

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

FILED

1998 JUN 10 AM 8:28

STATE OF 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 Beauticians TITLE NUMBER: 3

CITE AUTHORITY W. Va. Code §30-27-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: 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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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.

*Edwin Roush*

Edwin Roush, Executive Director

FISCAL NOTE FOR PROPOSED RULES

Curriculum and Minimum Requirements Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operation in West Virginia

Rule Title: Joint Barbers and Beauticians License (3 CSR 1)

Type of Rule:  Legislative  Interpretive  Procedural

Agency Board of Barbers and Beauticians Address 4860 Brenda Lane, Guthrie Center  
Charleston, WV 25312

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

Although there will be some increase in the Board's workload, existing funding is adequate.

3. Objectives of these rules:

The proposed amendments: 1) delete a 250-hour student instructor curriculum requirement (to be inserted by concurrent amendment in 3 CSR 2, "Qualifications Training, Examination and Registration of Instructors in Barbering and Beauty Culture"; 2) clarify testing procedures for cross-over licenses; 3) change the minimum number of senior instructors; 4) make minor "cleanup" changes.

REVISED

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;  
Specific groups of citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date May 16, 1988

Signature of Agency Head or Authorized Representative

Edwin B. Roush

Edwin B. Roush  
Executive Director

WEST VIRGINIA BOARD OF BARBERS AND BEAUTICIANS

RULE ABSTRACT

Title: 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

CSR Title and Series: 3 CSR 1

Type: Legislative

Summary: The proposed amendments: 1) delete a 250-hour student instructor curriculum requirement (to be inserted by concurrent amendment in 3 CSR 2, "Qualifications, Training, Examination and Registration of Instructors in Barbering and Beauty Culture"); 2) clarify testing procedures for cross-over licenses; 3) change the minimum number of senior instructors; and 4) make minor "clean-up" changes.

For further information contact: Regulatory Development Section, Health Department, 1800 Washington Street, East, Charleston, WV 25305, Telephone 348-3223, or WV Board of Barbers and Beauticians, 4860 Brenda Lane, Guthrie Center, Charleston, WV 25312, Telephone 348-2924.

[PROPOSED]

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

198\_

---

For Filing with the Legislative  
Rule-Making Review Committee

[PROPOSED]  
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 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

(PROPOSED)  
TITLE 3  
LEGISLATIVE RULES  
BOARD OF BARBERS AND BEAUTICIANS

FILED

1988 JUN 10 AM 8 28

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 -

1.4. Effective Date -

~~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.

### S3-1-4. 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 1931y-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 PRACTICE</u>	<u>CLINIC</u>	<u>TOTAL HOURS</u>
Ethics, Personal Hygiene, Visual Poise and Person- ality Development	10				10
Sanitation, Sterilization 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 Merchandizing	10				10
Wiggery and Hair Pieces	2	1	4		7
Review for Clinic Floor		5			5
Facials, Massage, Paks and Eyebrow Arching	5	3	3		11
Chemical Hair Relaxing and Hair Straightening	8	7	10		25
Hair Coloring and Lightening	<u>20</u>	<u>20</u>	<u>5</u>	<u>—</u>	<u>45</u>
SUB TOTAL First 300 Hours	124	70	106		300

TABLE 3-1A (Cont'd)

<u>SUPERVISED CLINIC PRACTICE</u>					
	<u>LECTURE</u>	<u>DEMONSTRATION</u>	<u>MANIKIN PRACTICE</u>	<u>CLINIC</u>	<u>TOTAL HOURS</u>
Sanitation, Sterilization 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 and Eyebrow Arching				44	44
Chemical Hair Relaxing and Hair Straightening				65	65
Lightening	—	<u>13</u>	—	<u>155</u>	<u>168</u>
SUB TOTAL		63		1419	1482

TABLE 3-1A (Cont'd.)

<u>LECTURE ON SCIENTIFIC SUBJECTS</u>					
	<u>LECTURE</u>	<u>DEMONSTRATION</u>	<u>MANIKIN PRACTICE</u>	<u>CLINIC</u>	<u>TOTAL HOURS</u>
Nail disorders	3				3
Chemistry	15				15
Skin, Scalp and Hair Disorders	9				9
Electricity, Light Therapy	12				12
Anatomy and Cells	20				20
State Laws and 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 3-1G 3-1B

	<u>LECTURE</u>	<u>DEMONSTRATION</u>	<u>CLINIC PRACTICE</u>	<u>CLINIC</u>	<u>TOTAL 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 PRACTICE</u>	<u>CLINIC</u>	<u>TOTAL 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

Proposed Rules  
Public Comments Received  
Discussion and Response

Title: "Curriculum and Minimum Requirements Subjects and Hour Schedule, Rule and Regulations for Schools of Beauty Culture Operation in West Virginia, Joint Barbers and Beauticians License," West Virginia Board of Barbers and Beauticians Legislative Rules, 3 CSR 1.

A public hearing regarding this rule was held on October 26, 1987, and was attended by twelve people. Copies of comments are attached. Ms. Mills spoke on behalf of Mr. Jack Donta, Huntington School of Beauty Culture. For "proposed": 1) Strike-throughs indicate a deletion proposed for public hearing. 2) Underlining indicates new text which was proposed for public hearing. 3) Strike-throughs of underlined text indicate deletion of a proposed addition. 4) Double underlining indicates text added after the public hearing. 5) Restoration of text proposed to be deleted is shown by double underlining plus strike-throughs. 6) Deletion of existing text after the hearing is shown by strike-throughs enclosed in brackets.

(1) Comment (Betty Dixon): The proposed rule will increase the workload of the Board. (Fiscal Note).

Response: The fiscal note has been revised to state more precisely that although there will be some increase in the Board's workload, the Board can support the increase out of existing funding.

(2) Comment (Betty Dixon): Section 3.2. The aesthetician curriculum has no rules or regulations. If the Board cannot issue rules and regulations relating to aestheticians then we should not propose a curriculum.

Response: The Board has decided to withdraw this proposed change. Counsel has advised the Board that under the West Virginia Code, the Board may not regulate aestheticians as such.

Proposed: New §3.2 and Table 3-1B relating to aesthetician curriculum have been deleted. Subsequent items have been renumbered accordingly.

(3) Comment (Betty Dixon and Rebecca Mills - Huntington School of Beauty Culture) Section 3.2. - The words "skin care" should be used instead of "aesthetician."

Response: The item is being withdrawn. See #2.

(4) Comment (Betty Dixon): Sections 3.3. and 3.4. The cross-over curriculums [for permanent waving] have no rules or regulations. If the Board cannot issue rules and regulations then we should not propose a curriculum. Also 31-D is the cross-

over curriculum for barbers and 31-C is the cross-over curriculum for beauty schools.

Response: The Board agrees that the standards governing permanent waving should be the same for barbers as for beauticians. Therefore, 3 CSR 3, "Operation of Barber Shops and Schools of Barbering," is being expanded to include the requirements applicable to permanent waving from 3 CSR 4, "Operation of Beauty Shops and Schools of Beauty Culture." No change related to this comment is proposed for this rule (3 CSR 1). The cross-over curriculums were correct.

(5) The Board has amended former §3.4 following the curriculum by striking the words "and hold a current license as a regular barber or beautician" on line 3. This deletion will make it possible for an applicant to take examinations for both licenses at the same time rather than having to wait for the first license before taking the second examination.

Proposed:

REQUIREMENT: Individuals must have completed 1800 hours of barber's training, or 2000 hours of cosmetologist's training. ~~[and hold a current license as a regular barber or beautician.]~~ 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 examination. Out-of-state applicants considered on individual basis. Requirements substantially equal are accepted. Requirements of less than 1800 hours barber's training or 2000 hours cosmetologist's training are usually accepted if supplemented by one (1) year of practical experience for every 300 hours of schooling not to exceed 1000 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 examination.~~

(6) Comment (JoAnn Berwinkle): Section 4.2. - Minimum with which a barber and beauty school will be permitted to operate for no more than 50 students instead of 20.

2. Change 20 dresserettes and 20 mirrors to 50 each.
15. Change 20 hairdressing chairs to 50.
17. Change 20 classroom chairs to 50.

Response: Twenty is a number selected as an example. Not all existing schools have as many as fifty students. §4.2 does require the addition of equipment in proportion to the number of additional students.

PUBLIC HEARING

Barbers & Beauticians Rules

10-26-87

DO YOU WISH TO COMMENT (YES/NO)

GROUP REPRESENTED (IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Glennard Mills	4128 <sup>th</sup> St. Hgt. W.D. 25701	Allyn Sch. of Beauty Culture	NO
John Brunkle	87.1 Box 418 Clarkburg, WV	Board Member BFB	NO
Edmund Jones	11 <sup>th</sup> St. Board of Barber's Examiners		NO
J J Angelle	211 Elm St. C. Bay, W.Va.	Bd. of Barber's Exam.	und.
Betty J Dixon	4328 Hughes St. Huntington	Board of Barber's Examiners	und.
Greene W. Schaub	329 S. Owen St. Martinsburg	International Beauty Exch.	YES
Charles B. Lynch	329 S. Green St. Martinsburg	International Beauty Exch.	NO
David M. Laine	1502 Market St. Wheeling, WV	Wheeling Beauty College	YES
Nona Cartlake	Coast. City, Ga.	Health Dept	
Ronald Brumbaugh	Dr. Bd. of Barber's Examiners		
Bernadine Pinon	338 Washington Ave. Huntington, W.V.	Hl. v. Chm. Barber College	NO



**Phillips Colleges, Inc.**

One Hancock Plaza  
Suite 1408  
Gulfport, Mississippi 39501  
(601) 864-6096

VIA FEDERAL EXPRESS

October 21, 1987

Department of Health  
Regulatory Development Section  
1800 Washington Street, E.  
Charleston, WV 25305

Gentlemen:

The enclosed are comments of opposition to certain proposed rule changes governing the beauty culture and barbering industry in the State of West Virginia.

I represent Phillips Colleges, Inc., owner of Wheeling Beauty College. During the past (7) seven years, I have worked diligently to resolve legislative and departmental rule conflicts. While these proposed rule changes may have some merit, their broad effect would cripple the beauty industry within the state as well as be deemed unconstitutional based on the "Restriction of Trade Doctrine."

I desire to speak at the upcoming public hearing to further voice my opposition to these proposed changes.

Sincerely,

PHILLIPS COLLEGES, INC.

D. David McGuire  
Vice President for Cosmetology

DDM/tw  
cc: Gerald D. Adams, President

**RECEIVED**

OCT 23 1987

**REGULATORY DEVELOPMENT  
SECTION**



## Phillips Colleges, Inc.

One Hancock Plaza  
Suite 1408  
Gulfport, Mississippi 39501  
(601) 864-6096

October 21, 1987

RECEIVED

OCT 23 1987

REGULATORY DEVELOPMENT  
SECTION

Department of Health  
Regulatory Development Section  
1800 Washington Street, E.  
Charleston, WV 25305

RE: Proposed Rule Change  
Chapter 30, Article 27, Section 1

Gentlemen:

I write in opposition to the proposed changes of this rule based on the following reasoning:

### Section 4 Licensing Standards

#### 4.1 General Policy

- (b) Imposing a five-year residency requirement for owners of schools of barbering and beauty culture greatly limits the number of prospective operators of such schools within the State of West Virginia. The worst scenario would be a situation of financial insolvency or death of a current school owner. This likely scenario would potentially cause a school to close, harming a number of students by depriving them of their education.
- (e) The proposed requirement of three rather than two re-registered regular senior instructors places a financial burden on schools desiring to operate with a fewer number of students by requiring the smaller school to pay instructors they actually do not need.

