



CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF AN AMENDMENT TO WV 3 CSR 1, "Curriculum and Minimum Requirements Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operation in West Virginia; Joint Barbers and Beauticians License"

safeguards to protect the public and students necessitated by this change. The set of amendments includes generally changes related to curriculum, instructor training, permanent waving conducted in barber shops, and school licensure requirements. (Some "clean-up" amendments are also included.) All five rules are being filed on an emergency basis.

Traditionally, West Virginia schools of barbering have not offered instruction in permanent waving to their students. Failure to provide this instruction has led to serious economic difficulties on the part of the schools. Not only is this an impediment to the recruitment of students by limiting future employment opportunities, but West Virginia students are at a disadvantage in applying for reciprocity in neighboring states. Schools have suffered economic losses due to the inability to offer permanent waving in their curriculum.

It is in the public interest to encourage the overall economy of the State. Therefore this rule is being filed on an emergency basis in order to prevent substantial harm to the public interest.

FILED

1988 JUN 10 AM 8 57

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

[EMERGENCY]

TITLE 3

LEGISLATIVE RULES  
BOARD OF BARBERS AND BEAUTICIANS

CURRICULUM AND MINIMUM REQUIREMENTS SUBJECTS AND  
HOUR SCHEDULE, RULES AND REGULATIONS FOR SCHOOLS  
OF BEAUTY CULTURE OPERATION IN WEST VIRGINIA;  
JOINT BARBERS & BEAUTICIANS LICENSE

SERIES 1

1988

[EMERGENCY]  
LEGISLATIVE RULES  
BOARD OF BARBERS AND BEAUTICIANS

CURRICULUM AND MINIMUM REQUIREMENTS SUBJECTS AND  
HOUR SCHEDULE, RULES AND REGULATIONS FOR SCHOOLS  
OF BEAUTY CULTURE OPERATION IN WEST VIRGINIA;  
JOINT BARBERS & BEAUTICIANS LICENSE

3 CSR 1

INDEX

|  | Page |
|--|------|
| Section 1. General   | 1    |
| Section 2. Application and Enforcement                                     | 1    |
| Section 3. Schedule of Subjects and Hours                                  | 1    |
| Section 4. Qualification, Classrooms, Equipment and<br>General Information | 3    |
| Section 5. Attendance, Records, Teaching Staff                             | 5    |
| Section 6. Post Graduate Instruction                                       | 6    |
| Section 7. Required Forms  | 6    |
| Section 8. Enforcement   | 6    |
| Section 9. Administrative Due Process                                      | 6    |
| Section 10. Severability   | 7    |

[EMERGENCY]  
TITLE 3  
LEGISLATIVE RULES  
BOARD OF BARBERS AND BEAUTICIANS

SERIES 1  
CURRICULUM AND MINIMUM REQUIREMENTS, SUBJECTS AND HOUR SCHEDULE,  
RULES AND REGULATIONS FOR SCHOOLS OF BEAUTY CULTURE OPERATING  
IN WEST VIRGINIA; JOINT BARBER AND BEAUTICIAN LICENSE

§3-1-1. General

1.1. ~~Scope - These legislative rules establish~~ This legislative rule establishes curriculum and minimum requirements, subjects and hour schedules, rules and regulations for schools of beauty culture operating in West Virginia.

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

1.3. Filing Date - June 10, 1988

1.4. Effective Date - June 10, 1988

~~1.5. Refiling Date --- December 30, 1982.~~

1.5. Supersession and Repeal of Former Regulations - This rule supersedes and repeals "Curriculum and Minimum Requirements, Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operating in West Virginia; Joint Barber and Beautician License," Board of Barbers and Beauticians Legislative Rules, 3 CSR 1, filed January 5, 1982 and refiled December 30, 1982.

§3-1-2. Application and Enforcement

2.1. Application - ~~These legislative rules apply~~ This rule applies to owners and operators of schools of beauty culture and persons seeking a joint barber and beautician license.

2.2. Enforcement - The enforcement of ~~these legislative rules~~ this rule is vested with the West Virginia Board of Barbers and Beauticians.

