

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

June 28, 1978

Marshall Whitlock
Legislative Committee to
Review Rules
400 State Office Building
St. Paul, Minnesota 55155

RE: Rules of the Board of Barber Examiners 1-78

Dear Mr. Whitlock:

This is to notify you pursuant to your request that the Rules of the Board of Barber Examiners designated as Minn. Regs. BE1-78 have been forwarded to the Office of the Attorney General for review and approval.

Very truly yours,

ROBERT J. CLAYTON
Special Assistant
Attorney General
Attorney for Board of Barber Examiners
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-9412

RJC:lf
cc Rule Making File

Attorney General

Robert J. Clayton
Special Assistant
Attorney General

July 19, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

Barber Board Proposed Rules 1-78

As we discussed, I am returning the above-captioned rules herewith which have not been filed with the Secretary of State. The following rules, or severable portions thereof, are disapproved for the following reasons:

1. BE 2, BE 28, BE 42: Each of these rules permits agency waiver of the application deadline upon a showing of hardship. However, the use of the phrase "may, in its sole discretion" implies that the Board may not grant a waiver even if a showing of hardship is made. The agency must establish by rule the criteria which it would use to discriminate in granting a waiver to one of two applications, each with a satisfactory hardship showing, if the agency ever intended to so discriminate. In either event, the word "shall" must be used to avoid giving the agency unfettered discretion and to establish that "every agency statements of general applicability and future effect..." are properly incorporated into the rule as adopted.

2. BE 6(c), BE 27(c): A problem similar to the one discussed in paragraph No. 1 above arises in these rules out of the use of the word "may". The agency must establish by rule "every agency statement of general applicability and future effect...", as required by Minn. Stat. § 15.0411, Subd. 3. This office interprets that requirement to necessitate agency promulgation of criteria upon which the agency will act in areas which affect the rights of or procedures available to the public. Such an area is posed by the above-listed rules. From the Hearing Examiner's Report, it appears this rule is intended to permit the Board to reject "precut" or other models in the practical parts of the examination which interfere or subvert a genuine testing of the participant's skills. The criteria upon which the agency will act must be established by rule and the word "shall" must be used for the reason discussed above.

3. "Regulation": Legislative action in recent years has evidenced a strong intent to expunge the word "regulation" whenever possible from use when referring to "rules" as defined in Minn. Stat. § 15.0411, Subd. 3. This office strongly recommends that changes be made in the above-captioned rules to conform with this intent. Changes to comply with this recommendation would be required in at least the following rules: BE58(B), BE61(A), BE77(Rule 13), and BE78(C).

#.444 Barber Board / Commerce

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/29 Temporary Rule _____

Resubmitted and Received 9-13-78

DUE DATE 7/19 / 9-22-78

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 9/15/78 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

BARBER BOARD PROPOSED RULES

POST-HEARING DOCUMENTS

1. Report of Hearing Examiner
2. Certificate of Board's Adoption of Rules Resolution
3. Findings of Fact and Conclusions
4. Order Adopting Rules
5. Statement of Compliance with Manual of Rule Making Procedures
6. Rules as Adopted
7. Report of Chief Hearing Examiner dated June 19, 1978
8. Memo from Attorney General
9. Certificate of Board's Adoption of Rules Resolution
10. Supplemental Findings of Fact, Conclusions and Order
11. Rules as Adopted with Corrections
12. Report of Chief Hearing Examiner

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners

SUPPLEMENTARY FINDINGS OF FACT, CONCLUSIONS AND ORDER

The above entitled matter came on for hearing on October 24, 1977 in Saint Paul, Minnesota before Peter Erickson, Hearing Examiner assigned by the Chief Hearing Examiner.

Hearing Examiner Erickson prepared the report of the Hearing Examiner dated November 18, 1977 pursuant to Minn. Stat. § 15.052, subd, 3 and Minn. Reg. H. E. 106.

Based upon the proceedings and records therein and pursuant to a Resolution on April 24, 1978 of the Board of Barber Examiners ("Board") the Board made Findings of Fact, and Conclusions dated June 2, 1978 and an Order adopting amendments to Minn. Rules Be 1-78 dated June 6, 1978.

After re-examining the record and reviewing the Attorney General's recommendation and pursuant to a Resolution of the Board dated July 24, 1978 the Board reaffirms its original Findings of Fact, Conclusions and Order insofar as they are consistent with the following nonsubstantial modifications of the proposed amendments to the rules. The Board makes the additional following:

FINDINGS OF FACT

1. Four revisions of the proposed rules are necessary to comply with the legislative directive that the term "regulation" not be used. In the following sections the term "rule" shall be substituted for the term "regulation" or "rules and regulations": BE 58 (B), BE 61 (A), BE 77 (Rule 13), and BE 78 (C).

2. In order to clarify the original intent of the Board, to avoid giving the Board unfettered discretion, and to resolve any question of the action the Board will take in the case of a late applicaiton for an examination where there is a showing of hardship, the Board finds that the word "shall" should be substituted for "may, in its sole discretion," in the following Proposed Rules: BE 2, BE 28 and BE 42.