#### 4.3 Financial Responsibility

The requirement of a (\$125,000.00) one hundred twenty-five thousand dollar performance bond is ludicrous. The existing bond requirement is one of the highest in the nation. (See attachment) This amendment seems directed as a restriction of trade within West Virginia.

Department of Health  
October 21, 1987  
Page Two (con't)

4.5 Instructors

Please refer to comments in subsection 4.1 regarding requirement of three senior instructors.

**RECEIVED**

OCT 23 1987

REGULATORY DEVELOPMENT  
SECTION

Department of Health  
October 21, 1987  
Page Three (con't)

RE: Proposed Rule Change  
Chapter 30, Article 27, Section 1  
Series Number 2

I write in opposition to the proposed rule change governing the Qualifications, Training, Examination and Registration of Instructors in Barbering and Beauty Culture, more particularly the proposed 100 hour curriculum and examination required for a barber instructor to qualify to teach permanent waving.

Subsection 4.3

It seems ludicrous to require barber instructors to complete only 100 hours of instruction in the art of permanent waving and at the same time require students to complete 375 hours of instruction in the same area of expertise. I must ask, "who will teach who?" I believe that an instructor should be required to complete as a minimum, an equal number of training hours as that of the students he/she will teach.

**RECEIVED**

OCT 23 1987

REGULATORY DEVELOPMENT  
SECTION

RECEIVED

OCT 23 1987

REGULATORY DEVELOPMENT  
SECTION

126

SCHOOL LICENSE FEES AND SCHOOL FINANCIAL RESPONSIBILITY

STATE	ORIGINAL	RENEWAL	RESPONSIBILITY
Alabama	300	400 <sup>b</sup>	\$5,000 bond
Alaska	700	400	Personal proof of financial responsibility
Arizona	350	300	\$10,000 bond
Arkansas	500	100	\$5,000 bond
California	216	185	\$5,000 bond
Colorado	365	69	\$10,000 bond
Connecticut			Schools are no longer licensed
Delaware	50	50	\$5,000 for 25 students
Dist. of Columbia	100	50	None
Florida	150	75 <sup>a</sup>	\$10,000 & up based on sq. footage
Georgia	175	150 <sup>a</sup>	None
Hawaii	500	Kate <sup>b</sup>	\$5,000 bond
Idaho	500	150	\$5,000 bond
Illinois	100	200 <sup>a</sup>	None
Indiana	400	400 <sup>c</sup>	None
Iowa	500	200	\$15,000 bond
Kansas	100	25	None
Kentucky	1000	100	Personal proof of financial responsibility
Louisiana	305	155	\$5,000 bond or financial statement
Maine			Schools are no longer regulated or licensed by the board
Maryland	160	100 <sup>a</sup>	Personal proof financial responsibility
Massachusetts	200	200	\$5,000 bond up to 25 students;
Michigan	100 <sup>d</sup>	300 <sup>d</sup>	\$10,000 bond over 25 students
Minnesota	150 fee + 750 lic.	750 (3 yrs)	\$10,000 bond and personal proof financial responsibility
Mississippi	55	30	\$5,000 bond
Missouri	185	185	None
Montana	100	100	\$5,000 bond
Nebraska	1000	100	\$5,000 bond for ea. 20 students (1st year only)
Nevada	450	450	\$5,000 bond & 25 bona fide students
New Hampshire	125	125	None
New Jersey	100	50	\$10,000 minimum
New Mexico	500 + 100 <sup>e</sup>	500	\$5,000 bond
New York	600	Noted	\$20,000 bond
North Carolina	50	50	Personal proof financial responsibility
North Dakota	500	200	\$10,000 bond
Ohio	200	200	\$10,000 bond
OKlahoma	400	100	\$2,000 bond for 15 students + 1 instructor;
Oregon	1		\$3,000 bond per additional instructor
Pennsylvania	200	200	\$2,500 bond
Rhode Island	50	50	\$100 per student
Rhode Island	50	None	None
South Carolina	75	75	\$2,000 bond
South Dakota	100	25	\$5,000 bond
Tennessee	150	150	Not indicated
Texas	300	75	\$5,000 bond
Texas	500	200	\$5,000 personal bond
Utah	100	60 <sup>a</sup>	\$5,000 bond
Vermont	100	50	\$2,000 bond
Virginia	65	35	None
Virgin Islands	200	200	None
Washington	150	150	To be determined by Director of Dept. of Lic.
West Virginia	500	250	Personal proof financial responsibility
Wisconsin	50	50 <sup>a</sup>	None
Wyoming	100	100	None

Dr. Bowen of Farmer's Friends  
For: Russell Sherman  
Faculty of Barber College

Re: 100 hrs. Barber Institute,  
Oct. 26, 1987 <sup>to training in F.W.</sup>

The 100 hours training would  
be comprehensive hands  
on training.

The 375 hours in  
schools many hours  
will be spent sitting  
on the clinic stool  
waiting for customers.

I feel the 100 hour  
training is adequate  
when you consider  
it is actual work  
done and not wasted  
time.

Advanced training and  
permanent wave  
training previously

acquired should be reviewed. Wheeling Park College staff has had years of training that has never been considered.

SUBJECT:

FROM:

TO:

DATE:

I believe it would be a good idea in the future to do a random survey of students on the actual training they are receiving in the beauty schools and on actual training the crossover students have received.



STATE OF WEST VIRGINIA  
DEPT. OF HEALTH

MEMORANDUM



# International Beauty Enterprises, Inc.

329 South Queen Street  
Martinsburg, WV 25401  
October 22, 1987

RECEIVED

OCT 26 1987

Department of Health  
Regulatory Development Section  
1800 Washington Street, E.  
Charleston, WV 25305

REGULATORY DEVELOPMENT  
SECTION

Re: 3 CSR 5

To Whom It May Concern:

The following is our response to the proposed changes of Rules and regulations for Licensing Schools of Barbering or Beauty Culture.

The general policy (4.1) under Licensing Standards , Section 4 will require a five year residency prior to the issuance of a license for a school of barbering or beauty culture. It is most evident that little or no thought has gone into this proposed regulation. Our comments regarding this issue are as follows:

We deeply resent, if the need ever arises, being forced to sell our cosmetology school to an extremely limited market. The ability to operate a school of cosmetology arts and sciences is not something that one acquires from being a resident of West Virginia for the period of five (5) years. It is also something that cannot be acquired from reading a textbook or attending a seminar. As a school that is accredited by the National Accrediting Commission of Cosmetology Arts and Sciences I believe it is in the industry's best interest to sell the institution to someone with a similar background. In West Virginia that narrows the market to eight (8) other Nationally Accredited Cosmetology Schools. Is this any reason for ever considering owning or even expanding a cosmetology school in West Virginia?

If I am restricted to selling my school to a limited market and I do not receive the fair market value on my investment do I have any recourse?

If I offer my cosmetology school for sale and I have no interested parties that have the five year residency requirement do I just close the establishment and deprive the already enrolled students of their education?

In the minutes of the State Board of Barbers and Beauticians, Page 5, dated August 16, 1987 the following statement is made: "...franchised salons and schools are coming into this state and are creating much competition."

This type of antiquated thinking can be most detrimental to the growth of the cosmetology profession in West Virginia. Competition should be looked upon with much challenge and the desire to strengthen educational programs that are already in existence. It is through healthy competition that cosmetology students and licensed cosmetologists can grow further in their field. Complacency is not going to improve our industry in West Virginia.

The proposed five year residency requirement prior to issuance of a license for a barber or beauty school is a detriment to the growth of our industry and should not be a part of the proposed rules and regulations.

Secondly, the proposed requirement stating that the applicant has contracted for the employment of three or more registered regular senior instructors should also be deleted. In questioning the availability of senior instructors in the State of West Virginia we find there are approximately 37 active instructors. Simple mathematics will show that the availability of senior instructors to accommodate the needs of the accredited, non accredited and vocational schools in the state will utilize every available licensee in the state.

This proposed regulation would then require a school of cosmetology to deny enrollment if they are unable to find a third senior instructor.

This proposed regulation would also require an institution to send home students when a senior instructor calls in sick because they will no longer be meeting the requirements of the State Board of Barbers and Beauticians.

When a senior instructor takes a vacation and a replacement can't be found the school would be in violation unless they send their students home.

Unfortunately the piece of paper that states an individual is a licensed senior instructor does not mean that this individual is a qualified instructor. As a result of this

complacency in teaching will also become the norm. Why should a teacher even attempt to improve his or her ability when they have a piece of paper, a license that is a passport to a position, wether qualified or not, because a school owner needs three senior instructors to keep his doors open.

The present requirements to obtain senior instructor licensure in West Virginia is extensive and not realistic as it presently stands. To further require an institution to expand their staff would create extreme hardship on the institution and could possibly force the closing of some cosmetology schools in West Virginia.

We have already discussed the five year residency status with a Washington law firm that specializes in the field of cosmetology arts and sciences. Their immediate reaction was that a violation of law would take place if such a rule was enacted. We have since sent them the complete text of proposed changes. If the proposed changes are adopted we will most actively pursue any and all means to rescind these detrimental changes.

In closing it is indeed unfortunate that such a tremendous amount of time is being wasted caused by individuals that would rather limit, control and stifle the cosmetology school industry in West Virginia. Can you just imagine the growth of our total profession if this negative energy could be harnessed into developing and enhancing our educational programs so our students can truly reap the benefits of superior cosmetology education.

Yours truly,



George W. Schaub, President  
International Beauty Schools

cc: Edwin Roush, WV Board of Barbers and Beauticians  
Carol Cataldo, National Accrediting Commission of  
Cosmetology Arts and Sciences  
Dr. James Murphy, National Association of Accredited  
Cosmetology Schools  
Jerry Adams, Phillips Colleges, Inc.

AMENDED 1

Page 3. Section 4.2 - Classroom and Equipment - Minumum with which a barber and a beauty school will be permitted to operate for no more than 50 students instead of 20.

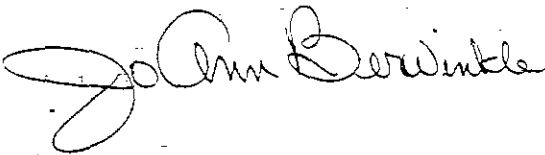
2. Change 20 dresserettes and 20 mirrors to 50 of each.
15. Change 20 hairdressing chairs to 50
17. Change 20 Classroom chairs to 50.

Jo Ann Berwick

ALL THE AMENDMENTS MUST PERTAIN TO THE OPENING OF A NEW BEAUTY OR BARBER SCHOOL OR THE PURCHASING OF AN EXISTING SCHOOL.