§3-1-3. ~~Minimum Curriculum for Schools of Beauty Culture~~ Schedule of Subjects and Hours

3.1. ~~Schedule of Subjects and Hours~~ Minimum Curriculum for Beautician License

3.1.1. Every West Virginia school of beauty culture shall conduct a course of study consisting of at least two thousand (2000) clock hours, divided as follows: An accurate record of the number of hours devoted to the prescribed subjects for each student by permit number must be posted on a bulletin board and available to all students on the first school day of each month and left for the number days in said month. The final examination of each student shall also be made a part of the application for

examination of each student before the West Virginia State Board of Barbers and Beauticians.

3.1.2. A copy of this curriculum and regulations must be posted on a bulletin board.

3.1.3. The objectives of this cosmetology curriculum are to train students in all phases of beauty culture to adequately pass the State Board examination and to attain successful employment in the beauty industry.

3.1.4. Practical work during the first three hundred (300) hours shall be restricted to manikins only.

3.1.5. The following curriculum and regulations adopted by the State Board of Barbers and Beauticians are placed in effect. (See Table 3-1A found at the end of this regulation.)

~~3-2- 250-Hour-Curriculum-for-Student-Instructors-(See-Table 3-1B-at-the-end-of-this-regulation-)~~

~~3-3-3.2. Curriculum--for--Barbers--to--Obtain-Cosmetologist License-to--Adequately-Pass-the-State-Board-Examination Curriculum for Barbers to Obtain a Cross-Over Cosmetologist License - The following curriculum is for a barber to adequately pass the cosmetologist State Board examination in order to obtain a cross-over cosmetologist license. (See Table 3-1E 3-1B found at the end of this regulation.)~~

~~3-4-3.3. Curriculum--for--Cosmetologists--to--Obtain-Barber License-to--Adequately-Pass-the-State-Board-Examination Curriculum for Cosmetologists to Obtain a Cross-Over Barber License - The following curriculum is for a cosmetologist to adequately pass the barber State Board examination in order to obtain a cross-over barber license. (See Table 3-1D 3-1C found at the end of this regulation.)~~

**REQUIREMENT:** Individuals must have completed one thousand eight hundred (1,800) hours of barber's training, or two thousand (2,000) hours of cosmetologist's training, and held a current license as a regular barber or beautician. All applicants, upon completing the five hundred (500) hours cosmetology training or three hundred (300) hours barber training, must submit to the one thousand eight hundred (1,800) hours barber examination, or two thousand (2000) hours cosmetology examination. Out-of-state applicants considered on individual basis. Requirements substantially equal are accepted. Requirements of less than one thousand eight hundred (1,800) hours barber's training or two thousand (2,000) hours cosmetologist's training are usually accepted if supplemented by one (1) year of practical experience for every three hundred (300) hours of schooling not to exceed one thousand (1,000) hours. ~~All applicants upon completing the 500 hours cosmetology training or 300 hours barber training must submit to the 1800 hours barber examination or 2000 hours cosmetology ex-~~

amination.

### \$3-1-4. Qualifications, Classrooms, Equipment and General Instructions

4.1. Qualifications - A school owner, or any person who intends to own a school of beauty culture in this state, is required to submit to the State Board of Barbers and Beauticians satisfactory evidence as to the character of the persons interested in managing and teaching in the school, literature and advertising material pertaining to the school, a copy of the contract to be signed by the prospective student's and establish any necessary facts regarding the ownership of the school.

4.2. Classrooms, Equipment - Each school of beauty culture shall have at least two (2) classrooms in use at all times. One (1) room, to be used for demonstrations, or lecture, or clinical work, shall be fully equipped and arranged in a manner to comply in every way, and at all times with the Rules and Regulations promulgated by the State Board of Barbers and Beauticians. Following is an approved list of the minimum equipment with which a beauty school will be permitted to operate for not more than twenty (20) students. Additional equipment must be installed in proportion to the increase in enrollment.

- (a) One (1) blackboard, not less than 4 x 8 feet in size.
- (b) Twenty (20) dresserettes and twenty (20) mirrors, or twenty (20) combination work tables. There must be a workstation table and chair for each student enrolled in school at all times.
- (c) Five (5) shampoo bowls.
- (d) Ten (10) hairdryers.
- (e) Three (3) facial chairs.
- (f) Two (2) facial supply trays.
- (g) Two (2) hydraulic haircutting chairs.
- (h) Two (2) vibrators.
- (i) Two (2) therapeutic lamps.
- (j) Four (4) manicure tables.
- (k) Sufficient clean linen cabinet space.
- (l) One (1) dip (wet) sterilizer for each booth and work stand.
- (m) Dry sterilization sufficient to accommodate as many students as are engaged in clinical work at any one time.
- (n) Sufficient training aids.
- (o) Twenty (20) hairdressing chairs.
- (p) Head manikins to be furnished by the school for each student, as part of kit for practical hairdressing.
- (q) Twenty (20) classroom chairs.
- (r) At least ten (10) waste containers.
- (s) One (1) large bulletin board conspicuously located for student permits, rules, regulations, notices, etc.
- (t) One (1) set of record files.