3. In order to clarify the original intent of the Board, to avoid giving the Board unfettered discretion, and to indicate the reason the Board would change, supply or reject a model for an examination, the Board finds that the following change should be made in Proposed Rules BE 6 (C) and BE 27 (C):

The Board of Barber Examiners~~,-at-its-discretion,-may~~ shall have discretion to change, supply, or reject models for an applicant's use in the practical parts of the examination in order to insure that the practical parts of the examination will be a fair test of the applicant's ability.

4. Rule BE 77 (Rule 13) stating that violation of any rule is a misdemeanor causes confusion in that specific penalties are set by Minn. Stat. § 154.19 (9) (1976). Therefore, the Board finds that the proposed amendment to this rule stating that a violation is a misdemeanor should be deleted. Instead, the original language conforming to section 154. 19 (9) should remain. This rule will read as follows:

For the purpose of this Act, no establishment shall be open for service to the public until all sanitary provisions of this Act have been complied with. These Rules pursuant to Minn. Stat. § 154 have been approved by the Minnesota Board of Barber Examiners and the Minnesota Board of Health. A violation of any of these Rules shall be punishable by a fine not less than $10 nor more than $100 or imprisonment for not less than 10 days nor more than 90 days and shall be cause for suspension or revocation of a certificate of registration or shop registration card.

Based on the foregoing additional Findings of Fact, the Board makes the following

CONCLUSIONS

1. The changes referred to in the Findings of Fact are nonsubstantial and more clearly state the Board's original intent in adopting the proposed amendments to Minn. Reg. BE 1-78.

Based on the foregoing additional Conclusion, the Board makes the following

ORDER

NOW THEREFORE IT IS ORDERED that these rules identified as BE 1-78 are hereby adopted with the amendments set forth above, this 31st day of August, 1978, pursuant to authority vested in me by Minn. Stat. 214.06 (1976) and by Resolution of the Board of Barber Examiners dated July 24, 1978.

Adam J. Mikrot
Executive Secretary
Board of Barber Examiners

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Robert J. Clayton
Special Assistant
Attorney General

DATE: July 19, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

STATE OF MINNESOTA
JUL 25 1978
DEPARTMENT OF COMMERCE

SUBJECT: Barber Board Proposed Rules 1-78

As we discussed, I am returning the above-captioned rules herewith which have not been filed with the Secretary of State. The following rules, or severable portions thereof, are disapproved for the following reasons:

1. BE 2, BE 28, BE 42: Each of these rules permits agency waiver of the application deadline upon a showing of hardship. However, the use of the phrase "may, in its sole discretion" implies that the Board may not grant a waiver even if a showing of hardship is made. The agency must establish by rule the criteria which it would use to discriminate in granting a waiver to one of two applications, each with a satisfactory hardship showing, if the agency ever intended to so discriminate. In either event, the word "shall" must be used to avoid giving the agency unfettered discretion and to establish that "every agency statements of general applicability and future effect..." are properly incorporated into the rule as adopted.

2. BE 6(c), BE 27(c): A problem similar to the one discussed in paragraph No. 1 above arises in these rules out of the use of the word "may". The agency must establish by rule "every agency statement of general applicability and future effect...", as required by Minn. Stat. § 15.0411, Subd. 3. This office interprets that requirement to necessitate agency promulgation of criteria upon which the agency will act in areas which affect the rights of or procedures available to the public. Such an area is posed by the above-listed rules. From the Hearing Examiner's Report, it appears this rule is intended to permit the Board to reject "precut" or other models in the practical parts of the examination which interfere or subvert a genuine testing of the participant's skills. The criteria upon which the agency will act must be established by rule and the word "shall" must be used for the reason discussed above.

3. "Regulation": Legislative action in recent years has evidenced a strong intent to expunge the word "regulation" whenever possible from use when referring to "rules" as defined in Minn. Stat. § 15.0411, Subd. 3. This office strongly recommends that changes be made in the above-captioned rules to conform with this intent. Changes to comply with this recommendation would be required in at least the following rules: BE58(B), BE61(A), BE77(Rule 13), and BE78(C).

(3)

4. BE 78(Rule 13): This office initially disapproves the provision of this rule which makes a violation of any rule a misdeamnor. Minn. Stat. 154.19(9) appears on its face to make separate penalties for violations of rules other than the general misdemeanor penalty language which appears at the beginning of that statutory provision. As stated in the existing rules, the proper penalty for a violation of a rule is to "be fined not less than $10 or imprisoned for ten days and not more than $100 or imprisoned for 90 days". This office will, of course, entertain further argument from the agency if our reading of the statute appears to be clearly flawed.

I have retained a copy of documents in this matter should you wish to further discuss it with me. After reconsideration based on the above comments and appropriate action, where necessary, the agency may resubmit these rules to this office for final approval as to form and legality and filing with the Secretary of State. When the agency resubmits the rules, please insure that the original order adopting is submitted to this office so that it can be filed with the Secretary of State's office.