AMENDED # 5

1. Turn page to title : Rules and Regulations for Licensing Schools of Beauty Culture and Barbering.
  1. All the amendments must pertain to the opening of a new beauty or barber or the purchasing of an existing school.
  2. A five (5) year residency requirement for major stockholders, not just owner.
  3. Full time employment of three (3) registered regular instructors, not the proposed employment.
  4. Increase Bond to \$125,000.00.
2. Page 1: Section 2.1 Application  
Rules must apply to major stockholders
3. Page 1& 2 Section 4.1. General Policy: applicant must be changed to major stockholder.  
Turn to page 2 - Contracted changed to hired full time Instructors/
4. Page 2 Section 4.5 - Show to proposed employment must be changed to hired full time.
5. Page 2 - Section 5.1: Name of applicant must be changed to Major stockholders.
6. Page 3 Section 5.3: Board Action- Employment of at least 2 registered Instructors changed to Three Instructors.



Representing Jack Dorta - Huntington  
School of Beauty Culture  
412 8th St.  
Hgn., W.V. 25701

10-26-87

It is my hope that there would be much more time put into research and study of these said proposals. I do not believe there has been adequate thought and honest research done to warrant a "rush" through of these proposals as they read now.

- Concerning the proposal of 3 Senior Instructors - I feel it could work better if it were stated one Senior Instructor for 20 students currently enrolled in any said school.

Concerning the proposal of a 5 year required residence - - What happens if the current owner dies? Or, if he decides to sell what happens to "free enterprise"?

The proposed rule for Esthetician should read a proposed rule for "Skin Care".

Finally who will teach a Barber to qualify him/hu to instruct ?? How? + Who?

Rebecca Mills

10-25-87

I ~~request~~ request that these Comments on proposed changes in the Rule & Regulations governing Beauticians, Barbers, <sup>Instructors,</sup> Salons, Shops and Schools be made a part of the record.

When we first started working on proposed changes, I kept suggesting that the Board needed time & <sup>work</sup> meetings to properly make needed changes. Also research as to other States. It is my personal feeling's the board has not had adequate time & research to do this.

~~The meeting.~~

The public hearing today is on Proposed Rule Series # 1, 2, 3, 4, 5, 6. What I have read is not the changes the Board of Barbers and Beauticians worked on. There have been proposed rule deleted also changes made in proposed rule and there have been additions to proposed rule that the Board of Barber and Beauticians did not approve.

(1)

10-25-87

Series  
Proposed Rule # 1

Curriculum and minimum Requirements  
Subject & Hour Schedule Rules & Regulations  
for Schools of Beauty Culture in West Virginia  
Joint Barbers and Beauticians License

#1. The effect of proposed rule will increase the work load of the W.V. Board of Barber & Beauticians which is always short handed.

#2. The aestheticians curriculum has NO Rules or regulations. Inspector

#3. The last page same as above also it is the <sup>31D</sup> Cross over Curriculum for <sup>Barber</sup> schools. 31C is the Cross over Curriculum for Beauty schools

~~If the Board~~ If the Board cannot issue rules & regulations relating to Aestheticians then I feel we should not propose ~~for~~ a curriculum. We need to change ~~In propose~~ this curriculum to propose a curriculum for 300 hr Skin Care  
(2)

10-25-87

Proposed Rule Series # 2

Qualifications, Training, Examination and  
Registration of Instructors in Barbering  
& Beauty Culture

# 1. This proposed rule will increase the  
work load of the WV. Board of Barbers & Beauticians

# 2. 4.3.1. 100 hr curriculum for Barber Instructors  
to qualify to teach permanent waving.

~~For~~ This like Medication Curriculum the  
Board can not issue rules & regulations when  
they should not propose this rule.

Proposed Rule <sup>Series</sup> # 3

Operation of Barber Shops & Schools of Barbering

# 1 This proposed rule The WV Board  
of Barbers & Beauticians did not make or  
approve

Proposed Rule Series # 4 Operation of Beauty Shops  
and Schools of Beauty Culture

# 1 This proposed rule The WV Board of  
Barbers & Beauticians did not make or approve

(3)

10-25-84

### Proposed Rule Series 5

Rules & Regulation for Licensing Schools of Barbering  
& Beauty Culture

- # 1 4.1. The changes are incorrect
- # 2 4.5. The changes are incorrect
- # 3 5.3. Incorrect
- # 4 6.2. The changes are incorrect
- # 5 Page 5 4<sup>th</sup> paragraph Changes are incorrect

### Proposed Rule Series 6

Minimum Curriculum for schools of Barbering

# 1 These changes will ~~effect~~ ~~the~~ increase the work load of the WV Board of Barber & Beauticians which is always overhanded

# 2 As in destruction of The Board cannot issue rules & regulations for the proposed permanent waving curriculum then The Board should not propose a curriculum

# 3 There is no Equal Opportunity by taking away from the Beauticians Curriculum & adding to the Barber Curriculum  
(4)

10-25-80

Equal should be to take away from the Barber Curriculum & giving to the Beauty Culture Curriculum.

With the Cross over Curriculum in effect now the employment opportunities are better & ~~700~~<sup>700</sup> hrs shorter for the students in W.V. Barber Schools ~~in~~ as compared to surrounding States

In summary, I feel the primary function of the Board of Barbers & Beauticians is to protect the Health Safety and Welfare of the Public.

The proposed rule changes omits rules and regulation which are important to the Health Safety & Welfare of the Public. I am in favor of changes & updating of rules & regulation.

Betty J. Dixon  
4328 Hughes St  
Huntington, W. Va. 25704  
(5)

KATZ, KANTOR & PERKINS

ATTORNEYS AT LAW

NORRIS KANTOR  
GUY W. PERKINS  
BILLY E. BURKETT  
WAYNE L. EVANS  
WAYNE S. STONESTREET  
MCGINNIS E. HATFIELD, JR.

FIFTH FLOOR LAW & COMMERCE BLDG.  
P. O. BOX 727  
BLUEFIELD, WEST VIRGINIA 24701

TEL. 304/327-3531

LEROY KATZ, L. C.\*  
OF COUNSEL  
\* WV & DC BARS

July 20, 1988

Richard Hartman, Chairman  
Regulatory Development Section  
Office of Secretary of State  
1800 Washington Street, East  
Charleston, WV 25305

Re: Board of Barbers and Beauticians Emergency Rules  
and Regulations Filed June 10, 1988

Dear Mr. Hartman:

The Little French Beauty Academy and other members of the West Virginia beautician community hereby request that the Secretary of State pursuant to the authority granted by West Virginia Code § 29A-3-15(a) disapprove the June 10, 1988, filing of Emergency Regulations by the West Virginia Board of Barbers and Beauticians and the State Department of Health, Series 1 through 6, which were filed on an emergency basis for the following reasons:

1. The Board of Barbers and Beauticians has exceeded the scope of its statutory authority in promulgating the Emergency Rules; and

2. An emergency does not exist justifying the promulgation of the above-mentioned rules.

The West Virginia Board of Barbers and Beauticians (hereinafter the "Board") has exceeded its statutory authority in promulgating the aforementioned Emergency Rules because "barbering" as defined by statute, West Virginia Code § 16-14-2, does not include "permanent waiving." The Board cannot, by regulation, alter the statutory definition of "barbering" through the exercise of its authority to promulgate rules and regulations under the Administrative Procedures Act and other statutory provisions. Although the Board does 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 qualification of applicants for licensure, and for the licensing of instructional personnel for schools of barbering and beauty culture, it must exercise this power within the statutory

FILED  
1988 JUL 21 PM 1:34  
SECRETARY OF STATE

KATZ, KANTOR & PERKINS

Richard Hartman, Chairman  
Page -2-  
July 20, 1988

framework from which it issues. The Proposed and Emergency Regulations clearly add a minimum curriculum of 2,000 hours for a barber/permanent waiving license favoring without any justification the crossover for barbers at less than the requirements of beauticians, i.e., 2,000 hours for a beautician's license, plus 300 hours to do crossover barbering. The Emergency and Proposed Regulations do not allow beauticians a similar "minimum curriculum" for shaving and trimming mustaches and similar barbering activities. Clearly, should barbers desire to invade beauty culture activities, they should do so through the legislative process and not attempt to circumvent the clear requirements of existing statutes through the promulgation of emergency or proposed rule making.

No emergency exists which would justify the promulgation of the above-mentioned rules as Emergency Rules. West Virginia Code § 29A-3-15(g) provides that 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 the Code or by a federal statute or regulation or to prevent substantial harm to the public interest. In its June 10, 1988, filing with the Secretary of State, the Board states that the Proposed Rules are filed on an emergency basis because of current economic difficulties on the part of barbering schools because of their reported inability to offer instruction in permanent waiving to their students. Concluding that it is in the public interest to encourage the overall economy of the state, the Board concluded that the rule should be filed on an emergency basis in order to prevent substantial harm to the public interest. To conclude that an emergency exists is absurd.

Barbers and barber schools have for years been attempting to include permanent waiving and other "beauty culture" activities within the scope of the statutory definition of "barbering" without amending the statutory definition of the same. The most recent skirmishing with regard to this matter occurred in the West Virginia Supreme Court of Appeals decision in Wheeling Barber College v. Roush, 321 S.E.2d 694 (W.Va. 1984), wherein the Wheeling Barber College's petition for a writ of mandamus was denied. After that decision, barbers of West Virginia waited three years before commencing any activity with regard to the promulgation of rules and regulations to establish additional crossover provisions by barbers and beauticians concerning the activities each are authorized to perform and the educational requirements concerning the same. Prior to the 1984 decision, barbers and beauticians had met in court over similar issues in 1979. Thus, to find that permanent waiving should be included on

KATZ, KANTOR & PERKINS

Richard Hartman, Chairman

Page -3-

July 20, 1988

a preferential and favoritism basis as a "minimum curriculum" of 2,000 hours for a barber/permanent waiving license and to qualify instructors to teach such minimum curriculum with only 100 additional hours of work coupled with a test in no manner can be categorized as an emergency. For beauticians to trim beards or shave a patron, they have to incur three times the amount of work to secure a license to perform the same. How the Board concluded that it is in the public interest for approximately 2,500 barbers to be given preferential treatment over approximately 8,000 beauticians in the State of West Virginia has no basis for logic to support such a conclusion. To enact discriminatory and partial regulations favoring barbering and barbering schools at the expense of beauticians and beautician schools is not in the public interest. Thus, to prevent substantial harm to the public interest, the Secretary of State should disapprove the Emergency Rules.

