

SERIES 4 COMMENT SUMMARY AND BOARD RESPONSE

The WV Cosmetology School Owners Association (“CSOA”) submitted detailed comments to the Series 4 proposed rule amendments. The comments included four (4) subparts as set forth below.

- (1) *Series 4 does not reflect changes to W. Va. Code § 30-27-5 as passed into law in Senate Bill 524.*

CSOA comments that the chair requirements per student should be applied as one chair per student during practical instruction, meaning one chair per student who is physically in class. Upon consideration, the Board voted to modify the rule as requested.

- (2) *Series 4 lowers minimum standards for school operation without legislative authorization and jeopardizes school quality.*

CSOA disagreed with certain changes to amounts of student equipment/amenities required per student per classroom. The Board reviewed the language in Series 4 and the concerns were discussed with the schools at the meeting. The Board and CSOA reached an agreement satisfactory to both the Board and CSOA. In accordance therewith, the Board voted to modify the rule by capping the amount of certain equipment/amenities required per classroom.

- (3) *Series 4 improperly extends sanitation requirements to non-instructional rooms at schools.*

In § 3-4-3.2a, the existing rule states that “[a]ll schools shall provide and maintain adequate and sanitary rest room facilities.” In the proposed rule “rest room” is stricken, and CSOA complains that this unnecessarily requires a school to meet sanitary requirements in all rooms, even those not used for instruction. Upon consideration, the Board determined that requiring schools to maintain adequate and sanitary facilities, without limiting such to “rest rooms”, was reasonable and appropriate. The Board voted not to modify the proposed rule.

- (4) *Series 4 should clarify the facility requirements for schools of barbering, cosmetology, hair styling, nail technology and aesthetics.*

CSOA suggests a clarification is needed to specify that a school cannot be established within the same physical structure as a salon, spa or similar business licensed under W. Va. Code § 30-27-17. CSOA further suggests adding a requirement that rooms for clinical and theory instruction exist within the same physical structure. Upon consideration, the Board voted to add specific provisions for clarification as requested. See §§ 3-4-3.1.r and 3-4-3.2.s.

WV Cosmetology School Owners Association
120 South Third St., Clarksburg, WV 26301

July 30, 2016

Amanda Cunningham
Executive Director
WV Board of Barbers and Cosmetologists
1201 Dunbar Ave.
Dunbar, WV 25064

Re: Proposed Rule Title-Series 3-04: Operational Standards for Schools of Barbering, Cosmetology, Hair Styling, Nail Technology and Aesthetics

Dear Amanda,

Thank you for the opportunity to provide comments on Series 4, the proposed rule to update the operational standards for schools of barbering, cosmetology, hair styling, nail technology and aesthetics.

The West Virginia Cosmetology School Owners Association and its member schools have been educating instructors in this field for decades, and we advocate for standards of excellence. The changes proposed in Series 4 have deficiencies in several areas, which we will enumerate in the following pages.

The overarching concerns expressed in our comments are three-fold: 1. Series 4 must be amended so it conforms to the changes made to W.Va. §30-27-5 with passage of Senate Bill 524 during the 2016 legislative session; 2. Changes proposed to the operational standards for schools were not contemplated by SB524, and any equipment standards should have a foundation in industry-accepted standards such as those long employed at cosmetology schools and/or appropriate federal safety standards; and 3. Series 4 improperly extends sanitation requirements to non-instructional rooms at a school.

In addition, the School Owners also suggest a new change made through Series 4 to clarify that schools licensed under W.Va. §30-27 must not exist in the same facility as salons or spas and that both instructional rooms schools are required to be located within the same physical structure.

We welcome the opportunity to consult with the you and/or the Board on Series 4, because absent substantial redrafting, the Cosmetology School Owners must oppose Series 4 in its entirety. We had hoped to be part of the conversations that led to the drafting of the proposed rule following passage of SB524, but nonetheless, we stand ready to offer our decades of experience in educating cosmetology students.

Please do not hesitate to contact me at (304) 612-3961 or our representative, Juliet A. Terry at (304) 552-1567 or juliet@jterryconsulting.com if you have any questions or would like to discuss our comments in greater detail.

Thank you,

Jay Bland,
President
WV Cosmetology School Owners Association

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120 South Third St., Clarksburg, WV 26301

COMMENTS ON SERIES 3-04

I. Series 4 Does Not Reflect Changes to W.Va. §30-27-5 as passed into law in Senate Bill 524 (2016)

Senate Bill 524 authorizes the powers and duties of the West Virginia Board of Barbers and Cosmetologists by amending W.Va. §30-27-5(b)8 as follows: "Set operational standards and requirements for licensed schools: *Provided*, That a licensed school shall have a minimum of one chair per student ***available during practical instruction***. (Enr CS for SB 524, page 9, lines 16-18, emphasis added)

Series 4, as proposed, incorrectly specifies that chair requirements be met per each student enrolled (§3-4-3.1 and 3.1b, §3-4-4.1a, and §3-4-5.1). Series 4 also needs to add clarification to §3-4-3.1c-o to reflect the language contained in SB 524.

The clearly stated intention in SB 524 is that the chair requirement be applied as one chair per student during practical instruction, meaning one chair per student who is physically in class. Adopting Series 4 as written would require schools to have one chair per enrolled student even though not all enrolled students are in class at the same time.