LES:mb

cc: Duane Harves

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners

Certificate of Board's Adoption of Rules Resolution

I, George Falzone, do hereby certify that I am Secretary of the Board of Barber Examiners, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Barber Examiners duly and properly called and held on July 24, 1978; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

WHEREAS proposed Minn. Reg. BE 1-78, as amended, have been previously approved and adopted by this Board and submitted to the Office of the Attorney General for approval as to form and legality,

WHEREAS the Office of the Attorney General has raised specific objections to said Rules,

RESOLVED, that proposed Minn. Reg. BE 1-78 are ordered amended to correct the objections noted by the Office of the Attorney General and said rules thus amended are hereby approved and adopted and that Adam J. Mikrot, Executive Secretary of the Board of Barber Examiners, is hereby authorized to sign findings of facts and an order adopting said rules as amended.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31 day of August, 1978.

George Falzone
George Falzone
Secretary
Board of Barber Examiners

Adam J. Mikrot
Attest

ADAM J. MIKROT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires August 10, 1984

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

September 7, 1978

Mr. Robert J. Clayton
Special Assistant Attorney General
500 Metro Square Building
St. Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners.
BE-78-001-PE

Dear Mr. Clayton:

Enclosed herewith is the hearing record in the above-referenced matter which was resubmitted to me for review on the issue of substantial change. Also enclosed is the Supplemental Report of the Chief Hearing Examiner.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Encs.

BE-78-001-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF BARBER EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES BY THE BOARD OF BARBER EXAMINERS.

SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, on June 15, 1978, the Board of Barber Examiners submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, on June 19, 1978, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the Board of Barber Examiners had met all requirements of Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Barber Examiners subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Attorney General recommended to the Board of Barber Examiners that certain of the rules be amended; and

WHEREAS, the Board of Barber Examiners has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this report, the Board of Barber Examiners has the responsibility of resubmitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 12th day of September, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

June 19, 1978

Mr. Robert J. Clayton
Special Assistant Attorney General
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners. BE-78-001-PE

Dear Mr. Clayton:

Enclosed please find the entire record which you submitted to us for review on the issue of substantial change, together with the Report of the Chief Hearing Examiner, pursuant to Minn. Stat. § 15.052, Subd. 3.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Enc.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF BARBER EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES BY THE BOARD OF BARBER EXAMINERS.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 24, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Board of Barber Examiners on November 18, 1977; and

WHEREAS, the Board of Barber Examiners previously adopted Rule BE 79 relating to fees and now wishes to adopt the balance of the rules as proposed at the hearing, said rules adoption being pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Barber Examiners has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Board of Barber Examiners has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Board of Barber Examiners has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 19th day
of June, 1978.

Duane R Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners

Statement of Compliance with Manual of Rule Making Procedures

I, Special Assistant Attorney General Robert J. Clayton, do hereby declare that I have examined the proposed rules Minn. Reg. BE 1-78 and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Robert J. Clayton
Special Assistant Attorney General

Dated: June 6, 1978

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners

Order Adopting Rules

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner of the State Office of Hearing Examiners, on October 24, 1977, at 9:00 a.m., in Room 81, State Office Building, St. Paul, Minnesota after proper notice required by Minn. Stat. 15.0412 (1976) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW THEREFORE IT IS ORDERED that these rules identified as BE 1-78 in the form attached hereto are hereby adopted this 6th day of June, 1978, pursuant to authority vested in me by Minn. Stat. 214.06 (1976) and by Resolution of the Board of Barber Examiners dated April 24, 1978.

Adam J. Mikrot
Executive Secretary
Board of Barber Examiners

(4)

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed
Adoption of Rules by the Board
of Barber Examiners

Findings of Fact
and Conclusions

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Monday, October 24, 1977, in Room 81 of the State Office Building, St. Paul, Minnesota.

Robert J. Clayton, Special Assistant Attorney General, Fifth Floor, Metro Square Building, appeared as counsel for the Board of Barber Examiners. Francis Singer, Administrative Management Director for the Department of Commerce, and Adam Mikrot, Executive Secretary of the Board, testified on behalf of the Board in support of the proposed rules.

Based upon all the records and proceedings herein, the Board of Barber Examiners hereby adopts as its Findings of Fact and Conclusions, the Findings of Fact and Conclusions stated in the Report of the Hearing Examiner dated November 18, 1977, with the following additional

FINDINGS OF FACT

1. In the last line of Proposed Minn. Reg. BE 45 theword "approach" is a typographical error. The correct word is "approved."

2. Proposed Rule BE 77, Rule 4, provides that, "At least one sink or lavatory shall be provided in each room, booth, stall, compartment or other area where barbers work." (Emphasis added.) Adam Mikrot, Executive Secretary of the Board of Barber Examiners, offered testimony at the hearing to support the need for and reasonableness of this requirement. (Tr. p. 20.) He stated that the Board's experience had shown that barbers will not wash their hands

before attending each patron as required by Rule 5 of Minn. Reg. BE 77 unless a sink is readily available.