It should be noted that the legislative rule-making committee will meet shortly to consider the identical Proposed Rules before it and determine whether or not a recommendation should be forthcoming to approve such rules with amendments or at all. West Virginia Code § 29A-3-15(f) authorizes the legislative rule-making review committee to make the same determinations concerning an Emergency Rule as the Secretary of State is authorized to make under West Virginia Code § 29A-3-15(a). Such committee may recommend to the Board, the legislature, or the Secretary of State such action as it may deem proper. We believe that the failure of the Secretary of State to disapprove the Emergency Rules filed by the Board will cause economic havoc among barbers and beauticians if the Emergency Rules are placed into effect and barber instructors and students seeking to become barbers begin acting upon the same in reliance upon such rules becoming final in the same form in which they now exist. We do not believe that these Emergency Rules will become law or, if they do, that they will appear in the same form in which they now exist. Thus, it is our request that the Secretary of State disapprove the aforementioned Emergency Rules on or before July 22, 1988. Alternatively, to prevent economic havoc in the barbering and beauty culture sectors of West Virginia's economy, the Secretary of State should make a finding and conclude that the information submitted by the Board is insufficient to allow a proper determination to be made as to whether the Emergency Rules, presently before the legislative rule-making review committee on a proposed basis, should be disapproved, and conclude that a further investigation, including, but not limited to, requiring the Board or other interested parties to submit additional information or comment or by fixing a date, time and

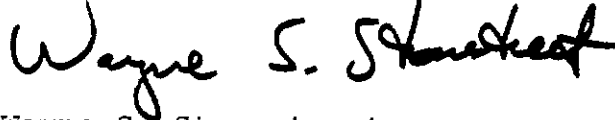
KATZ, KANTOR & PERKINS

Richard Hartman, Chairman  
Page -4-  
July 20, 1988

place for the taking of evidence on the issues involved in making the determination required by West Virginia Code § 29A-3-15(a).

Sincerely,

KATZ, KANTOR & PERKINS



Wayne S. Stonestreet  
Counsel for Little French  
Beauty Academy, et al.

WSS/saw

cc: Mr. Charles G. Brown  
Attorney General

Ms. Nora M. Antlake  
Assistant Attorney General

Ms. Kay Howard, Director  
Regulatory Development Section  
State of West Virginia Department of Health



## LITTLE FRENCH *Beauty Academy*

Complete Training In All Lines  
Of Beauty Culture  
3230 East Cumberland Road  
Bluefield, West Virginia 24701  
Phone 304-325-3696

NANCY F. SMITH  
President and Director  
FRED PARSONS, SR.  
Vice President  
NITA S. BATES  
Manager  
MARQUETTA DOWNARD  
Asst. Manager

July 20, 1988

Richard Hartman, Chairman  
Regulatory Development Section  
Office of Secretary of State  
1800 Washington Street, East  
Charleston, WV 25305

Re: Legislative Rules  
Title 3 Series 1-6  
Board of Barbers and Beauticians

Dear Mr. Hartman:

In reviewing the court case of Wheeling Barber College, etc., et al. v. E.B. Roush, etc., et al. #16097, located in the 321 South Eastern Reporter, 2nd series, Supreme Court of Appeals of WV Oct. 17, 1984. The Barber College sought a writ of mandamus to compel the State Board of Barbers and Beauticians to insert permanent waving into the curriculum of the state's barber schools and to certify instructors to teach and barbers to practice permanent waving. The writ was denied.

The services barbers and beauticians may provide are distinguished in WV Code 16-14-2 (1959) (listing the services that each is entitled to render and authorizing only beauticians to give permanent waves) Although WV Code 30-27-3 (1980) authorizes the State Board of Barbers and Beauticians to promulgate rules and regulations to establish a joint barbers and beauticians license, none has yet been promulgated. A joint license could abolish the distinction of WV Code 16-14-2 (1959)

Now the State Board of Barbers and Beauticians have filed with the Secretary of State, these new emergency rules for barber schools to teach 2 courses in their school. Barber training for 1800 hours and barber/permanent waves for 2000 hour course. I find that this is discrimination against beauty culture schools in the state because they can only teach one course of beauty culture with 2000 hours.

If you disapprove of these rules being emergency, then the Legislative Rules Committee would have to act on the rules. Debra Graham from the Legislative Rules Committee would probably not hold their meeting until September 1988, which would give us a chance to be at their meeting and state the facts from our point of view.

I'm enclosing copies of petitions signed by licensed beauticians that cover 19 counties in the state that are against these rules. If I'd had more time I would have covered more counties.

Sincerely,

*Nancy F. Smith*

February 9, 1988

Richard Hartman, Chairman  
Regulatory Development Section  
Office of Secretary of State  
1800 Washington Street, East  
Charleston, WV 25305

Re: Board of Barbers and Beauticians and Amendments  
to Rules Pertaining Thereto

Dear Mr. Hartman:

The undersigned, being a licensed beautician in the State of West Virginia, desires to submit comments regarding the proposed rule changes affecting barbers and beauticians. The comments pertain to Title No. 3 of the Legislative Rules adopted by the Board of Barbers and Beauticians and pertains to proposed amendments for Rules numbered 1, 2, 3, 4, 5 and 6. Proposed Rule No. 1 needs to be modified to provide that beauty schools should be able to teach barbering if barber schools are going to be allowed to teach permanent waving as proposed in Proposed Rule No. 6. To limit beauty schools to the teaching of permanent waving, etc., but to allow barber schools to teach permanent waving in addition to barbering would not be treating all schools equally under the law and would, therefore, appear to deny beauty schools due process of law while permitting barber schools to have an advantage over course offerings when compared to beauty schools.

In addition, the requirements in Section 3.4 of the proposed amendment to Rule No. 1 should provide that all applicants should submit to an examination whether in the state or out of the state.

With respect to Section 5.3 of the proposed amendment to Rule No. 1, we submit that the rule should be modified to state that no school will be permitted to open or operate with less than 2 instructors; we concur that there should be one instructor for every 20 students, but if only 40 students are enrolled in the school, then the school should only be required to have 2 instructors rather than 3 instructors as called for in such a situation by the proposed amendment to the rule.

Regarding the proposed amendment to Rule No. 2, your attention is specifically directed to Section 6.1.2 which limits its provisions to instructors in beauty culture only. Why should barbers be excluded from this renewal qualification? Again, we submit that it would be discriminatory to require instructors in beauty culture to renew their certificate every two years but not require barbers to do likewise.

Richard Hartman, Chairman  
Page -2-  
February 9, 1988

With respect to the proposed amendment to Rule No. 3, your attention is directed to Section 3.6 and it is submitted that an addition to this rule should be added which provides that shampoo bowls and boards must be cleaned after each shampoo. Likewise, Section 3.11 should be changed to require at least 12 combs, because if you do permanent waving, etc., you need 12 combs. It is further submitted that an additional section needs to be added to the proposed amendments to Rule No. 3 which would make the existing Rule No. 14 of the Rules and Regulations for Beauty Shops adopted by the State Department of Health applicable to barber shops as well.

Regarding the proposed amendment to Rule No. 5, your attention is specifically directed to Section 4.1, wherein it is proposed that an applicant for a license for a school of barbering or beauty culture must have been a resident of the state for at least five years. It is submitted that this requirement would be a restraint of trade, particularly with respect to schools in border counties, such as Ohio, Cabell, Wood, Hancock, Mercer, monongalia, and the counties in the eastern panhandle. It is only logical to assume that if a school in one of those counties were for sale, the prospective purchaser would be from one of the counties of the neighboring states. In view of the fact that, in each of the aforesaid counties, considerable commerce is transacted with counties in the adjoining state, the enforcement of this rule could have a deleterious effect on the value of barbering and beauty culture schools in those counties and strenuous objection is noted to the proposed rule. With respect to the requirement in Section 4.5 that the applicant must show the proposed employment of at least 3 registered senior instructors, it is submitted that 2 would be sufficient, especially if the school has 40 or less students. The requirement that there be one instructor for each 20 students is a good requirement and the change herein suggested would be more realistic rather than the proposed rule change.

Insofar as the proposed amendment to Rule No. 6, it should be noted that the explanation is inaccurate because the changes will definitely increase the workload of the Board if they must test barbers for permanent waving. More importantly, however, the proposed rule is discriminatory in that it allows barber schools to teach permanent waving but does not provide for beauty schools to teach barbering. This same objection was noted with respect to the proposed changes in Rule No. 1.

Your attention to the comments herein set forth as they apply to the proposed rule changes will be appreciated.

Sincerely,

*Donna Minter*  

---

*Honey's Way Villa*  
*Beckley, W. VA. 25801*



WEST VIRGINIA COSMETOLOGISTS ASSOCIATION

41 Elkhorn Street  
Welch, WV 24801  
20 July 1988

Richard Hartman  
Chairman Regulatory Development Section  
Office of Secretary of State  
1800 Washington East  
Charleston, WV 25305

Dear Mr. Hartman,

I heard today you will give a decision Friday 22 July 1988 regarding Rules 1 through 6 from the Board of barbers and beauticians as an Emergency Action.

Please reference Case # 16097 of October 17, 1984 Supreme Court of Appeals of WV - Wheeling Barber School, etc, et al V E.B. Roush, etc, et al - - also please refer WV Code 30-27-3 (1980) authorizing the State Board of barbers & beauticians to promulgate rules and regulations to establish a joint barber-beautician license - - this has been done! Classes have been taught and examinations have been conducted - - consequently a method has been provided whereas barbers can legally do perms in West Virginia.

One license with one definition of services for barbers and beauticians would end this continuing industry conflict and allow the industry to progress to better serve the public.

Please do not pass these rules as an emergency action without another public hearing - - please do not further allow fragmentation of our industry.

Sincerely,

*Albert Ciamparella*  
Albert Ciamparella  
WVCA Board of Directors  
Past State President (2 terms)  
Past WVCA Legislative Chair (9 years)

P.S. I was appointed by the Board of b/b to serve on the committee to write the curriculum for the cross-over regulation.

SECRETARY OF STATE  
OFFICE OF THE SECRETARY

1988 JUL 22 AM 10:18

FILED

**KATZ, KANTOR & PERKINS**

ATTORNEYS AT LAW

NORRIS KANTOR  
GUY W. PERKINS  
BILLY E. BURKETT  
DEBRA A. ARCHER  
WAYNE L. EVANS  
WAYNE S. STONESTREET

FIFTH FLOOR LAW & COMMERCE BLDG.  
P. O. BOX 727  
BLUEFIELD, WEST VIRGINIA 24701  
TEL. 304 / 327-3551

LEROY KATZ, L. C. \*  
OF COUNSEL  
\* WV & DC BARS

June 30, 1988

Mr. Richard Hartman, Chairman  
Regulatory Development Section  
Office of Secretary of State  
1800 Washington Street, E.  
Charleston, WV 25305

RE: Board of Barbers and Beauticians and Amentments to  
Rules Pertaining Thereto

Dear Mr. Hartman:

The undersigned attorney represents a beauty school as well as a number of beauticians throughout the state of West Virginia who will be adversely affected by the proposed amendments to rules pertaining to the Board of Barbers and Beauticians, and regulatory attempts to amend Chapter 16, Article 4, Sections 1, 2, etc., of the Official Code of West Virginia. It is our understanding that at a State Board meeting of barbers and beauticians held in Parkersburg on May 22, 1988, these proposed rules and regulations were discussed and that the Board was advised that it was the intent of all concerned to put these rules and regulations into effect by filing an Emergency Filing Notice, although it was recognized that it was up to your office to determine whether there was in fact an emergency. It is our further understanding that upon the advice of Kay Howard of the Regulatory Development Section of the Department of Health, a writing was prepared indicating that an emergency existed in order to try and put these rules and regulations into effect under the Emergency Rule Provision rather than letting them be put into effect in the normal course of events.

