

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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1988 JUN 10 AM 8 57

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Barbers and Beauticians TITLE NUMBER: 3

CITE AUTHORITY: W. Va. Code §30-27-1

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rules and Regulations for Licensing
Schools of Barbering or Beauty Culture

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

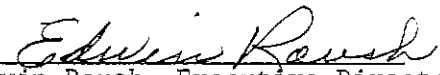
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The amendments to this rule, "Rules and Regulations for Licensing Schools of Barbering or Beauty Culture", 3 CSR 5: increase a 5-year bonding requirement for newly licensed schools of either barbering or beauty culture from \$10,000 to \$50,000; add a 5-year residency requirement for new applicants; increase the minimum number of senior instructors from 2 to 3 for licensing new schools of barbering or beauty culture; and make a few "clean-up" changes.

These amendments are part of a set of related amendments to five of the six rules of the Board of Barbers and Beauticians, all of which amendments taken together are designed to permit schools of barbering to teach permanent waving and to establish safeguards to protect the public and students necessitated by this change. The set of amendments includes generally changes

Use Additional Sheets If Necessary.


Edwin Roush, Executive Director

CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO THE FILING OF AN AMENDMENT TO WV 3 CSR 5, "Rules and Regulations for Licensing Schools of Barbering or Beauty Culture"

related to curriculum, instructor training, permanent waving conducted in barber shops, and school licensure requirements. (Some "clean-up" amendments are also included.) All five rules are being filed on an emergency basis.

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

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

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OFFICE OF JUSTICE
SECRETARY OF STATE

[EMERGENCY]

TITLE 3

LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING OR BEAUTY CULTURE

SERIES 5

1988

[EMERGENCY]
LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING OR BEAUTY CULTURE

3 CSR 5

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

SERIES 5
RULES AND REGULATIONS FOR LICENSING SCHOOLS OF BARBERING AND
BEAUTY CULTURE

§3-5-1. General

1.1. Scope - These legislative rules establish This legislative rule establishes general rules for the licensing of schools of barbering or beauty culture.

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

1.3. Filing Date - June 10, 1988

1.4. Effective Date - June 10, 1988

~~1-5-88--Refiling-Date---December-30,--1982-~~

§3-5-2. Application and Enforcement

2.1. Application - These legislative rules ~~apply~~ This rule applies to the owners and operators of schools of barbering or beauty culture.

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

Section-3--Relation-to-Other-Regulations--

~~These regulations will amend and supplement prior regulations promulgated by the Board dealing with and relating to the licensing of schools of barbering and beauty culture. All prior Rules and Regulations of the Board in conflict with the Rules and Regulations herein adopted are hereby repealed.~~

§3-5-3. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Rules and Regulations for Licensing Schools of Barbering and Beauty Culture, West Virginia Legislative Rules, 3 CSR 5, filed August 15, 1968 and refiled December 30, 1982.

§3-5-4. Licensing Standards

4.1. General Policy - A license for a school of barbering or beauty culture shall be issued only when it is clear that the public safety, health and welfare are adequately and sufficiently protected by the conditions surrounding the establishment of the proposed school, and when the issuance of such license would be in the interest and protection of public health. Therefore, licenses shall issue only when the applicant has proven to the

satisfaction of the Board that: (a) The applicant is professionally competent, (b) the applicant has been a resident of the State for at least five (5) years ~~(b)~~ (c) the applicant is financially responsible, ~~(c)~~ (d) adequate physical facilities will be available for the school, and ~~(d)~~ (e) the applicant has contracted for the employment of two--(2) three (3) or more registered regular senior instructors, or in the instance of a new school, has contracted for the employment of three (3) or more registered regular senior instructors.

4.2. Professional Competency - Each applicant must show and prove a background of training and experience in barbering or beauty culture, as the case may be, as will support a finding by the Board of professional competency and managerial ability so as to provide a substantial likelihood of the continued successful operation of the proposed school.

4.3. Financial Responsibility - The applicant must prove to the satisfaction of the Board: (a) The ability to finance the construction and equipping of the proposed school, and (b) a surety performance bond made payable to West Virginia State Board of Barbers and Beauticians in the amount of ~~ten-thousand-dollars, (\$10,000)~~ fifty thousand dollars (\$50,000), to be held five (5) years from date of issuance to guarantee full instruction to students who enroll at the school. In the event the applicant should default in providing such instruction, a refund from the surety bond shall be made to the student, according to the number of hours of instruction lacking, if tuition has been prepaid. State or county schools not charging tuition to be exempt.

4.4. Facilities - The applicant must show that the intended premises for the proposed school are adequate and sufficient so as to insure proper facilities for teaching a minimum of fifty (50) students at all times and that the proposed school will be properly fitted and equipped.