3. The Board's interpretation of what is required by Proposed Rule BE 77, Rule 4 would be better expressed by deleting the word "other" and substituting "the immediate" therefore. This change is consistant with and is supported by Mr. Mikrot's testimony.

Based upon the foregoing adopts the following additional

CONCLUSIONS

1. The Board concludes that the proposed rules be amended as set out in Finding 1 and 3 for the reasons stated therein.

Dated the 2nd day of June, 1978.

Board of Barber Examiners

By Adam J. Mikrot
Executive Secretary

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners

Certificate of Board's Adoption of Rules Resolution

I, George Falzone, do hereby certify that I am Secretary of the Board of Barber Examiners, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Barber Examiners duly and properly called and held on April 24, 1978; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that proposed Minn. Reg. BE 1-78 as ameded are hereby approved and adopted and that Adam J. Mikrot, Executive Secretary of the Board of Barber Examiners is hereby authorized to sign findings of facts and an order adopting said rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of May, 1978.

George Falzone
George Falzone
Secretary
Board of Barber Examiners

Bernard P. Holland
Attest

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the
Adoption of Rules by the
Board of Barber Examiners

Rules
As
Adopted

CHAPTER ONE: REGISTERED APPRENTICES

BE 1 Additional six-month practice-form IA.

An applicant who fails to satisfactorily pass an examination for a Certificate of Registration to practice as a registered barber, must file within 30 days after he begins his practice, Form IA with the Board to extend his registration for six months and enable him to continue practice as an apprentice. (See Form IA). The additional six-month practice required by MSA 154.05 (5) shall include not less than 1,040 hours of work time. The registered barber who supervises the additional six-month practice will file quarterly reports with the Board during the additional practice period.

BE 2 Application-filing dates.

An applicant for examination as a registered apprentice shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board shall, upon the showing of a hardship, accept applications at a later date.

BE 3 Apprentices from other states-qualifications.

A. The Board must find the following to determine that another state or country has substantially the same requirements for registration of an apprentice as provided under Minn. Stat. ch. 154:

1. The same educational requirements as MSA 154.06 (1).

2. Graduation from a barber school that requires:

a. Approval by a state requiring at least the same number of hours of instruction for school approval as Minnesota does.

b. Instructors to have the same qualifications as MSA 154.065 Subd. 2 except the examination referred to in paragraph (e) shall be prescribed and conducted by the Barber Board of the state in which an instructor is teaching.

c. A curriculum that is equivalent to MSA 154.07 and rules and regulations of the Minnesota Board adopted pursuant thereto.

BE 4 Apprentices from other states-references.

A person making application for examination pursuant to MSA 154.12 shall file with the Board as part of his application three character references from any person over eighteen (18) years of age who is not related to the applicant.

BE 5 Examination dates.

Examinations for a certificate as a registered apprentice shall be held the first week in February, May, August and November of each year. Notice of the examination shall be given during the first week of the month preceding the month in which the examination is to be held.

BE 6 Examinations-grading.

The apprentice examinations given pursuant to MSA 154.09 shall be graded as follows:

A. Each examination shall have six parts, consisting of four practical performances, including a haircut, shave and two other practical performances, an oral part and a written part.

B. The grading criteria for the written part of the examination and the passing grade thereon will be established for each written examination at the time of its preparation; however, the lowest passing grade established hereunder shall never be less than 55. The grading for the practical performances and the oral part of the examination will be on a scale of 1 to 100 with 100 representing a perfect score. A score of 70 will be the minimum passing grade for the haircut portion, and 70 will also be the minimum passing score for the average of the remaining parts of the practical performances. The minimum passing score for the oral portion of the examination will be 70. If an applicant does not receive at least the established minimum passing grade on the written portion of the examination, or at least a grade of 70 on the oral portion of the examination, the haircut portion of the examination, or score an average of at least 70 on the remaining parts of the practical examination, such applicant will have failed the entire examination, and thereafter may only retake the entire examination after paying the necessary fee and meeting the requirements of MSA 154.06.

C. The Board of Barber Examiners shall have discretion to change, supply or reject models for an applicant's use in the practical parts of the examination in order to insure that the practical parts of the examination will be a fair test of the applicant's ability.

BE 7 Examinations-review.

An applicant, upon written request, may review his examination at the office of the Board of Barber Examiners during usual business hours.

BE 8 Grading system.

The grade of an examination conducted pursuant to MSA 154.09 shall be determined under the following grading system: (See grading card.)

BE 9 Home Study Course.

The 15 months practice of a registered apprentice pursuant to MSA 154.05 shall include completion of the program entitled "Related Home Study Course for Apprentice Barbers" prepared by the Minnesota Department of Education: Vocational-Technical Education Division, and such course must be passed before the examination may be taken.

BE 10 Quarterly Reports.

The requirement of MSA 154.05 (4) regarding the practicing as a registered apprentice for a period of 15 months shall mean licensure for not less than 450 days and not less than 2,500 hours of work time.

The registered barber who supervises the practice of a registered apprentice will file a quarterly report during the 15-month apprenticeship period. (See quarterly report.)