In view of the fact that these proposed changes seriously affect beauty schools throughout the state as well as beauticians throughout the state of West Virginia, and in view of the fact that these proposed rules and regulations apparently ignore many of the detailed criticisms of same submitted in writing to you by various beauticians in November and December, 1987, I would respectfully request that you immediately forward to the undersigned attorney anything that has been filed by the Board of Barbers and Beauticians to support the alleged claim

KATZ, KANTOR & PERKINS

Mr. Richard Hartman, Chairman  
Page -2-  
June 30, 1988

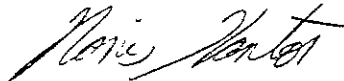
that an emergency exists requiring the emergency enactment of these rules and regulations.

I believe it is obvious from the content and tone of this letter that my numerous clients do not believe there is any emergency whatsoever and that this is simply an attempt to achieve a result under the guise of an emergency, which result might not be able to be achieved in the normal course of rule making procedure.

Your prompt attention to the request herein contained would be appreciated.

Sincerely,

KATZ, KANTOR & PERKINS



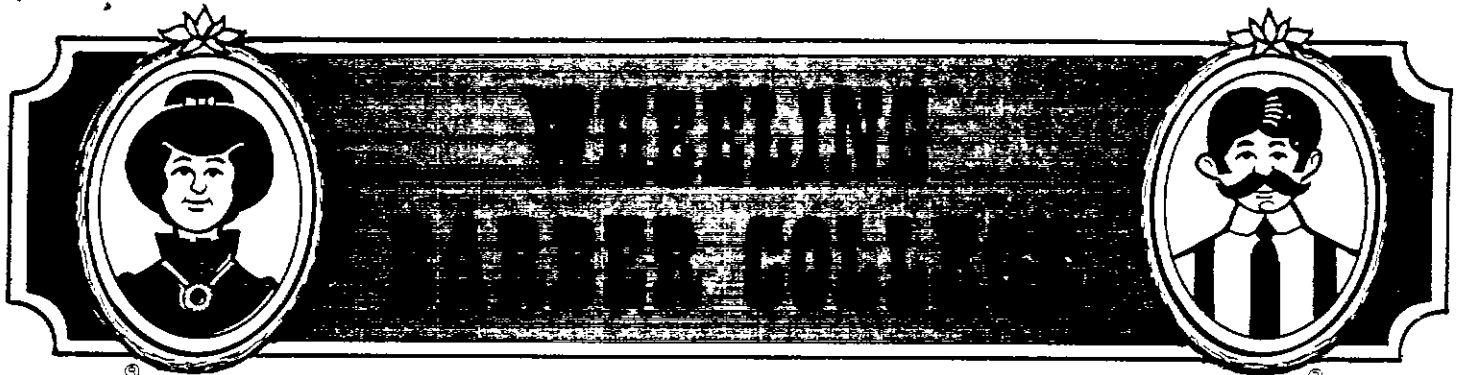
Norris Kantor

NK:bs

cc: Mr. Charles G. Brown  
Attorney General

Ms. Nora M. Antlake  
Assistant Attorney General

Ms. Kay Howard, Director  
Regulatory Development Section  
State of West Virginia Department of Health



1107 Main Street, Wheeling, West Virginia 26003 • Phone: 304/232-0100

April 1, 1987

The Honorable Ken Heckler  
Secretary of State  
Capitol Building  
Charleston, WV 25305

Dear Secretary Heckler:

On March 29th at 2:20 p.m. the State Board of Barbers & Beauticians passed a motion to put permanent waving into the curriculum of the barber colleges and to qualify the barber instructors to teach permanent waving. This was a giant step forward for the barbering industry. I have worked for three and a half years through the Board, the Legislature, and the Supreme Court to accomplish this goal.

We had taught permanent waves in our school and the other two barber colleges in the state for about eight years. Then in November, 1983, just five months after I had purchased the Wheeling Barber College, the Board under pressure from the beauty college owners put a prohibition on permanent waving by barbers and barber colleges. Wheeling Barber College has lost an estimated \$350,000.00 over the last three years due to this prohibition. Our schools survival depends on this rule change.

In 1983 we had plans of expansion and remodeling. Instead we had to take pay cuts and lay offs. I want to stress the urgency of this rule change as an emergency. Not only does our survival depend on this change, but our currently enrolled students want the opportunity to be trained in permanent waving.

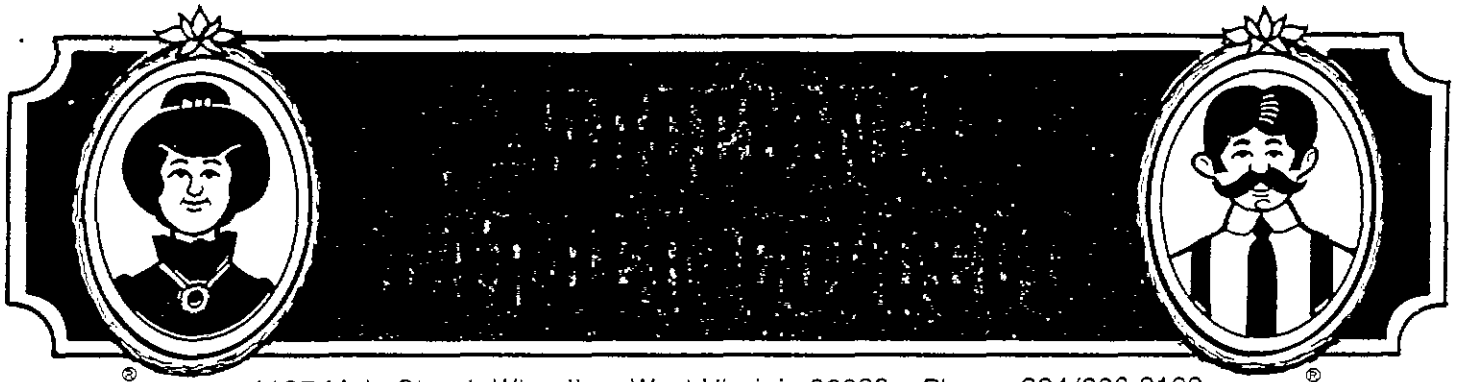
I would be happy to discuss this with you further. Please contact me should you find any question as to the urgency of this situation. I have enclosed a breakdown of losses that have occurred based on previous enrollment and clinic income. I have also enclosed information on the Huntington and Charleston Barber Colleges' losses.

Thank you for your time and consideration.

Sincerely,

Beverly Thalman  
President

Enclosure  
cc: Rich Hartman  
Nora Antlake



1107 Main Street, Wheeling, West Virginia 26003 • Phone: 304/232-0100

ESTIMATED LOSSES DUE TO RESTRICTION ON PERMANENT WAVING BY BARBERS

TUITION	1984	20 STUDENTS @	\$2,745.	\$54,900.00
	1985	28 STUDENTS @	\$2,745.	\$76,860.00
	1986	35 STUDENTS @	\$3,127.	<u>\$109,445.00</u>
				\$241,205.00

HAIRSTYLING	1984	\$16,000.00
	1985	\$31,000.00
	1986	<u>\$37,000.00</u>
		\$84,000.00

MERCHANDISE SALES \$4,500.00

LEGAL EXPENSES \$10,000.00 (Jolyon McCamic)  
plus current expenses

BEVERLY THALMAN PERSONAL TIME, LOBBYING, AND EXPENSES \$20,000.00

TOTAL ESTIMATED LOSSES \$359,705.00

March 30, 1987

Ms. Beverly Thalman  
Wheeling Barber College  
1107 Main Street  
Wheeling, W. Virginia 26003

RE: Charleston and Huntington W. Virginia Barber Schools

Dear Beverly:

I am writing to you in an effort to solicit help in rectifying a serious problem in the State of West Virginia concerning the future of barbering in the state, specifically as it relates to the financial condition of the barber schools due to the 1983 ruling that restricts "Barbers" from performing permanent waves on customers.

This ruling, because of the restrictions it places on our barbers, inhibits our ability to attract students by limiting their employment opportunities drastically; thereby giving the cosmetology schools in the state an unfair and unnecessary advantage.

In order to show the impact of this legislation on our schools, I offer you the following figures for your review:

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>Est. 1987</u>
<u>Huntington</u>				
Tuition Revenue	\$77,167	\$70,147	\$61,883	\$51,377
# of Students	22	20	15	12
<u>Charleston</u>				
Tuition Revenue	\$82,801	\$80,474	\$46,723	\$36,012
# of Students	23	15	11	8

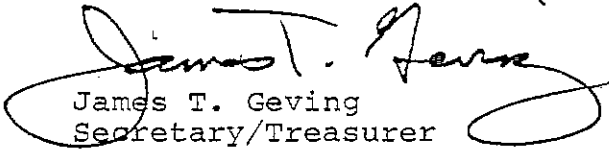
Ms. Beverly Thalman  
March 30, 1987  
Page 2

As you can readily see by the above table, our tuition and student load has been dropping significantly each year since the ruling went into effect. At this rate, it is becoming critical that we join forces to try to get this ruling reversed as soon as possible. If we are forced to wait another year for these changes to occur, it places extreme pressure on the schools to continue operating in this losing manner. To lose these schools because of a ridiculous ruling such as this would be a major set back for the barbering industry in the State of West Virginia.

I urge you to proceed with any avenues open to you in securing an immediate change in the law. I further authorize you to use this letter in any manner you see fit in substantiating our common cause.

Sincerely,

THE BARBERS, HAIRSTYLING FOR MEN & WOMEN, INC.



James T. Geving  
Secretary/Treasurer

JTG:pdk

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
 SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
 BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES  
 ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
 AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
ROBERT NUCKLES	925 CEDAR HILL DR. RIDGEY Jackson County
Heather Freeman	3111. Hinde Ridge-Kennelwood
Cindy Hoffman	PO BOX 700 (Corryville W. Va 26171)
Daniel Clemens	RI. 4A Box 1098. Mineralwell, W. Va. 26150
Karen White	10th Avenue Parkersburg, W. Va. 26101
Rhonda Payne	1816 7th Street - Parkersburg, W. Va. 26101
Glenn Holt	611 Lakewood Dr. Parkersburg W. Va 26101
Karen Hadman	814 Lee St. Parkersburg W. Va 26101
Bernice Stillmore	2205-23rd St. Parkersburg, W. Va. 26101
Joni Gray	P.O. Box 1045 St. Albans, W. Va. 25117
Jeff Anderson	44 Oak Circle Parkersburg W. Va. 26101
Bill Davis	201 31st St. + Niagara Falls 26105
John Powell	36th St. Parkersburg, W. Va. 26101
Charlotte H. G. Smith	1611 Park St. Parkersburg W. Va 26101
Shelly Lips	2007 Parkersburg W. Va 26101
Randy Green	2007 " " " "
Jamie Hart	" " " "
Laura Condit	1215 33rd Street Parkersburg W. Va 26101
Michael G. Green	1416 2nd St. Parkersburg W. Va 26101
Kathryn Mack	1110 - W. Va. Ave. Parkersburg W. Va 26101
Timothy Powell	1003 Oak St. Parkersburg W. Va 26101
Marie E. Harris	503 Fuller Ridge W. Va 26101
Leanne H. Miller	1111 - 19th St. Parkersburg, W. Va. 26101
Mary A. Mentore	1014 19th. Parkersburg, W. Va. 26101
Florence Crawford	1015 19th Parkersburg W. Va 26101
Paul D. Kestler	1000 15th Parkersburg, W. Va 26101
Helena Livingston	1100 Danford Ave. Parkersburg, W. Va 26101
Mrs. H. G. G. G. G.	1600 Danford Ave. Parkersburg, W. Va 26101
Regina L. G. G.	1600 Danford Ave. Parkersburg, W. Va 26101
Lee G. G.	1607 Danford Ave. Parkersburg, W. Va 26101
Elizabeth McCall	Phyllis Apt 481 Parkersburg W. Va 26101
Sharon Snyder	411-39th Avenue 26101
Ruth R. G.	192 Park Center Dr. Parkersburg W. Va 26101