Requiring one chair per student during practical instruction is a reasonable, commonsense requirement that was part of SB 524 passed by the Legislature and signed by Gov. Earl Ray Tomblin. Series 4 must adhere to state code, as amended by SB 524.

II. Series 4 Lowers Minimum Standards for School Operation Without Legislative Authorization and Jeopardizes School Quality

Senate Bill 524 only amends W.Va. §30-27-5(b)8 as it relates to the chair requirement. Nowhere does the legislation contemplate lowering the minimum standards to operate a school, which is the practical effect of the changes Series 4 makes to equipment standards contained in §3-4-3.

Reducing all classroom equipment and amenities down to one (1) theoretically would allow anyone to open a school with just one student so long as the facility met the two-room requirement contained in §3-4-3.1. While reasonable marketplace economics may preclude such a scenario, the members of the Cosmetology School Owners Association have serious concerns about salons opening up small schools in back rooms, and Series 4 makes that possible as long as the provisions of §30-27-1(c) are not violated.

The School Owners' preference is to remove the changes made to §3-4-3 as it relates to specific numbers of chairs (apart from that authorized by SB 524) and other equipment and leave them unchanged from the current rules. This will continue the minimum standards for schools that have been in operation for years and prevent a proliferation of substandard instructional facilities.

An alternative approach is two-fold:

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1. Insert grandfather language: Insert language specifying that the new rules on equipment standards apply only to new schools to reflect and accommodate student population growth. This would mean new rules apply only to schools licensed for operation after Jan. 1, 2017. This will grandfather existing schools so they do not have to undergo dramatic renovations to their educational spaces to meet the new rules. West Virginia's private cosmetology schools all have operated -- some for as many as 50 years -- with the higher standards currently outlined in the existing rule and have never had situations that demanded changes such as those proposed in Series 4.

2. Adjust the equipment standards to reflect standard industry practice and/or federal safety regulations. The equipment quantity changes proposed by Series 4 do not comport with long-standing industry standards. For example, requiring one shampoo bowl for every four students far exceeds what experienced instructors deem necessary. Likewise, requiring instructional floors to have one waste container for every two students is excessive. Schools typically use 30-gallon garbage cans -- requiring one for every two students means nearly all floor space could be taken up by the waste containers.

Additionally, the proposed change regarding wet dip sterilizer or disinfectant (3.1.i) does not reflect federal safety standards. To comply with regulations set by the U.S. Occupational Safety and Health Administration, the wet dip sanitizer must be rinsed from the tool prior to the tool touching the client. If the wet disinfectant is at the station, the stylist would have to carry wet tools across the clinical floor to rinse them. The common industry practice is to keep tools in the wet dispensary at the sink area so they can be rinsed thoroughly before use, and then placed in dry sanitary storage at the station.

III. Series 4 Improperly Extends Sanitation Requirements to Non-instructional Rooms at Schools

As it exists today, §3-4-3.2a, requires schools to have adequate, sanitary rest rooms, which is a commonsense requirement for any instructional institution. In the revision proposed by Series 4, however, the words "rest rooms" are stricken, which removes the requirement for adequate and sanitary rest room facilities; instead, this change means all rooms at a school must meet sanitation standards, even rooms not used by nor available to students for instruction, such as the school owner's private office space. The change proposed to §3-4-3.2a should be rejected.

IV. Series 4 Should Clarify the Facility Requirements for Schools of Barbering, Cosmetology, Hair Styling, Nail Technology and Aesthetics.

W.Va. §30-27-1(c) and the rules in §3-4-8 prevent schools from offering cosmetology and related services for compensation or remuneration, but the School Owners Association suggests adding clarity to these provisions by amending the rules to specify that a school authorized under this article cannot be established within the same physical structure as a salon, spa or similar business licensed under W.Va. §30-27-17.

Furthermore, the School Owners recommend Series 4 make an additional change to §3-4-3.1 to require that rooms for clinical and theory instruction exist within the same physical structure. This change will underscore that schools are institutions of higher education that exist for the

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sole purpose of educating students to excel in the fields of barbering, cosmetology, hair styling, nail technology and aesthetics. Splitting the clinical and theory rooms among different buildings or even in different cities is not meeting the highest standards for instruction.

(Note: Series 4 also contemplates changing all references to Schools of Beauty Culture to Schools of Barbering, Cosmetology, Hair Styling, Nail Technology and Aesthetics – the title to §3-4-3 does not include this change, so Series 3-04 should make sure the change is applied consistently.)

In summary, the West Virginia Cosmetology School Owners Association views 3.1.b through 3.1.g as unnecessary changes that should be tabled pending a discussion between the Board of Barbers and Cosmetologists and the Association. In an April 5, 2016, email from the Board, we were told the rules would be changed to reflect the changes in state code in SB 524. Series 4 should be restricted only to what was specifically authorized in Senate Bill 524, with the optional addition we suggested in IV.

Our association members are proud of the high-quality instruction they have provided for decades. We hope our experience is valued and that we can be a partner with the state in its regulation of a vital industry that touches all corners of West Virginia. Thank you for your time and consideration in reviewing these comments.

West Virginia School Owners Association