BE 11 Requirements of MSA 154.05 (4).

A registered apprentice meets the requirements of MSA 154.05 (4) if he completes his 15 months practice at any time prior to or within the week in which the examination is given pursuant to MSA 154.05 (5).

BE 12 Student Permit Fee.

An applicant for a Certificate of registration to practice as an apprentice who is required to complete a further course of study of not less than

500 hours pursuant to MSA 154.06 shall not be required to pay an additional Student Permit Fee, provided, however, that there is no interruption in his course of study.

BE 13 Supervision of Practice--Form I.

A registered apprentice who practices under the immediate personal supervision of a registered barber must file the following form with the Board to receive credit for the practice. This form must be filed within 30 days after the registered apprentice begins his practice. (See Form I.)

BE 14 Supervision Terminated--Form II.

A registered apprentice who ceases to practice under the immediate personal supervision of a registered barber must file the following form with the Board before he will be allowed to file another Form I: (See Form II.)

BE 15 Expiration of Certificate.

Upon the expiration of a certificate of registration to practice as an apprentice pursuant to MSA 154.06, an individual will be required to pass an apprentice Examination to attain apprentice status. If the applicant fails the apprentice examination so taken, the applicant must complete an additional 500 hours of training in a duly licensed Minnesota Barber School to qualify to retake the apprentice examination.

BE 16-25 Reserved for Future Use.

CHAPTER TWO: REGISTERED BARBERS

BE 26 Examinations--Dates.

Examinations for a certificate as a registered barber shall be held in the second week of February, May, August and November of each year. Notice of the examination shall be given during the first week of the month preceding the month in which the examination is to be held.

BE 27 Examinations--Grading.

The registered barber examinations given pursuant to MSA 154.09 shall be graded as follows:

A. Each examination shall have six parts, consisting of four practical performances, including a haircut, shave, and two other practical performances, an oral part and a written part.

B. The grading criteria for the written part of the examination and the passing grade thereon will be established for each written examination at the time of its preparation; however, the lowest passing grade established hereunder shall never be less than 55. The grading for the practical performances and the oral part of the examination will be on a scale of 1 to 100 with 100 representing a perfect score. A score of 75 will be the minimum passing grade for the haircut portion, and 75 will also be the minimum passing score for the average of the remaining parts of the practical performances. The minimum passing score for the oral portion of the examination will be 75. If an applicant does not receive at least the established minimum passing grade on the written portion of the examination, or at least a grade of 75 on the oral portion of the examination, the haircut portion of the examination, or score an average of at least 75 on the remaining parts of the practical examination, such applicant will have failed the entire examination, and thereafter may only retake the entire examination after paying the necessary fee and meeting the require-

ments of MSA 154.05.

C. The Board of Barber Examiners shall have discretion to change, supply or reject models for an applicant's use in the practical parts of the examination in order to insure that the practical parts of the examination will be a fair test of the applicant's ability.

BE 28 Examinations--Filing.

An applicant for examination as a registered barber shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board shall, upon the showing of a hardship, accept applications at a later date.

BE 29 Out of State Barbers--Qualifications.

A. The Board must find the following to determine that another state or country has substantially the same requirements for licensing or registering barbers as provided under Minn. Stat. ch. 154:

1. The same educational requirements as MSA 154.05 (1).

2. Graduation from a barber school that requires:

a. Approval by a state requiring at least the same number of hours of instruction for school approval as Minnesota does.

b. An instructor to have the same qualifications as MSA 154.065 subd. 2 except the examination referred to in paragraph (e) shall be prescribed and conducted by the Barber Board of the state in which the instructor is teaching.

c. A curriculum that is equivalent to MSA 154.07 and rules and regulations of the Minnesota Barber Board adopted pursuant thereto.

3. The same practice requirements for a registered apprentice as set forth in MSA 154.05 (4).

BE 30 Out of State [redacted] pers--References.

A person making application for examination under MSA 154.11 must file with the Board, together with his application, character references from three individuals over the age of eighteen years who are not related to the applicant.

BE 31 Practicing Barber--A Registered Barber.

The following phrases contained in MSA 154.11 have the following meanings:

A. "A license or certificate of registration as practicing barber" means a current certificate of registration as a certified barber and not just as an apprentice.

B. "Has practiced as a barber" means that a person has performed the acts of barbering under a certificate of registration as either a registered barber or a registered apprentice.

BE 32 Failure to Renew Certificate Within One Year Period.

A registered barber who has failed to renew his certificate of registration for one year or more from the date of expiration, must take and pass the registered barber examination before a certificate of registration may be issued.

BE 33-41 Reserved for Future Use.

CHAPTER THREE: BARBER SCHOOL INSTRUCTORS

BE 42 Applications--Filing Date.

An applicant for examination as a registered teacher or instructor in a barber school shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board shall, upon the showing of a hardship, accept applications at a later date.

BE 43 Examinations--Grading.

Examinations given to applicants for an instructor's license shall be graded as follows:

A. An applicant for an instructor's certificate must receive a minimum grade of at least 70 on each phase of the examination and an average of at least 75 on all phases to pass the examination, and if any part of the examination is failed, the entire examination must be retaken.