### 4.3. General Instructions

(a) The classroom shall be equipped with a chalkboard and scientific illustrations dealing with cosmetology. This room shall be used for lectures, demonstrations or scientific instruction to students.

(b) All schools shall provide and maintain adequate restroom facilities.

(c) No students will be permitted to enter any class for study, or given credit for any work done in school, prior to the time their certificate of registration has been received from the office of the State Board.

(d) All books and literature that will aid in student learning are encouraged to be used.

(e) Each school of beauty culture shall maintain a library of suitable reference books approved by the Board annually.

(f) Each school of beauty culture shall hold regular classes for the teaching of both the theory and the practice of all branches of beauty culture.

(g) Schools shall not guarantee positions to students, nor guarantee financial aid in equipping a shop.

(h) Schools are not limited to any particular system of teaching cosmetology. Students should be familiar with the various methods and practices in their profession and the different supplies and equipment used in the beauty industry.

(i) Each school must have an admission office, properly equipped with filing cabinet, etc., and maintain duplicate copies of records sent to the State Board of Barbers and Beauticians.

(j) Each school shall advertise only under the designation of a beauty school and shall display conspicuously at the entrance to said school a sign in plain block, display lettering at least one inch in height, as follows: "All Work Done By Students Only."

(k) All service prices must be displayed in the clinic area. The prices must be followed by the words, "Student Work", in lettering at least one half (1/2) the size of the lettering used to display the price.

(l) Instructors, as well as students, must, during school hours, be attired in washable uniforms, which must be kept clean and neat at all times. Uniforms worn by the instructors must be different from those worn by the students so they may be easily recognized.

(m) All bottles and containers in use must be distinctly and correctly labeled, showing the use for which the contents are

intended.

(n) The State Board of Barbers and Beauticians shall be furnished with a copy of the current school catalog and copies of all student contracts. At any time changes are made in any of the above, the Board shall be furnished with a copy of same, as revised within thirty (30) days of the change or revision.

**§3-1-5. Attendance, Records, Teaching Staff**

**5.1. Attendance**

(a) All schools of beauty culture must establish regular school hours.

(b) Schools shall require that all students attend classes at least eighty (80%) percent of the time enrolled in school, not to exceed eight (8) hours per day, exclusive of lunch period. Any absence for more than twenty (20) percent of the time after enrollment, must be accounted for by a written excuse from a doctor, dentist, or someone acceptable to the Board, who can certify to the necessity for such absence.

Note: Hours herein referred to shall mean full clock hours.

**5.2. Records**

(a) Daily Records - Each school shall keep a daily class record on each student, showing hours devoted to the respective subjects, and the total number of hours in attendance, days present and days absent.

(b) Monthly Records - A monthly record of the entire enrollment must be sent to the office of the State Board of Barbers and Beauticians on, or before, the fifth working day of each month, on forms furnished to the schools for the purpose, showing the student's name, permit number, number of months reported, hours absent, hours present, total hours and their projected graduation date.

(c) Permanent Records - A permanent record shall be compiled by the manager of each school from the daily class records. This record shall be kept up to date in a permanent file, and shall be subject to inspection at any time by any member of the State Board of Barbers and Beauticians, or any authorized representative.

(d) Final - The manager of each school shall compile from his records a summary of each student's grades, hours and attendance, which shall be presented to the student upon graduation, and shall also be made a part of his application for registration by examination. The manager must sign each copy of the required records, certifying that the record is correct, and that the student has received a diploma from his school.

5.3. Teaching Staff

(a) No school will be permitted to open or operate with less than ~~two-(2)~~ three (3) regularly registered, senior instructors. There must be one (1) instructor for every twenty (20) students, or reasonable average thereof, and an instructor shall be in the study and classrooms of the school at all hours, and supervise all practice student work.

