I see he uses the Latin state motto that translates MOUNTAINEERS ARE ALWAYS FREE, referring to the law abiding citizens of this great state. The United States Declaration of Independence states . . . *that all men are created equal . . . with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.* The actions of this board since the hiring of Mr. Higginbotham in 2009 has taken away these very freedoms from those citizens owning schools, those citizens desiring to be licensed as an instructor, those citizens already professionally licensed, and most importantly those future citizens wishing to become a professional barber.

This board under the direction of Mr. Higginbotham, unlike the previous boards, has failed to work with the licensed professionals and its educators within the industry, to promote industry standards to insure the public's health and safety, rather they have a history of changing state code, rules and regulations, and board policies that will place the public's health and safety in the hands of less competent people. This board will argue that they are ensuring the public's health and safety, with stricter sanitation procedures than any previous board. However, they fail to comprehend that education is an important element in insuring the public's health and safety. Furthermore, this board will argue that with this rule they are creating job opportunities for citizens to become barbers. However, they have limited the amount of money the barber can potentially earn, simply by the elimination of the many services traditionally provided by a barber.

The Declaration of Independence reads in part, *That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, . . .* Therefore, I believe that every school owner, licensed educator, licensed professional especially barbers, and all concerned citizens should now support those legislators that on numerous occasions have introduced legislation that would abolish the Board of Barbers and Cosmetologist and replace it with a board that will be cooperative in working with the professional licensee's and industry educators, to positively promote all professions within the industry, so to insure the public's health and safety.

In closing, I would like to refer to the language used by the legislator's in the ENROLLED version of HB 2368 authorizing the establishment of rules and regulation for a barber apprentice.

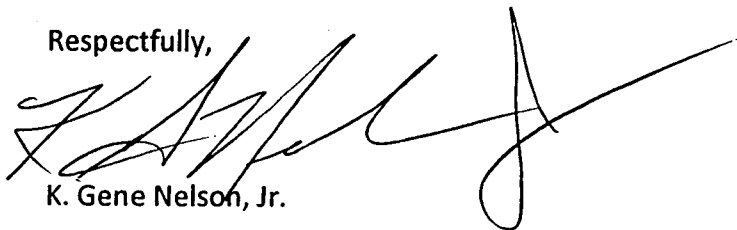
**§30-27-8a[d]** *The board may propose emergency rules and rules for legislative approval, in accordance with the provisions of article three chapter twenty-nine-a of this code, to implement the provisions of this section, . . .* It is the word "may" I would like to focus on. The legislature specific use of the word "may", can only be interpreted that an emergency may possibly exists. Therefore, allowing you to exercise your authority as Secretary of State in determining if such a

promulgated emergency rules is necessary for the immediate preservation of the public peace, health, safety or welfare as stated in §29a-3-15[f]. Had the legislators used the word "shall" in place of "may", they would have clearly indicated that a promulgated emergency rule was actually necessary for the immediate preservation of the public peace, health, safety or welfare.

The board and Mr. Higginbotham argue that these emergency rules [3 CSR 13] are necessary for the welfare or should I say prosperity of the few citizens that will become barbers. This board with the passage of [3 CSR 1] changing the curriculum for a barber, which is repeated in this rule [3 CSR 13] has crippled the welfare or prosperity of future barbers, unless the board and Mr. Higginbotham view their enrolled in the welfare system as being prosperous; and definitely will fail to preserve the health, safety, and welfare of the public, if the request for emergency implementation of [3 CSR 13] is granted at this time.

I thank you in advance concerning this matter and look forward to your response. If I may be of further assistance, then please do not hesitate to contact me at [304] 346-9603.

Respectfully,



K. Gene Nelson, Jr.

Copies to:

Gov. Earl Ray Tomlin  
Senator Kessler, President  
Delegate Thompson, Speaker  
Senator Minard, LRMRC Chair  
Senator Plymale, Education Chair  
Delegate Brown, LRMRC Chair  
Delegate Poling, Education Chair  
Delegate Andes  
Delegate Paxton



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Kelly G. Nelson, Jr.  
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Scott Depot, WV 25560

June 28, 2012

Dear Kelly Nelson:

Thank you for your comments concerning the Board's proposed rule for barber apprenticeship. I hope I can reply to your concerns as it pertains to proposed rules. I would like to point out that the Board feels that barbering can be offered through an apprenticeship program, but does not feel that cosmetology, aesthetics, nor nail technology could be offered through an apprenticeship due to those professions having frequent changes and continuously expanding scopes of practice.