BE 44 Instructor's License--Renewal.

The Board will not renew an instructor's license if the person does not hold a current vocational teacher's certificate.

BE 45 Vocational Teacher's Certificate--Procedure.

A. The procedure for a person making application for examination pursuant to MSA 154.065 (2) (c) as a registered teacher in a barber school shall be as follows:

1. The Trade and Industrial Unit of the State Board of Education will verify teacher training credits of individuals contemplating the instructor's exam. It will also require verification of at least three years of practical experience beyond apprenticeship.

2. The Trade and Industrial Unit will issue a memorandum to the Barber Board stating that the individual is (or is not) qualified for a vocational certificate.

3. The Board will then admit the individual for the instructor's examination.

4. Upon passing the examination and when the individual has obtained his job in a school, the Trade and Industrial Unit will issue the regular vocational certificate for which the person has previously qualified providing the proper fee is paid and a recommendation as to character, and competency, etc., is received from the employer.

5. The first certificate will be issued for a period of two years upon evidence of at least 24 clock hours of teacher training. Renewals are for one year and will be renewed only on evidence of additional teacher training from a recognized vocational teacher trainer. The final 5 year renewal is given on completion of 192 clock hours. The teacher training provided by this regulation is subject to requirements imposed by the Minnesota Department of Education; Vocational-Technical Education Division.

6. To qualify for an instructor's vocational certificate in barbering, the applicant, other than temporary teacher, must satisfactorily complete the Board's recommended Course Sequence.

Course Sequence must contain:

EITHER

VO. ED.	5300	Philosophy and practice of vocational education, or
IND.	5325	Philosophy and practice of industrial education
		And each of the following:
IND.	5330	Industrial course instruction
IND.	5301	Tests in industrial subjects
IND.	5360	Industrial instruction:
		Together with at least two of the following alternate choices:
IND.	3900	Independent study (In barbering)

IND. 5314 Administration of industrial education

IND. 5303 Industrial aids

IND. 5306 Industrial education workshop

IND. 5600 Instruction materials laboratory, or

(Any other course approved in writing by the Board)

BE 46-55 Reserved for Future Use.

CHAPTER FOUR: BARBER SCHOOLS

BE 56 License--Requirement.

No person shall operate a barber school in Minnesota without having first obtained a license therefore from the Board of Barber Examiners. Persons holding a permit for the conduct of a barber school which was issued prior to the adoption of these rules shall have a period of sixty (60) days after the adoption of these rules to file the necessary documents showing conformance with these rules with the execption of the course outline required by Rule BE 57 6. After the date of adoption of these rules all barber schools operating or requesting a license to operate will be governed by and shall proceed in accordance with these rules.

BE 57 License--Contents of Application.

A. A person desiring to operate a barber school in Minnesota shall present to the Board a verified statement showing at least the following:

1. All information required by Minn. Stat. ch. 154 or elsewhere in these rules.

2. The name of the applicant or applicants together with their occupations and residences for the ten years immediately prior to making

applications.

3. The address of the proposed school.

4. A complete financial statement showing all assets and liabilities of the applicant or applicants and their plan of financing.

5. A plan of operation of the school setting forth the following information:

a. Drawings showing the number of chairs to be installed and showing a minimum of five feet between barber chairs, measuring from center to center. Waiting area must be separate from work stations.

b. Drawings showing classroom space with a minimum area of 25 square feet available for each proposed student in classroom space.

c. A statement showing that the following will be available: One desk for each student enrolled; One chart on skin and hair; One chart on blood supply to face and neck; One chart on the muscles of the face, head and neck; One chart on the nerves of the face, head and neck; One chart on the bones of the face, head and neck; and One blackboard of a size not less than 6 feet by 3-½ feet.

d. Plans showing the following: Separate toilet and washroom facilities for men and women; plumbing and sewer system appropriate to the size and use of the building as a barber school; a statement regarding the availability and intended use of municipal sewer and water supplies.

e. Plans for appropriate lighting and ventilating systems.

f. Plans showing use of a type of floor material such as tile or linoleum which may be easily kept clean and sanitary.

g. Plans for proper sanitization facilities including the following:

One sink for each barber chair; One closed cabinet for clean towels for each barber chair; One closed container for soiled towels for each barber chair; One time clock; One hair dryer; two mechanical hand vibrators for each 15 chairs; and two stimulator machines for scalp manipulations for each 15 chairs.

h. Plans for adequate waiting chairs and clothes racks.

6. All barber schools shall submit to the Board a full course outline including each instructional unit, showing a course of instruction comprising an aggregate of not less than 1500 hours to be completed within 12 months, of not more than eight work instruction hours in any one working day. A copy of each school's curriculum will be filed with the Board. In the case of applicants for a license to operate a barber school submitted to the Board after the adoption of these rules, the application will contain the foregoing statements. Barber schools in existence at the time of adoption of these rules shall have two months from the date of adoption for submission of the outline prescribed by this rule. All schools shall submit a complete student course syllabus to the Board at the time of application for license and any renewal thereof.