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Bernice J. Ware	Monroe St. Monaca # 4 Petri W
Sharon Reed	Box 164 Crumpler WV 24825
Pat Smith	1600 Stadium Drive
Tamara Freeman	Rt 1 Box 223 Narrows Va
Marlene Andis	Lakeland Pl. Plunged
Sharon Spencer	113 Riegley St. Bluefield, VA 24
Connie Fisher	1003 Adams St. Princeton
Jeanie Peoples	224 Kern St Bluefield, W Va
Anita Moore	Rt 1 Box 353A Princeton, W
Lut. Fike	P.O. Box 1411 O.R. W. Va
Ophelia Jones	Rt 1 W Va
Nancy Wilson	Rt 1 W Va
David John	Rt 1 W Va 20106
Betty Harrison	Rt 1 W Va
Betty Lewis	Rt 1 W Va Box 9893
Marathy Woodridge	Rt 1 W Va 8 B63
Patricia Kage	Rt 1 Box 579 Princeton W Va 24112
Deloris Hogue	307 Central Nancy W Va Dist. Va.
Gloria J. Allen	14700 W. Main St. Princeton
Carolyn S. Kessler	Rt 6 Box 321-C Petri, WVA 24740

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
 SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
 BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES  
 ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
 AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Jeanie Easles	3125 Walker, Princeton WVA
Jammy Anke	Five Plaza Princeton WVA
Jim Hambleck	" " " "
Mina Miller	" " " "
Jammy Gillis	Princeton
Charles D. White	Princeton
Beau Sandy	Princeton, WV
Rebecca Heale	Beld. WV
Becky Rhodes	Beld. VA
Brenda Janney	Pat WV
Carolyn Bray	Rt. 1 Box 248 Rock, WV 24747
Nelly Wood	1143 Mercer St Princeton WV 24740
Ann Duggan	912 Mercer St Princeton, W.Va.
Ann Sylvestre	827 Mercer St Princeton W.Va 24740
Charlynn Meadows	827 Mercer St Princeton WV
Lita Walker	827 Mercer St. Princeton WV
Kate Strasko	827 Mercer St, Princeton W.Va
Laura D'O'Neil	611 Mercer St Princeton WV
Conley Mc Cleure	602 Mercer St Princeton WV 24740
Nozel Quispac	602 Mercer St Patn.
Jennie Kyne	712 Mercer St Patn. WV 24740
Connie Scott	712 Mercer St Patn WV 24740
Lisa Pettig	712 Mercer St Patn WV 24740
Mary Ann Thron	712 Mercer St Patn WV 24740
Julia Pentony	712 Mercer St Patn WV 24740
Sandy Kiala	1234 E. main St Patn WV 24740
Patricia Guerin	" " " " 24740
Jeddy Hill	1137 Mercer St Patn WV "
Connie Lamb	1137 Mercer St. Patn W.Va. 24740
Beverly Ford	1137 Mercer St. Patn W.Va 24740
Linda Clark	Rt 6, Box 542 Patn St W 24740
Freda Quisenberry	Box 225 Patn WVA 24740
Monica Hartnett	Box 291 MARIANA WV 24736



THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Mary Zwick	20 Box 5274 Princeton, W.V. 24740
Albion Stewart	208 Thelma St. Bluefield, W.V. 24701
Robert O. Carson	2809 Edgemont Dr. Bluefield, W.V. 24701
Sara C. Cox	Rt 1 Box 179 Hinton, W.Va 25951
Doc M. Pink	1136 Stewart St. Wheeling, W. Va. 24701
Melissa Willey	P.O. Box 201 Bluefield, W.V. 24701
Nichole Sel	34 Green Acres, Princeton, W.V. 24740
Melissal Jayne	Rt 1 Box 332 Bluefield, W.V. 24701
Tammy Paul	18 Watkins NHA Petoski, W.V. 24740
Karen Muncy	P.O. Box 1591 Bluefield, W.V. 24701
Debra Lambert	Box 374 Kenosha, W.V. 24752
Opal Armstead	Box 92 Powhatan, W.V.A. 29877
Mary Hill	1463 Old Athens Rd. Princeton, W.V. 24740
Lisa Dugg	P.O. Box 465 Dary, W.V. 24828
Chris Kapitza	Box 73 Berkeley, W.V. 24843
Valerie Shae	Box 473-A Bluefield, W.V. 24701
Nancy Smith	P.O. Box 1143 Bluefield, W.V. 24701
Sarah Knott	510 Hope St. Bluefield, W.V. 24701
Lain Henderson	P.O. Box 411 Athens, W.V. 24712
Tanya Landolt	Rt 4 Box 498 Bluefield, W.V. 24701
Cheryl Champ	Petrol Village #7 #105 Petrol, W.V. 24740
Miyoka Pradly	P.O. Box 201 Elbert, W.V. 24801
Robert Houk	Box 200 Tremier, W.Va 24878
Nita S. Bates	Holliday Hill T.P. #25, Bluefield, W.V.

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME

ADDRESS

Sandra Tolbert

P.O. Box 111 Tolbert WV

Debbie Berry

Pluto Rt. Box 17 Hinton, WV

Wanda Thompson

Hinton

Judy Donohoe

P.O. Box 432 Hinton WV 25951

Bever Lee Ratliff

P.O. Box 775 Hinton WV 25951

Joanna Fox

208 7th Ave. Hinton, WV 25951

Mary Ann Sullivan

212 Ballance Hinton WV 25951

Brenda Lilly

212 Ballance Hinton WV

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES  
ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Jerry McKinney	Box 1561 Beckley
Narleigh Buchanan	203 2 <sup>nd</sup> St Fair Hill W Va
Chis Babes	Montgomery Beauty Salon
Debbie Thompson	Montgomery Ward Beauty Salon
Jennifer Gardner	Montgomery Ward Beauty Salon
Brenda Lauer	MT Ward Beauty Shop
Diana L. Trammie	Dea Mt. Ward Beauty Salon
Sharon McVey	Stone & Thomas Beauty Salon
Betty Hildbrand	Stone & Thomas Beckley WV
Libby Buchanan	Stone & Thomas
Tonda Meadows	Stone & Thomas
Danny McConnell	Stone & Thomas
Deane Meadows	Stone & Thomas
Rachel Bobin	Stone & Thomas
Gregg M. Bashan	Haw for all Seasons
John Farney	L'Image Salon Beckley W Va
Yusef Baker	Haw Post - Beckley, W Va
Bill Warrick	Haw Post - Beckley, W Va
Robert Speed	Robute - Sophia, W Va



THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Jan Brubaker	P.O. Box 324 Pine Grove W.Va
Donna Simons	Rt 1 Alderson W.Va
Rhonda Ingram	Rt 1 Alderson W.Va
Marilyn Hightower	Farmington W.Va
Dellie J. Davis	Cardwell W.Va
Beverly Davis	Southern W.Va
Carol Roberts	
Lucy Campbell	Levinburg W.Va
Lawrence Davis	White Sulphur Springs W.Va
Tommy Davis	Levinburg W.Va
Paula Davis	Levinburg W.Va
James O. Davis	Levinburg W.Va
Ruthell O. Davis	Levinburg W.Va
Patricia Reynolds	Panorama W.Va
Denise Foster	Bluefield W.Va
Suzanne Pickles	Union WV 24983
Sheila McKinney	Union WV 24983
Lisa Davis	Clarksburg W.Va
Robert J. Davis	Clarksburg W.Va
Sharon Davis	Clarksburg W.Va
Melissa McKinney	Clarksburg W.Va
Tommy Davis	Clarksburg W.Va
Jo Ann Burman	Rt 1 Janes Lick W.Va
Opalene Lyttell	Summit Point W.Va 26384
Nelbert Thomas	Summit Point W.Va 26384
Kenneth Thomas	Summit Point W.Va 26384
Sheila Thomas	Summit Point W.Va 26384
Brook Thomas	Rt 2 Beresford Clarksburg W.Va 26304
Sharon Thomas	Rt 1 Box 175 Clarksburg WV 26304
Kelli Y. Lewis	Rt 1 Box 30 B Fairmont W.Va 26534
Barbara L. Thompson	106 Stewart St Fairmont WV 26530
Tommy L. Cross	Rt 9 Box 178 Fairmont WV 26554

Summers Co  
Greenbrier Co

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Larry Runyan	P.O. Box 523 Fairmont WV 26577
Yvonne Betty	1129 Fairmont Drive Fairmont WV 26554
Harley Kern	P.O. Box 789 Fairmont WV 26577
Veronica Brown	190 Howard Ave Martinsburg WV 26551
Bonita Coleman	40 S. 7th St. Pleasant Mt. WV 26301
Jamie Carpenter	440 Wilson St Fairmont WV 26577
Bryant Collins	104 1/2 High St. Fairmont WV 26577
Chuck Myer	Route 3 Box 283 Fairmont WV 26577
Phyllis Hudd	Route 3 Box 158 Fairmont WV 26577

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
 SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
 BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO. 3 OF THE LEGISLATIVE RULES  
 ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
 AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Kimberly Hall	Rt. 1 Box 112, Delbarton, W.V. 25870
Deanna C. [unclear]	Rt. 1 Box 375, Billmeyer, W.V. 25870
Deanna Taylor, [unclear]	Rt. 2 Box 1000, Delbarton, W.V. 25870
Nemise [unclear]	Rt. 1 Box 135, A. Williams, W.V. 25861
[unclear]	Rt. 1 Box 100, [unclear], W.V. 26571
Jack [unclear]	Rt. 4 Box 100, [unclear], W.V.
Whitney [unclear]	Rt. 1 Box 453, Kearsawville, W.V. 26588
Debra [unclear]	Box 339, Lumberport, W.V. 26360
Kelly [unclear]	119 1/2 S. [unclear], [unclear], W.V.
Juan [unclear]	505 Highland, The Station, W.V. 26331
[unclear]	305 Paradise, Clarksburg, W.V. 26301
[unclear]	3357, McAfee, [unclear], W.V. 26554
William [unclear]	Rt. 3 Box 188, Bristol, W.V. 26332
[unclear]	[unclear], [unclear], W.V. 26437
Jennifer [unclear]	116, [unclear], [unclear], W.V.
Jessie [unclear]	147 Third Street, Clarksville, W.V. 26331
Kelly M. [unclear]	111 Valley View, [unclear], W.V. 26330
[unclear]	Rt. 2 Box 16, [unclear], W.V. 26332
[unclear]	Box 484, [unclear], W.V.
[unclear]	19, [unclear], [unclear], W.V. 26554
[unclear]	Rt. 2 Box 291, [unclear], W.V. 26354
[unclear]	2104 Valley View - Di. [unclear], W.V. 26554
[unclear]	Rt. 6 Box 3543, Fairmont, W.V. 26354
[unclear]	[unclear], [unclear], W.V. 26554
[unclear]	PO Box 648, [unclear], W.V. 26588
[unclear]	PO Box 900, [unclear], W.V. 26555
[unclear]	Rt. 3 Box 900, [unclear], W.V. 26554
[unclear]	Rt. 1 Box 351, [unclear], W.V. 26585
[unclear]	2113 Crabapple, [unclear], W.V. 26554
[unclear]	Rt. 4 Box 152, [unclear], W.V. 26554
[unclear]	500 [unclear], [unclear], W.V. 26554
[unclear]	208 S. [unclear], [unclear], W.V. 26330