(b) Each instructor in a beauty school shall devote his entire time during school hours to instruction, and shall not apply his time to the private or public practice of beauty culture for compensation during school hours.

(c) Teaching by demonstrators is strictly forbidden, but a demonstrator may demonstrate to the students in school new processes, preparations and appliances, in the presence of the registered instructors.

**§3-1-6. Post Graduate Instruction Credits that may be Accepted from Schools of Beauty Culture not Located in West Virginia**

No licensed beautician who enters school for the purpose of taking postgraduate instruction will be permitted to remain in school for a period of more than two thousand (2,000) hours.

A student who has been graduated from a recognized school of beauty culture not located in West Virginia can be given credit only for the amount of hours required for graduation under the regulations in that particular state. These hours may apply on the two thousand (2,000) hours required for graduation from a school in this State. All credits submitted and accepted under this regulation must be duly certified by the manager of the school the student attended, showing subjects studied, hours and grade received on each. This record will be held by the school manager until the student graduates, and then will be made a part of his application for examination as a beautician in this State.

Private lessons may be given to licensed beauticians who are desirous of gaining more knowledge in any subject, or subjects, which they are already licensed to practice.

**§3-1-7. Required Forms - Required beauty school reports will be on forms approved and supplied by the Board of Barbers and Beauticians.**

**§3-1-8. Enforcement - Enforcement of ~~these rules and regulations~~ this rule is vested with the State Board of Barbers and Beauticians.**

**§3-1-9. Administrative Due Process - Those affected persons desiring a public hearing shall do so in a manner pursuant to the provisions in Chapter 29A, Article 5 of the West Virginia Code. ~~of 1931, as amended.~~**

\$3-1-10. Severability - If any provision of these-regulations this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of these--regulations this rule which can be given effect without the invalid provision or application, and to this end the provisions of these-regulations this rule are declared to be severable.

Table 3-1A

|  | <u>LECTURE</u> | <u>DEMONSTRATION</u> | <u>MANIKIN<br/>PRACTICE</u> | <u>CLINIC</u> | <u>TOTAL<br/>HOURS</u> |
|--|----------------|----------------------|-----------------------------|---------------|------------------------|
| Ethics, Personal Hygiene,<br>Visual Poise and Person-<br>ality Development | 10             |                      |                             |               | 10                     |
| Sanitation, Sterilization<br>and Bacteriology                              | 15             | 5                    |                             |               | 20                     |
| Shampooing and Rinsing   | 5              | 2                    | 1                           |               | 8                      |
| Hair and Scalp Treatment   | 6              | 1                    | 3                           |               | 10                     |
| Manicuring and First Aid   | 3              | 1                    |                             |               | 4                      |
| Haircutting  | 5              | 5                    | 10                          |               | 20                     |
| Hairstyling  | 10             | 10                   | 30                          |               | 50                     |
| Permanent Waving   | 15             | 10                   | 40                          |               | 65                     |
| Safety Precautions   | 10             |                      |                             |               | 10                     |
| Salesmanship and<br>Merchandizing  | 10             |                      |                             |               | 10                     |
| Wiggery and Hair Pieces  | 2              | 1                    | 4                           |               | 7                      |
| Review for Clinic Floor  |                | 5                    |                             |               | 5                      |
| Facials, Massage, Paks and<br>Eyebrow Arching                              | 5              | 3                    | 3                           |               | 11                     |
| Chemical Hair Relaxing and<br>Hair Straightening                           | 8              | 7                    | 10                          |               | 25                     |
| Hair Coloring and<br>Lightening  | <u>20</u>      | <u>20</u>            | <u>5</u>                    | <u>—</u>      | <u>45</u>              |
| SUB TOTAL First 300<br>Hours   | 124            | 70                   | 106                         |               | 300                    |

TABLE 3-1A (Cont'd)