The barber apprenticeship is needed to promote additional educational opportunities, create jobs and businesses, answer the public's call to a barber apprenticeship program, and to save the drastically reducing barber industry. This rule will allow individuals to begin a career in a profession and they can "earn as they learn" and not face substantial financial aid debt upon entering the workforce. The Board feels this rule will save the barber industry that has seen a 14% decline in licensees since 2007 and that has experienced more licensed barbers dying than newly licensed barbers in three out of the last five years. Please keep in mind that the Board hopes this rule saves the barber industry, not hurt the industry. Additionally, the Board reviewed data from other states that offer an apprenticeship program and found no increased risk to the public from individuals trained by a licensed professional compared to a school.

You mentioned that the Board removed the 375 student teaching requirements for a prospective instructor and that the student instructor must observe qualified instructors or instruct under supervision to be properly qualified instructors. The Board's instructor requirements do not tell schools that they cannot have a process of observations and supervision in the school. Any observation and/or supervision process is a business/educational decision by the school and should not be micro-managed by the Board. The Board feels that a school owner(s) and the fellow instructors should be more equipped to know if a certain instructor has the skills to teach without further observations or under supervision. However, the Board ensures that a prospective instructor has the knowledge and professional competency through a licensing examination.

The Board reached out to schools to help develop the instructor rules back in late 2010. The schools created a proposed curriculum of 1,000 hours for licensees to complete in order to become eligible for

the instructor exam. When discussing what the Board thought was an all school-supported 1,000 hour curriculum for instructors the Board found out that only a minority of the schools supported the curriculum and that certain schools would use it as a smokescreen to charge prospective instructors a tuition fee and their rule would allow for federal funding through financial aid to do in-house training of their own staff. After reviewing the facts, the Board implemented a rule that would allow an individual with five-years of salon experience to sit for an instructor exam, get licensed, and then seek employment with a licensed school. The Board felt and still feels that each school can provide the in-house training they desire without the Board saying how many hours to each instructor.

You state that the Board has failed to license all applicants that sit for the instructor exam. You are correct, not all people that sit for an exam pass therefore not all applicants have become licensed. However, since the implementation of the new instructor rule in July 2011, there have been 13 instructors licensed and 19 that have sat for the instructor exam. Prior to July 2011 there were less than 10 individuals that had sat for an instructor exam in an 18 month period when applicants had to complete 2-3 months of training through a school, often times for a fee.

You further state that the Board feels it is important to have instructors with shop/salon experience, you are again correct since the Board implemented the 5-year shop/salon experience requirement for prospective instructors. The Board feels that an instructor should possess knowledge of how a shop/salon operates, how to continuously hold a shop/salon position, and actual working experience in order to fully teach all aspects of the professions. Prior to that rule, the Board saw students graduate on a Monday, start work as a student-instructor at a school the next day, Tuesday, complete 2-3 months of "in-house" training and then educate students in barbering, cosmetology, nail technology, or aesthetics. The Board now has a system that would allow experienced licensees to take an exam and get licensed. In no way does this system prevent schools from hiring and training talented individuals. As you should know, it is hard to make it in a shop/salon and to keep a business thriving as an owner or booth renter. It takes time for new licensees to build a clientele and to establish themselves in the industry. Sometimes people do not make it in the industry and the Board hopes that having instructors with shop/salon experience will help students understand the hard work that is needed to achieve success and help train and develop key basic skills that will help the student be "shop/salon ready" upon graduating school so the students can "hit the ground running". Instructors with shop/salon experience can provide valuable insight to students getting ready to enter the workforce.

I understand that you and other barbers were upset about the word "master" being removed from the barber license two years ago. After reviewing state law, it was determined that there was no reference to a master barber profession, only barber and barber perm wivist. Therefore we removed the term from the license since the Board office did not have the authority to print a license for master barber since the term was not in code. Additionally, the word "managing" was removed from the cosmetology license since there is no code reference to a managing cosmetologist license.

The composition of the Board is in no way made by the Board. The governor appoints the board members with confirmation of the senate. The Board, staff, nor I have the authority to appoint a member to the Board.

It is a fact that individuals wishing to become a barber in the northern part and the eastern panhandle of the state are going to other states to earn their training, obtain their license, and start their business. The Board office, which is the authority on licensing and fields questions regarding licensing and training, receives frequent calls from people informing us about going to another state since there is

only one barber school and no apprenticeship. To my immediate knowledge, we have only had one barber transfer their license from a bordering state to the northern part or eastern panhandle of West Virginia in the last 3 years. Where is the growth of barbers and their business?