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
 SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
 BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES  
 ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
 AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME Galene Taylor ADDRESS 142 Park Center Dr Pledge 26101  
Chadwick (Holly) Johnson 211 N. Main St Parkersburg WV 26101  
Deborah N. Cochran 210 Park Shopping Center Parkersburg WV  
Veronica J. Kiesel PO Box 470  
Debra Whitman 3100 University Park Parkersburg WV 26101  
Theresa Thomas 3404 33rd Parkersburg WV 26101  
Robert Whitel 1028 4th St Beloit WV 26104 Home Address  
Angela Morrison 906 Standard Ave Beloit WV 26104 Home Address  
Bernice S. Mowrey Box 103 Rt 3 Sandsville WV 26105  
Laura Stanley Rt 1 Box 992 Marlinton WV 26150  
Janet Sadio 1803 21st St Parkersburg WV  
Jane Harris 4003 3rd Ave Parkersburg WV 26105  
Richard Taylor Rt 1 Box 202 Parkersburg WV 26104  
William W. Case 2330 W. Cherry St Parkersburg WV 26104  
Shirley Howard Rt 1 Box 205 Parkersburg WV 26104  
Karen Brown 3618 Third St Pledge WV 26101  
Dee Palmer 416 Park St Parkersburg WV 26101  
Bonnie Higgins 2421 Monongahela Ave Parkersburg WV 26101  
Carol ... ... 26101  
Jill Lindwood 3109 Hulse Ave Parkersburg WV 26104  
Nancy Collins Rt 2 Colwell, Ohio 45723  
Michael ... Rt 1 Box 111 Parkersburg WV 26101  
Raymond ... 1301 4th St Parkersburg WV 26105  
Doreen ... 1009 24th St Parkersburg WV 26101  
Dana Rockwell 1215 15th St Union WV 26105  
Brenda ... Rt 1 Box 284 Waverly WV 26154  
Michelle ... 2400 N 20th St Parkersburg WV 26101

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO. 3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Caroace Algotak	4924 Washington Ave Char. WV
Patricia A. Higginbotham	5114 13 <sup>th</sup> Blvd. N.W. Cov. Tenn
Johnny P. Givens	757 W. 22 <sup>nd</sup> St. W. Va. 25302
Vernice Thomas	30 Xuncer Way Char. WV 25311
Cecilia Wade	201 Vine St. Chas WV 25300
Margaret Nafe	2720 Rymmlbrand Dr. Chas
Margie J. Hembran	171 Knollwood Rd. Chas 25302
Beverly K. Beahlt	#11 128 <sup>th</sup> St. Chesapeake WV 25315
Patti Robertson	517 Price St Chas WV 25302
Wicki Lynn	271 Blue Creek Rd Elkview WV 25071
Kytha Woodburn	1079 White Oak Dr. Lewisville, WV 25300
Luzanne Colledge	2972 Penn Ave. Lot 21 China W. Va 25302
Lorraine Winnick	1028 Mt. Rd Chas W. Va 25303
Stanno Holman	330 19 <sup>th</sup> Street Dunbar WV <sup>25804</sup> <del>25802</del>
Karen Williams	2506 W Central Ave. Hill WV 25015
Mary Pauling	P.O. Box 1193, Clendenin, WV 25045
William C. Rindal	210 Capital Street, Charleston WV 25301
Charles Miller	210 Capital St. Charleston, W. Va 25301
Joni E. Madia	2225 Wilson Ave. St Albans WV 25177
Linda F. Davis	St. Rt. Box 27-72 Price, WV 25159
Emergen Lasham	Rt. 3 Box 189 Rome WV 25248
Jean Wadant	P.O. Box 895, St. Albans, W. Va. 25107
Margaret Thomas	225 Hov. St. Charleston, W. Va
Patricia Garrett	401 Johnson St. Oak Hill WV 25901
Juni Finch	Pine Knoll apt. 8-5 Oak Hill W. Va 25901
Shirley Webb	607 Ridge Park Dr. Beckley, W. Va. 25801
Roger McQuinn	P.O. Box 845 Coal City W. Va. 25823
William Graham	202 West Mill St. Beckley W. Va 25801
Lawrence Brown	Box 55, Myrtle W. Va 25845
Dorothy Horton	Box 243, Ester W. Va 25865
Dorothy Adams	582 Terry Ave. Oak Hill 25901
Alta Lawson	Box 314, Oak Hill, W. Va. 25846
Cecily Deal	Rt 1 Box 86 B Mt Hope WV 25880

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO  
SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS &  
BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES  
ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED  
AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS
Nora Wellman	Marion, W.Va. 25191
Joyce Dimpsey	Turkey Creek, W.Va. 41570
Eva Thompson	General Creek, W.Va.
Myrtle Purry	Turkey Creek, W.Va.
Regina Thomas	Marion, W.Va.
Naomi Brown	Rt 1 Williamson
Tenn Smith	Williamson W.Va 25661
Pauline Millam	Williamson W.Va 25661
Kearn Malmig	Williamson W.Va. 25661
Mark Hannon	Williamson W.Va. 25661
Marcia Staton	Williamson W.Va. 25661
Myrtle Binovich	Williamson W.Va 25661
Mary Thomas	Williamson W.Va. 25661
Clay Hall	Williamson W.Va. 25661
Letty Hill	Williamson W.Va 25661
Villa June Hatfield	Williamson W.Va 25661
Clasie Freeman	Williamson W.Va. 25661
Charlotte Adams	Williamson W.Va. 25661
Bill Grant Harris	Williamson W.Va 25661
Kara D. Dugan	Williamson, W.Va. 25661
Helen Collins	Williamson, W.Va. 25661
Jay Christian	Marion, W.Va. 25191

THE UNDERSIGNED BEING A LICENSED BEAUTICIAN IN THE STATE OF W.VA. DESIRES TO SUBMIT THIS PETITION AGAINST THE PROPOSED RULE CHANGES AFFECTING BARBERS & BEAUTICIANS. THESE CHANGES ARE FROM TITLE NO.3 OF THE LEGISLATIVE RULES ADOPTED BY THE BOARD OF BARBERS & BEAUTICIANS AND PERTAINS TO PROPOSED AMENDMENTS FOR RULES NUMBERED 1, 2, 3, 4, 5, and 6.

NAME	ADDRESS	
Lorna Newcomb	Welch, WV	
Rita Anderson	Welch WV	
Pat Brewster	Gary, W.V.	
Virginia Farnow	Premier, W.V.	
Henna Hale	Welch, W.V.	20587
Robert Cunningham	WV	7897
Nell Maggie Welch	W.Va	7240
Rita Justice	John, WV	24850 23549
Ray Miller	Box 161 Arundel, W.Va	24811 23859
Patricia Young	Jacger WV	20723 License No.
Margaret Atwell	Wayne, WV	License 26926
Dandy Polvo	Beckley, W.V.	Lic # 24242
Grady VanDusen	Beckley, W.V.	Lic # 24377
Paul Kalmers	5109 Welch, W.V.	24801 21801
Jane Loney	Welch, WV	24801 22186
Janice L. W. W.	Welch, WV	24801 Lic - 27234
Sue Williams	Beckley, W.V.	24801 Lic No. 19271
Bunny Sly	Welch, W.V.	24801 Lic No. 16782

159 W.Va. 647, at 652, 226 S.E.2d 427, at 430 (1976).

In the case before us we are of the opinion that the Committee's recommendation that the respondent's license to practice law be suspended for one year is an appropriate recommendation under the circumstances.

Accordingly, we conclude that Mr. Woodyard's license to practice law should be suspended for a period of one year.

License Suspended for One Year.



WHEELING BARBER COLLEGE,  
etc., et al.

v.

E.B. ROUSH, etc., et al.

No. 16097.

Supreme Court of Appeals of  
West Virginia.

Oct. 17, 1984.

Barber college sought a writ of mandamus to compel the State Board of Barbers and Beauticians to insert permanent waving into the curriculum of the state's barber schools and to certify instructors to teach and barbers to practice permanent waving. The Supreme Court of Appeals, Neely, J., held that: (1) until the statutory mechanisms set forth in the Administrative Procedures Act for the promulgation of agency regulations are complied with, any resolution of a regulatory agency governed by the Act remains a nullity providing no one with a clear legal right to judicial relief; (2) since the Board had never promulgated a rule expanding the ranks of persons who could perform permanent waves, the Board's letter advising barbers that it was illegal for them to offer permanent

waves could not constitute an improper retraction of the previous resolutions permitting barbers to perform permanent waves; and (3) since not one of three elements essential to issuance of writ of mandamus existed, writ of mandate would be denied.

Writ denied.

1. Licenses ⇌5

State regulates barbers and beauticians as incident to policing health and welfare of citizens of state.

2. Licenses ⇌25

Although power of Board of Barbers and Beauticians to promulgate rules and regulations pertaining to licensure and qualification of barbers, beauticians and curricula and standards of instruction for schools of barbering and beauty culture is concurrent with and limited by, that of State Department of Health, day-to-day administration of barbers and beauticians remains with Board. Code, 16-14-1, 30-27-1(a).

3. Licenses ⇌25

If Board of Barbers and Beauticians wishes to combine tonsorial services of barbers and beauticians, or simply to permit barbers to offer and barbering schools to teach, permanent waves, Board must comply with procedures of Administrative Procedures Act. Code, 16-14-2, 29A-3-1 et seq., 30-27-8.

4. Administrative Law and Procedure ⇌721

Any resolution of regulatory agency governed by Administrative Procedures Act remains a nullity and provides no one with clear legal right to judicial relief, until statutory mechanisms set forth in Act for its promulgation are complied with. Code, 29A-3-1 et seq.

5. Licenses ⇌25

Since Board of Barbers and Beauticians has not promulgated any formal regulation that would override distinction that allows only beauticians to perform permanent waving, and has not established joint

barber-beautician  
olution of Board  
permanent waves  
adequate no  
persons per  
waves did not  
advising barbers  
them to offer  
constitute in  
lution, but  
cy of enforcement  
rating barbers  
14-2.

6. Mandamus  
Writ of  
less three  
right in petition  
duty on petitioner  
which petition  
sence of a

1. Unlawful  
forth in the  
for the petitioner  
complied with  
tory agency  
nullity providing  
right to judicial

2. "Clear legal  
sue unless  
clear legal  
relief sought  
of the respondent  
petitioner's  
sence of a  
of Vanm  
Vehicles.