SUPERVISED CLINIC PRACTICE

|  | <u>LECTURE</u> | <u>DEMONSTRATION</u> | <u>MANIKIN<br/>PRACTICE</u> | <u>CLINIC</u> | <u>TOTAL<br/>HOURS</u> |
|--|----------------|----------------------|-----------------------------|---------------|------------------------|
| Sanitation, Sterilization<br>and Bacteriology    |                |                      |                             | 120           | 120                    |
| Shampooing and Rinsing                           |                |                      |                             | 37            | 37                     |
| Hair and Scalp Treatment                         |                |                      |                             | 40            | 40                     |
| Manicuring and First Aid                         |                | 2                    |                             | 31            | 33                     |
| Haircutting                                      |                | 13                   |                             | 300           | 313                    |
| Hairstyling                                      |                | 13                   |                             | 400           | 413                    |
| Permanent Waving                                 |                | 20                   |                             | 200           | 220                    |
| Wiggery and Hair Pieces                          |                | 2                    |                             |               | 2                      |
| Merchandizing                                    |                |                      |                             | 20            | 20                     |
| Unassigned                                       |                |                      |                             | 7             | 7                      |
| Facials, Massage, Paks<br>and Eyebrow Arching    |                |                      |                             | 44            | 44                     |
| Chemical Hair Relaxing and<br>Hair Straightening |                |                      |                             | 65            | 65                     |
| Lightening                                       | —              | <u>13</u>            | —                           | <u>155</u>    | <u>168</u>             |
| SUB TOTAL  |                | 63                   |                             | 1419          | 1482                   |

TABLE 3-1A (Cont'd.)

LECTURE ON SCIENTIFIC SUBJECTS

|                                   | <u>LECTURE</u> | <u>DEMONSTRATION</u> | <u>MANIKIN<br/>PRACTICE</u> | <u>CLINIC</u> | <u>TOTAL<br/>HOURS</u> |
|-----------------------------------|----------------|----------------------|-----------------------------|---------------|------------------------|
| Nail disorders                    | 3              |                      |                             |               | 3                      |
| Chemistry                         | 15             |                      |                             |               | 15                     |
| Skin, Scalp and Hair<br>Disorders | 9              |                      |                             |               | 9                      |
| Electricity, Light Therapy        | 12             |                      |                             |               | 12                     |
| Anatomy and Cells                 | 20             |                      |                             |               | 20                     |
| State Laws and<br>Regulations     | 20             |                      |                             |               | 20                     |
| Beauty Salon Management           | 25             |                      |                             |               | 25                     |
| Dispensary                        |                |                      |                             | 80            | 80                     |
| Appointment Desk                  | 1              | 2                    |                             | 16            | 19                     |
| Job Placement                     | <u>10</u>      | <u>—</u>             | <u>—</u>                    | <u>5</u>      | <u>15</u>              |
| SUB TOTAL                         | 115            | 2                    |                             | 101           | 218                    |
| TOTAL                             |                |                      |                             |               | 2000                   |

SUMMARY

|  |             |
|--|-------------|
| Scientific Subjects                      | 239         |
| Beginner's Demonstration                 | 70          |
| Beginner's Manikin Practice              | 106         |
| Demonstrations, Clinic, Manikin Practice | <u>1585</u> |
| TOTAL PRESCRIBED TRAINING PERIOD         | 2000        |

TABLE-3---1B

3.2. 250-Hour-Curriculum-for-Student-Instructors

|   | <u>HOURS</u> |
|---|--------------|
| 1.--Orientation                               | 10           |
| 2.--Psychology-of-Student-Training            | 15           |
| 3.--Introduction-to-Teaching                  | 10           |
| 4.--Good-Grooming-and-Personality-Development | 10           |
| 5.--Course-Outlining-and-Development          | 15           |
| 6.--Lesson-Planning                           | 20           |
| 7.--Teaching-Techniques-(Methods)             | 30           |
| 8.--Teaching-Aids---Audio-Visual-Techniques   | 20           |
| 9.--Demonstration-Techniques                  | 20           |
| 10.--Examination-and-Analysis                 | 20           |
| 11.--Classroom-Management                     | 15           |
| 12.--Record-Keeping                           | 10           |
| 13.--Teaching-Observation                     | 15           |
| 14.--Teacher-Assistant                        | 20           |
| 15.--Pupil-Teaching-(Practice-Teaching)       | 15           |
| TOTAL   | 250          |

Note:--"This-curriculum-must-be-taught-by-a-regular-instructor-or-an-instructor-certified-with-a-degree-in-education."