4.5. Instructors - The applicant school must show the proposed employment of employ at least two--(2) three (3) registered regular senior instructors by the proposed school, and that there will be a minimum of one (1) instructor employed for each twenty (20) students, or reasonable average thereof; Provided, that schools having a valid license as of the effective date of this rule shall employ a minimum of two (2) such instructors.

§3-5-5. Applications for Licenses

5.1. General Form and Content - Applications for license shall be in writing, made under oath, and will be sufficient if made either in letter form or on forms made available by the Board. Applications shall be addressed to State Board of Barbers and Beauticians, State West Virginia Department of Health, State of West Virginia, Capitol Building, 1800 Washington Street East, Charleston, West Virginia, 25305 and shall contain at least the following:

- (a) The name of the applicant;
- (b) The place at which such applicant will conduct its operations and whether the same is owned or leased by the applicant;
- (c) If such applicant be an unincorporated copartnership or association, the name and addresses of the partners or governing board;
- (d) If such applicant be a corporation the names and resident addresses of its officers and directors;
- (e) A copy of a proposed floor plan of said school, which arrangement shall have at least two (2) classrooms and a room for clinical and demonstration work;
- (f) A list of the equipment proposed to be installed;
- (g) Report from state fire marshal indicating that floor plan, equipment installation and premises will meet all Rules and Regulations pertaining to fire safety;
- (h) Background of all persons connected with the applicant as either owner, manager or instructor relative to: (1) Training and experience in barbering or beauty culture, and (2) business and managerial training, experience or ability;
- (i) Applicant's financial statement certified to by a qualified public accountant and a surety performance bond made payable to the West Virginia State Board of Barbers and Beauticians in the amount of ~~ten-thousand--dollars--(\$10,000)~~ fifty thousand dollars (\$50,000), to be held five (5) years from date of issuance to guarantee full instruction to students who enroll at the school.
- (j) A statement setting forth the applicant's general operating plan for the school;
- (k) A list of the names of the registered regular senior instructors to be employed in the school;
- (l) Copies of proposed: (1) Advertising to be used in opening of school, (2) student contract, and (3) daily and monthly time sheets to be used in recording student activities in the school.

5.2. Time of Filing - Application for a license shall be filed with the Board at least sixty (60) days prior to the Board meeting at which the application is requested to be considered.

5.3. Board Action - Upon the filing of an application and the payment of required investigative fee, if the Board shall find that the professional competency, business experience, char-

acter, financial responsibility and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the proposed school will be operated professionally, honestly, fairly and efficiently within the purposes of the statutes, and if the Board shall find that the applicant will have adequate and sufficient facilities, and that the applicant has made arrangements for the employment of at least two (2) registered regular senior instructors or, for new schools at least three (3) such registered regular senior instructors, and that allowing such applicant to engage in the operation of a school of barbering or beauty culture in this State would be in the interest and protection of the public's safety, health and welfare, the Board shall thereupon issue and deliver a license to the applicant to conduct a school of barbering or beauty culture at the location specified in said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended.

If the Board shall not so find, it shall not issue such license and shall notify the applicant of the denial.

The Board shall approve or deny every application for license within ninety (90) days from the applicant's filing of all required information.

If the application is denied, the Board shall within thirty (30) days thereafter file in its office a written decision and findings, with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve a copy thereof upon the applicant.

§3-5-6. Licenses

6.1. Contents of License and Posting Same - Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

6.2. Issuance of More than One License to Same Licensee - Not more than one (1) place of business shall be maintained under the same license, but the Board may issue more than one (1) license to the same licensee: Provided, that for each such license the applicant shall comply with all the provisions of the statutes and ~~the rules and regulations promulgated herein~~ this rule governing an original issuance of a license.

6.3. Annual License Fee - Every licensee shall on or before

the first day of each year pay to the Board the sum of two hundred fifty dollars (\$250) as an annual license fee for the next succeeding fiscal year.

6.4. Investigation of Business - The licensee shall keep, and make available to the Board upon request, such books, accounts and records as will enable the Board to determine whether such licensee is complying with the Rules and Regulations lawfully made by the Board.

6.5. Revocation or Suspension of License - The board shall, upon ten (10) days notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke or refuse to renew any license issued hereunder if it shall find that:

(a) The licensee has failed to pay the annual fee or to comply with any demand, ruling or requirement of the Board lawfully made pursuant to and within the authority of the statutes;

(b) The licensee has violated knowingly any provision of the statutes or any rule or regulation lawfully made by the Board under and within the authority of the statutes.

Any licensee may surrender any license by delivering to the Board written notice that it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability of the licensee for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any student enrolled in licensee's school.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked or suspended in accordance with the provisions of this article, but the Board shall have authority on its own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if not fact or condition then exists which clearly would have warranted the Board in refusing originally to issue a license under the statutes or any rule-ex-regulation-promulgated-herein: this rule.

Whenever the Board shall revoke or suspend a license, it shall forthwith file in its office a written order to that effect, and findings with respect thereto, containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.