The Board's experience with consulting certain schools about proposed rules resulted in certain schools requesting the Board to revoke a license when a licensee does not repay loans to the school, not issuing a first license to a licensee that is not financially current with the school, and developing other rules that would be to the sole benefit of the school and not to a student trying to earn an education and get a license. The Board does have an established and existing history with schools providing input or information concerning rules or to provide insight or guidance on certain operations or functions. It is standard practice for the Board to review issues with selected schools prior to implementing new procedures.

Your belief that the Board did not consult educators about the curriculum is incorrect. The Board did consult with national educators, textbook developers, other state boards, and the national organization of state boards of cosmetology and barbering to create the initial foundation of the curriculum. Since you do not comment on the content of the curriculum I assume you are in agreement with it, but it seems you are upset you were not part of the planning stages of the curriculum. It would be difficult to include everyone in the development of the curriculum and I apologize for the inconvenience.

As for the barber apprenticeship bill, the Board contemplated the situation of a barber working in a barbershop being able to offer the barber apprenticeship program, but felt it would best be suited to a barber that owns the shop and not just an employee. The apprenticeship takes on another operational dimension within a shop, added expense, and the functions of the apprenticeship cannot be in a position where the apprentice's training and the barber offering the training can be trumped by a barbershop owner. Since the owner of the shop has operational authority of the shop, the Board's barber members felt it very important to only allow barbershop owners. Barbershops are also more established to an actual location and do not move as much as individual licensees. As you know, some licensees may move from shop to shop for various reasons. This type of inconsistency would not be beneficial for the apprentice to move from shop to shop and another shop owner might not accept responsibility for the apprentice. Then what would happen to the apprentice? Additionally, the Board feels that the integrity and quality of the apprenticeship program will be more protected by a barbershop owner offering the program since the barber's license and shop license are at risk should fraudulent practices occur. It's more unlikely that an established business within a community would risk the business, good name, and the licenses.

It is important for an apprentice to learn at a financially stable barbershop at a location that is stable as well. A stable barbershop may be evident if the shop is open and in business for five years. An apprentice should be protected from an owner that may not be established enough to offer the program. It would not be beneficial to allow a barbershop owner that has only had a shop for, let's say 43 months, with no other established history to offer the program because the certainty of the apprentice's completion of the apprenticeship is lower than an apprentice in the program from an established barbershop of at least 5 years.

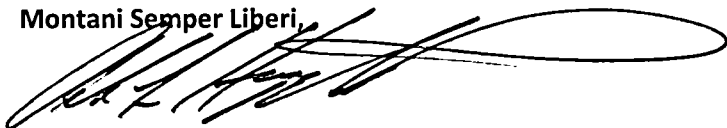
The Board feels that the proposed requirements for a cosmetologist to learn barber training is sufficient. The scope of practice of a cosmetologist includes hair, nail technology, and aesthetics. Nail technology and aesthetics are arguably the two most dangerous licenses the Board oversees based on the implements, lasers, and other tools used in the very close proximity to arteries and veins. The two main

differences from a cosmetologist wishing to do barbering are shaving and clipper techniques. Other scopes of practice are already within the scope of practice of cosmetology. Cosmetologists that went to school to get barbering through the 300-hour program have stated that the program was too long and there was no need to go to school for 2-3 months to learn to shave and do clipper techniques. The Board hopes that by allowing cosmetologists to learn the barber trade through a "master" barber will spur growth in the industry and maintain the history of the trade.

It is regrettable that you feel the Board is trying to eliminate barbering. As you should be able to see, the Board is trying to help people become licensed as a barber by establishing the rules of a barber apprentice and by lowering the hours of barbering to help improve the horrendous graduation rate of barbers. Since 2000, barbers have completed the 1,800 and/or 2,000 hour program at the rate of 39%. That means that 61% of all people that start barber school never finish and never become licensed. It is a fact that shorter programs result in higher completion percentages and contrary to your belief, short programs do not put the public at greater risk since all 13 states that have shortened a program by several hundred hours have stated there has not been an increase in complaints or board actions against the professions with shortened programs. The Board has to be reactive in establishing the barber apprenticeship that was passed by the legislature without Board backing or support. The barber apprenticeship program was created because the citizens of West Virginia and the licensed barbers of West Virginia lobbied their state delegate and/or senator to establish a barber apprenticeship program to promote additional educational opportunities, create jobs and businesses, answer the public's call to a barber apprenticeship program, and to save the drastically reducing barber industry.

In closing, I appreciate your response and hope the replies help bridge an understanding of the Board's action to promote additional educational opportunities, create jobs and businesses, answer the public's call to a barber apprenticeship program, and to save the drastically reducing barber industry in West Virginia while implementing a manageable barber apprenticeship program that will be monitored for public safety.

Montani Semper Liberi,



**Adam L. Higginbotham M.B.A.**  
Director