TABLE 3-1C 3-1B

|                                | <u>LECTURE</u> | <u>DEMONSTRATION</u> | <u>CLINIC<br/>PRACTICE</u> | <u>CLINIC</u> | <u>TOTAL<br/>HOURS</u> |
|--------------------------------|----------------|----------------------|----------------------------|---------------|------------------------|
| Manicuring & Disorders         | 3              | 2                    |                            | 5             | 10                     |
| Hairdressing                   | 15             | 10                   | 30                         | 75            | 130                    |
| Permanent Waving & Haircutting | 30             | 30                   | 60                         | 160           | 280                    |
| Makeup                         | 3              | 2                    |                            | 5             | 10                     |
| Haircoloring & Lightening      | 20             | 20                   |                            | 15            | 55                     |
| Dispensary                     | —              | —                    | —                          | <u>15</u>     | <u>15</u>              |
| TOTALS                         | 71             | 64                   | 90                         | 275           | 500                    |

TABLE 3-1D 3-1C

|                             | <u>LECTURE</u> | <u>DEMONSTRATION</u> | <u>CLINIC<br/>PRACTICE</u> | <u>CLINIC</u> | <u>TOTAL<br/>HOURS</u> |
|-----------------------------|----------------|----------------------|----------------------------|---------------|------------------------|
| Mustaches & Beards          | 4              | 2                    |                            | 21            | 27                     |
| Haircutting                 | 10             | 10                   |                            | 85            | 105                    |
| Hairstyling                 | 10             | 15                   |                            | 65            | 90                     |
| Honing, Stropping & Shaving | 8              | 8                    |                            | 37            | 53                     |
| Hair Pieces                 | <u>10</u>      | <u>10</u>            | <u>5</u>                   | —             | <u>25</u>              |
| TOTALS                      | 42             | 45                   | 52                         | 208           | 300                    |



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000

WILLIAM H. HARRINGTON  
Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

July 22, 1988

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Barbers and Beauticians

RULE: Amendments to Title 3 CSR Series 1, 2, 3, 5 and 6

DATE FILED AS AN EMERGENCY RULE: June 10, 1988

### DECISION NO. 5-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

FILED  
1988 JUL 22 PM 3:16  
OFFICE OF THE SECRETARY OF STATE



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000

WILLIAM H. HARRINGTON  
Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

### DECISION                      EMERGENCY RULE DECISION (ERD 5-88)

AGENCY: Board of Barbers and Beauticians  
RULE: Amendments to Title 3 CSR Series 1, 2, 3, 5 and 6  
DATE FILED AS AN EMERGENCY RULE: June 10, 1988

- par. 1 The Board of Barbers and Beauticians has filed the above amendments as an emergency.
- par. 2 The five series deal with various elements of regulations of barbering and beauty culture and this emergency decision will treat all five series together.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Board has filed these emergency amendments with supporting documents with the Secretary of State on June 10, 1988, and with the LRMRC on June 10, 1988.

par. 8 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 9 (B) Statutory Authority -- WV Code §30-27-1(a) reads in part:

*The board shall promulgate rules and regulations pertaining to the licensure and qualifications of barbers, beauticians and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture.*

*WV Code §30-27-1(g) reads:*

*(g) The board shall have the power to promulgate rules and regulations generally regarding the practice and conduct of barbering and beauty culture, including, but not limited to, the procedures, criteria and curricula for examination and qualifications of applicants for licensure, and for the licensing of instructional personnel for schools of barbering and beauty culture.*

par. 10 Comments have been received presenting the argument that WV Code §16-14-2 defines "barbering" and "beauty culture" and that since "permanent waving" is listed under the definition of "beauty culture" and not listed under the definition of "barbering" then the emergency amendment allowing barbers to do permanent waving exceeds the Board's statutory authority.

par. 11 This question was presented to the Attorney General in 1981. Then Attorney General Chauncey H. Browning wrote:

"One final observation should be made. Although the definition of barbering in Code 16-4-2 does not include the skill of permanent waving while the definition of beauty culture in that same Code section does, they should not be construed as mutually exclusive. That is, the statutory definitions are descriptions of the types of services traditionally performed by barbers and beauticians. Those descriptions are intended to place the public on notice as to the types of services which licensed practitioners of the two professions may perform. The definitions are not intended to preclude new and innovative expansion of those services by the two professions, under the direction of the Board. This assertion has recently been reinforced by the Legislature's enactment of a provision which now allows an individual to obtain licensure as both a barber and a beautician. (See. Code 30-27-3)

To summarize our conclusions:

1. The Board does have the authority to insert a permanent waving component into the curriculum of schools of barbering.

2. If proficiency in permanent waving is a prerequisite for licensure as a barber, then a licensed practitioner may perform permanent waving in his establishment.