7. All barber schools shall maintain on a current basis an observation sheet upon which will be recorded an analysis of the behavior and attitude of each student enrolled. The observation sheets will be open to inspection by the Board, any member of the Board, or a duly authorized agent of the Board at all times.

8. Applicants for a license to operate a barber school shall submit a copy of a brochure which will be made available to students upon approval of their application. This brochure shall list the fees which will be charged; together with enrollment and termination procedures for students. Any change in the tuition fee listed in this brochure must be immediately reported, in writing, to the Board.

9. Owners of barber schools shall make annual application for renewal of their licenses in accordance with the rules and regulations of the Board. The Board shall make a new determination annually that the school meets the requirements of Minn. Stat., ch. 154, as amended, and the rules and regulations of the Board before renewal of the license shall issue.

BE 58 License--Location.

A. Licenses shall issue for only a specific location upon the application of an individual who is to operate the school. Licenses shall not be transferable to any other individual or location without the approval by the Board. The facilities of an approved barber school shall not be expanded or increased without the prior approval of the Board, as provided in paragraph B. of this section.

B. The licensee may, by written application to the Board, request a hearing for transfer of a license, change of location of the barber school facility, or expansion of the school. Upon receipt of such an application, the Board shall conduct a public hearing in accordance with Minnesota Statutes, Chapter 15, and rules promulgated thereunder. The criteria for determining the application for a transfer, change of location, or expansion shall be the same standards applicable to the issuance of an original license.

BE 59 License Applicants.

No license shall issue to a corporation.

BE 60 License--Considerations Involved in Issuance.

A. The Board shall give consideration upon receipt of an application for the establishment of a barber school to the following factors:

1. Any detriment to the public welfare and the need for barber school facilities in the community and neighborhood where the proposed barber school is to be located, giving particular consideration to:

a. The economic character of the community and neighborhood;

b. The effect on existing barber shops and barber schools in the community;

c. The availability of adequate support for the proposed barber school in the community and neighborhood with particular regard to adequate practice for students;

d. The extent to which the proposed barber school would draw patrons from adjacent communities or neighborhoods and the character thereof;

e. The effect of the establishment of a barber school on the social and economic aspects of the community and neighborhood and adjacent communities and neighborhoods in regard to the proposed site.

2. For purposes of this rule, it is deemed by the Board as not being in the interest of the public welfare to approve the issuance of a license for the establishment of a barber school in a municipality of less than 100,000 population, or where there would be in excess of one barber school for each 75,000 of population.

3. No applicant to whom a license for the operation of a barber school has been issued shall commence operation of such school with fewer than ten students enrolled.

4. "License" as used herein contemplates an enrollment of 15 students per license issued.

BE 61 License--Public Hearing.

A. Upon receipt of an application for the establishment of a barber school, the Board shall conduct a public hearing in accordance with Minn. Stat., ch. 15, and rules promulgated thereunder. The applicant shall show at such hearing, by competent evidence, the factual basis of the assertions of his application and his qualifications as required by Minn. Stat., ch. 154, and the rules of the Board. The applicant shall further show his financial qualifications and it shall be a sufficient reason for denial of the application that the Board considers the financial

resources of the applicant to be insufficient to maintain and operate a barber school and assure the graduation of students who are registered in such school and have paid their tuition.

B. In the event that a license is not renewed by the Board upon application pursuant to these rules, the aggrieved applicant may by written notice to the Board request a public hearing concerning the denial of his application in accordance with Minn. Stat., ch. 15, and regulations promulgated thereunder.

BE 62 Instructors.

A. The provisions of MSA 154.07 requiring one instructor for every 15 students or minor fraction in excess thereof applies to classroom instruction as well as practical instruction. An applicant shall name in his application the names of all instructors. The Board will not issue a temporary instructor's certificate for a new school.

B. A barber school student must complete all services given to the patron of a barber school. Under no circumstances will the barber school owner or instructor finish the services on patrons.

BE 63 Barber Schools--Students.

A. Each barber school shall be required to give an aptitude test to each prospective student. The aptitude test shall be approved by the Board of Barber Examiners and shall include examination for dexterity in addition to examinations for other aptitudes.

B. Each student shall receive a physical examination for communicable or infectious diseases and either a mantoux test or a chest x-ray. The student shall, upon completion of such examination, submit a doctor's certificate

to the Board that he is free from contagious or infectious disease.

BE 64 Hours of Instruction.

The course of instruction required by MSA 154.07 shall include a training day including both classroom and practical instruction. Practical instruction shall not be given for more than 6-½ hours per day. Classroom instruction shall be given for 1-½ hours each day for each 8 hour day and 1 hour for each 6-½ hour day.

BE 65 Student Report--Monthly.

A. All approved barber schools shall file with the Board of Barber Examiners a monthly student report in substantially the following form: (See monthly report.) Failure to comply with this requirement shall be grounds for denial of an annual barber school permit authorized under MSA 154.07.