Jolyon  
ic, Wheel  
David  
Charleston  
Stephe  
venors.

NEED  
This is  
mus in v

barber-beautician license, and since no resolution of Board permitting barbers to offer permanent waves had public hearing after adequate notice, rule expanding ranks of persons permitted to offer permanent waves did not exist, and letter from Board advising barbers that it was illegal for them to offer permanent waves could not constitute improper retraction of such resolution, but merely represented shift of policy of enforcement of statutes strictly separating barbers and beauticians. Code, 16-14-2.

#### 6. Mandamus ⇐1

Writ of mandamus will not issue unless three elements coexist: clear legal right in petitioner to relief sought, legal duty on part of respondent to do thing which petitioner seeks to compel, and absence of another adequate remedy.

#### *Syllabus by the Court*

1. Until the statutory mechanisms set forth in the Administrative Procedures Act for the promulgation of an agency rule are complied with, any resolution of a regulatory agency governed by the Act remains a nullity providing no one with a clear legal right to judicial relief.

2. "A writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." *Syl. of Vanmeter v. W. Va. Dept. of Motor Vehicles*, W.Va., 313 S.E.2d 405 (1984).

Jolyon W. McCamic, McCamic & McCamic, Wheeling, for relators.

David Patrick Lombert, Asst. Atty. Gen., Charleston, for respondents.

Stephen D. Herdon, Wheeling, for intervenors.

NEELY, Justice:

This is an original proceeding in mandamus in which the relators ask this Court to

compel the State Board of Barbers and Beauticians to insert permanent waving into the curriculum of this State's barber schools and to conduct examinations—to certify instructors to teach and to certify barbers to practice permanent waving. After examining the allegations of the relators and the law in the State regulating barbers and beauticians, we conclude that the relators have failed to establish that they have a clear legal right to the relief sought. Accordingly, we decline to issue the writ of mandamus.

[1.2] West Virginia regulates barbers and beauticians "as an incident to policing the health and welfare of the citizens of the State." *Thorne v. Roush*, W.Va., 261 S.E.2d 72, 74 (1979). To this purpose the legislature has enacted statutes controlling the hair-care trade. The Board of Barbers and Beauticians is the administrative agency authorized to "promulgate rules and regulations pertaining to the licensure and qualification of barbers, beauticians ... and curricula and standards of instruction for schools of barbering and beauty culture." *W.Va. Code* 30-27-1(a) [1980]. Although this power is concurrent with, and limited by, that of the State Department of Health, *W.Va. Code* 16-14-1 [1977], the day-to-day administration of barbers and beauticians remains with the Board.

[3] The services barbers and beauticians may provide are distinguished in *W.Va. Code* 16-14-2 [1959] (listing the services that each is entitled to render and authorizing only beauticians to give permanent waves) and *W.Va. Code* 30-27-7 [1980] (limiting barbering to barbershops and beauty culture to beauty shops). Although *W.Va. Code* 30-27-3 [1980] authorizes the State Board of Barbers and Beauticians to promulgate rules and regulations to establish a joint barber-beautician license, none has yet been promulgated. A joint license could, presumably, abolish the distinctions of *W.Va. Code* 16-14-2 [1959]. However, if the Board wishes to combine the tonsorial services of barbers and beauticians, or simply to permit barbers to offer, and barbering schools to teach, permanent waves, the

Board must comply with the procedures of the Administrative Procedures Act. *W. Va. Code* 30-27-8 [1983].

*W. Va. Code* 29A-3-1, *et seq.*, sets forth the rule-making procedures that an agency must follow, before promulgating a new rule. Notice of, a text of, and the reasons for, the proposed rule must be filed in the state *Register* in the Secretary of State's office. Thereafter, a public hearing, after adequate notice, must be held before the rule is adopted. Judicial review of a new agency rule is provided for in *W. Va. Code* 29A-4-2 [1982].

[4] The relators assert that the Board of Barbers and Beauticians "usurped and abused" its authority by circulating a memorandum on 7 November 1983 advising barbers that it was illegal for them to offer permanent waves.<sup>1</sup> In support of their petition for mandamus relief, the relators argue that this letter constitutes an improper retraction of a previous resolution permitting barbers to perform permanent waves. Although the existence of this resolution is hotly contested, determination of that issue is irrelevant. Any resolution of a regulatory agency governed by the Administrative Procedures Act remains a nullity and provides no one with a clear legal right to judicial relief, until the statutory mechanisms set forth in the Act for its promulgation are complied with.

1. The Board sent the following memorandum to all licensed barbers, beauticians and schools of barbering and beauty culture on 7 November 1983:

The question has come before this board as to whether barbers are permitted to perform permanent waving in barbershops within this State. This memorandum is to advise you that licensed barbers may not perform such services under the present statutes and regulations in effect. There are several reasons for this prohibition:

(a) The Board of Barbers and Beauticians has not authorized schools of barbering to include a permanent waving component in their curriculum. It is the Board's prerogative to determine whether such instruction should be excluded or allowed in barber colleges; and

(b) The Board of Barbers and Beauticians does not test applicants for a barber's license on the subject of permanent waving, and that skill

[5] Although it appears that the Board of Barbers and Beauticians has vacillated in recent years on the question of whether barbers should be allowed to perform permanent waving, the Board has not promulgated any formal regulation that would override the distinction maintained in *W. Va. Code* 16-14-2 [1959] that allows only beauticians to perform permanent waving, nor has it established a joint barber-beautician license. Furthermore, no resolution of the Board permitting barbers to offer perms had a public hearing, after adequate notice. Therefore, a rule expanding the ranks of permanent waving offerors does not exist.

The Board's memorandum of 7 November 1983 appears simply to be a restatement of the traditional distinction between barbers and beauticians that does not allow barbers to give permanents or beauticians to shave and trim beards. The Board has merely shifted from a policy of non-enforcement to one of enforcement of the statutes strictly separating barbers and beauticians.

[6] This Court has held consistently that "[a] writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." *Syl. of Vanmeter v. W. Va. Dept. of Motor Vehi-*

is therefore not within the scope of a barber's license. Accordingly, permanent waving constitutes a "business or trade other than that of barbering" and may not be conducted in a barbershop, since such activity is prohibited by *W. Va. Code*, ch. 30, art. 27, sec. 7.

Of course, licensed barbers who have obtained licensure as both a barber and a beautician are permitted to do permanent waving, but only in a licensed beauty shop.

On the other hand, licensed beauticians are not authorized to do shaving, shaping, or trimming of the beard of male patrons in a licensed beauty shop.

The position of the Board as set forth in this memorandum is supported by an opinion of The Honorable Chauncey H. Browning, Attorney General of the State of West Virginia, issued on September 2, 1981.

*cles, W. Va., 81 of McGrady S.E.2d 793 (1 elements esse of mandamus Accordingly, 1 for in this pro Writ Denie*

Suprem

Divorced transfer of his ex-wife Randolph Co the father cu mother appe Appeals hel to support t of custody v daughter.

Affirme

1. Divorce Infants Finding child custo weight custo observe der

2. Divorce In divo chancellor will not be

*cies*, W.Va. 318 S.E.2d 405 (1984); Syl.Pt. 2 of *McGrady v. Callaghan*, W.Va., 244 S.E.2d 793 (1978). Not one of the three elements essential to the issuance of a writ of mandamus exists in the case before us. Accordingly, the writ of mandamus prayed for in this proceeding is denied.

Writ Denied.



S.L.M.

v.

J.M.

No. 16371.

Supreme Court of Appeals of  
West Virginia.

Oct. 17, 1984.

Divorced father filed a motion for the transfer of custody of his daughter from his ex-wife to himself. The Circuit Court, Randolph County, Jack R. Nuzum, J., gave the father custody of his daughter, and the mother appealed. The Supreme Court of Appeals held that evidence was sufficient to support the conclusion that the change of custody was in the best interests of the daughter.

Affirmed.

1. Divorce ⇨184(10)

Infants ⇨19.3(7)

Findings of trial judge in divorce or child custody case are accorded great weight because trial judge is in position to observe demeanor of witnesses.

2. Divorce ⇨184(10)

In divorce suit finding of fact of trial chancellor based on conflicting evidence will not be disturbed on appeal unless it is

clearly wrong or against preponderance of evidence.

3. Divorce ⇨312.6(9)

Trial court committed no reversible error in transferring custody of daughter to father on ground that mother had at one point endeavored to conceal where she and her daughter lived from father and failed to communicate concerning health, welfare and development of their daughter, and was not mentally and emotionally fit to protect best interests of daughter.

4. Divorce ⇨312.6(8)

In action challenging transfer of custody of daughter to father, Supreme Court of Appeals would defer to trial judge's informed judgment with respect to mother's mental and emotional fitness and weight given to testimony of mother's expert witness.

5. Divorce ⇨303(7)

In action challenging transfer of custody of daughter to father, evidence, including evidence that mother was not mentally and emotionally fit to protect best interests of her daughter, was sufficient to support conclusion that change of custody was in best interests of child.

6. Infants ⇨19.3(5)

To justify change of child custody, in addition to change in circumstances of parties, it must be shown that such action would materially promote welfare of child.

*Syllabus by the Court*

1. "In a divorce suit the finding of fact of a trial chancellor based on conflicting evidence will not be disturbed on appeal unless it is clearly wrong or against the preponderance of the evidence." Syllabus Point 3, *Taylor v. Taylor*, 128 W.Va. 198, 36 S.E.2d 601 (1945).

2. "To justify a change of child custody, in addition to a change in circumstances of the parties, it must be shown that such action would materially promote the welfare of the child." Syllabus Point 3, *Horton v. Horton*, W.Va., 264 S.E.2d 160 (1980).



WEST VIRGINIA COSMETOLOGISTS ASSOCIATION

41 Elkhorn Street  
Welch, WV 24801  
20 July 1988

Richard Hartman  
Chairman Regulatory Development Section  
Office of Secretary of State  
1800 Washington East  
Charleston, WV 25305

Dear Mr. Hartman,

I heard today you will give a decision Friday 22 July 1988 regarding Rules 1 through 6 from the Board of barbers and beauticians as an Emergency Action.

Please reference Case # 16097 of October 17, 1984 Supreme Court of Appeals of WV - Wheeling Barber School, etc, et al V E.B. Roush, etc, et al - - also please refer WV Code 30-27-3 (1980) authorizing the State Board of barbers & beauticians to promulgate rules and regulations to establish a joint barber-beautician license - - - this has been done! Classes have been taught and examinations have been conducted - - consequently a method has been provided whereas barbers can legally do perms in West Virginia.

One license with one definition of services for barbers and beauticians would end this continuing industry conflict and allow the industry to progress to better serve the public.

Please do not pass these rules as an emergency action without another public hearing - - please do not further allow fragmentation of our industry.

Sincerely,

*Albert Ciamparella*  
Albert Ciamparella  
WVCA Board of Directors  
Past State President (2 terms)  
Past WVCA Legislative Chair (9 years)

P.S. I was appointed by the Board of b/b to serve on the committee to write the curriculum for the cross-over regulation.

FILED  
1988 JUL 25 AM 8:58  
OFFICE OF THE  
SECRETARY OF STATE