Very truly yours,

Chauncey H. Browning, Attorney General"

par. 12 I concur with this opinion.

par. 13 Likewise the Supreme Court has addressed this question following a petition for a writ of mandamus to compel the Board to insert permanent waving into the barber curriculum. That writ was denied for failure to meet the standards for issuance of a writ; not for lack of the Board's authority to properly promulgate such a rule. The Court wrote in part:

"However, if the Board wishes. . .to permit barbers to offer, and barbering schools to teach, permanent waves, the Board must comply with the procedures of the Administrative Procedures Act." 321 S.E.2d 694

par. 14 The Board has followed the procedures for emergency rule making and has progressed through the initial steps for adoption of a final legislative rule by conducting a public hearing following proper notice and has filed its agency approved proposed legislative rule with the LRMRC.

par. 15 Additional comments present the position that allowing barbers to do permanent waving and not allowing beauticians to perform additional services on what is being presented as a quid pro quo is being discriminatory. I find no indication that the Board is required or directed to treat barbers and beauticians or the training required for each to be equal. There does exist a requirement that the Board develop a joint license, but the Code clearly distinguished a separation. It is also a policy decision of the Board that the requirements and activities between barbers and beauticians are not the same.

par. 16 Many other comments request action by the Secretary of State within this decision towards policy decisions as expressed within this emergency rule. The authority of the Secretary of State in reviewing emergency rules is limited. Those limits prohibit this office from judging the wisdom, or lack thereof, of an agency's policy. That responsibility rests with the agency, subject to established political measures to impact upon such decisions.

par. 17 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 18 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 19 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 20 The facts and circumstances as presented by the Board are as follows:

These amendments are part of a set of related amendments to five of the six rules of the Board of Barbers and Beauticians, all of which amendments taken together are designed to permit schools of barbering to teach permanent waving and to establish safeguards to protect the public and students necessitated by this change. The set of amendments includes generally changes related to curriculum, instructor training, permanent waving conducted in barber shops, and school licensure requirements. (Some "clean-up" amendments are also included.) All five rules are being filed on an emergency basis.

Traditionally, West Virginia schools of barbering have not offered instruction in permanent waving to their students. Failure to provide this instruction has led to serious economic difficulties on the part of the schools. Not only in this an impediment to the recruitment of students by limiting future employment opportunities, but West Virginia students are at a disadvantage in applying for reciprocity in neighboring states. Schools have suffered economic losses due to the inability to offer permanent waving in their curriculum.

It is in the public interest to encourage the overall economy of the State. Also, it is expected that as a result of changes to other rules related to the teaching of permanent waving in schools of barbering that there will be an increase in the amount of permanent waving conducted in barber shops. Therefore, there is a need to have in place for barber shops the same standards for permanent waving as those applicable for beauty shops for health and safety considerations. Therefore this rule is being filed on an emergency basis in order to protect the public health and safety as well as in order to prevent substantial harm to the public interest.

par. 21 As stated in prior emergency rule decisions (ERD 1-86; ERD 3-86; ERD 10-86; ERD 11-86; ERD 20-86; ERD 21-86; ERD 6-87; ERD 21-87; ERD 22-87; ERD 2-88):

There exists no specific judicial review of nor legislative guidance for the terms or conditions creating "substantial harm" or elucidating the range of "public interest." Should the harm exist statewide to be substantial or merely encompass one area? The Secretary of State concludes that "harm" to one area of the state would result in a substantial ripple throughout.

It is also concluded that the economic health of any area of West Virginia is of "interest" to the public and to the Secretary of State.

par. 22 There has been presented evidence that economic harm will be presented with adoption of these rules. (See letter from Wheeling Barber College, April 1, 1987) This argument carried convincing weight before the Board and does likewise with this office. Although several comments received expressed possible hardships on other persons with adoption of this rule and such comments suggested corrective language to the rule, this office has no authority to direct an agency to amend their proposal; although this office would suggest that the Board seriously review its regulatory operations in light of its impact on the industry as expressed in such comments.

par. 23 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule

par. 24 This decision shall be cited as Emergency Rule Decision 5-88 or ERD 5-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

SECRETARY OF STATE  
OFFICE OF THE SECRETARY OF STATE

1988 JUL 22 PM 3:17

FILED