BE 66 Miscellaneous.

A. No barber school shall act as an agent in any respect to either students or prospective students regarding any attempt to transfer, sell or assign a student's place in a barber school.

B. No barber school shall advertise for patrons.

C. All barber schools shall have prominently displayed a sign stating "BARBER SCHOOL--ALL WORK DONE BY STUDENTS" with letters at least 6" high.

BE 67-76 Reserved for Future Use.

BE 77 Sanitary Rules and Regulations Governing Barber Shops and Barber Schools in the State of Minnesota.

Rule 1. Walls, Ceiling, Floor and Furniture:

The walls, ceilings, floor and furniture in every barber shop or barber school shall be kept clean and in good repair. Floors of barber shops or barber schools shall be covered with hardwood, linoleum, composition tile, or some other washable and nonporous material. These requirements shall include the proper cleaning of floors, shelves, cabinets, chairs, trays and other barber shop or barber school equipment.

Rule 2. Section 1, Instruments:

Razors, shears, combs, clipper blades, hairbrush and all other instruments or appliances that come in contact with the head, neck or face must be thoroughly cleaned and sanitized by submersion for a minimum of two minutes after use on each patron. As an alternative to submersion, clipper blades and shears may be treated by spraying them with a commercial spray containing active ingredients not less than 0.25% o-Phenyl phenol, 11.00% Isopropyl alcohol, and 88.75% Inert ingredients. When not in use, they must be kept in a clean closed compartment provided for and used only for storage of such equipment. Styptic pencil and lump alum are positively prohibited.

Section 2, Sanitization:

All barber shops and barber schools shall have in use at all times at each chair, a wet or dip sanitizer which is adequate in size to accommodate

all instruments to be used on each patron. The wet sanitizer shall contain a suitable chemical bactericide solution which shall be bacteriologically effective, such as 0.1% suitable quaternary ammonium compound, or by other means having a solution equivalent to 5% phenol, or other chemical sanitizing agent having equivalent bactericidal effect. The chemical solution shall be changed daily, or more often, as needed.

One dip disinfectant solution container will be kept for each barber chair in operation. Instruments immersed in the dip disinfectant solution container will be carefully rinsed in warm running water before use. Failure to provide a sink or dip disinfectant solution container constitutes prima facie evidence that instruments are not properly sanitized.

Rule 3. Towels:

A separate, clean towel or neck band shall be used for each patron. All barber shops and barber schools shall have sufficient closed sanitary towel cabients for storage of clean towels and closed hampers for soiled towels. All soiled towels after use on each customer shall be placed in a closed hamper and shall not be left on the lavatory or workstand. The headrest shall be provided with a clean towel or clean paper for each patron served.

Rule 4. Water Supply:

The water supply, sewage disposal system, and toilet facilities shall comply with the requirements of the Minnesota State Board of Health. Water heating equipment capable of supplying ample hot water of at least 160 degrees Fahrenheit shall be provided. At least one sink or lavatory shall be provided in each room, booth, stall, compartment or the immediate area in which barbers work. If more than two barber chairs are in any room, booth, stall or compartment, at least one sink or lavatory will be provided for each two barber

chairs at which barbers are currently working, with each barber having free access to such sink or lavatory without obstruction from other chairs, partitions, wall dividers or other barriers. The failure to provide a sink or lavatory as herein provided is prima facie evidence that proper sterilization and hand washing does not occur.

Rule 5. Cleanliness of Personnel:

The operator shall wear clean uniforms or clean clothes at all times. The operator shall cleanse his hands thoroughly with soap and clean water before attending each patron.

Rule 6. Medical Treatment:

No barber, apprentice barber, or student barber shall undertake to treat any disease of the skin nor shall he apply any medicine or treatment which administration is not distinctly a part of barbering. No barber shall apply drops to the eyes.

Rule 7. Licensing:

No person shall practice, or attempt to practice barbering without a certificate of registration issued pursuant to the provisions of Chapter 154.

Rule 8. Lighting and Ventilation:

Barber shops and barber schools shall have adequate lighting and be properly ventilated.

Rule 9. Right of Entry:

Any duly authorized employee of the Minnesota Board of Barber Examiners, Minnesota Board of Health, or Local Board of Health shall have authority to enter upon and inspect any barber shop or barber school at any time during business hours.

Rule 10. Health of Personnel:

No owner or manager shall permit any person suffering from a communicable disease to act as a barber.

Rule 11. Posting Regulations:

The owner or manager of any barber shop or barber school shall post a copy of these Rules and Regulations in a conspicuous place where they can be read by the patrons of the establishment.

Rule 12. Responsibility:

For the purpose of this Act, barbers, apprentice barbers, student barbers, or the proprietor or manager shall be responsible for all violations of the sanitary provisions of the Act.

Rule 13. Establishment:

For the purpose of this Act, no establishment shall be open for service to the public until all sanitary provisions of this Act have been complied with. These Rules pursuant to Minn. Stat. SS 154 have been approved by the Minnesota Board of Barber Examiners and the Minnesota Board of Health. A violation of any of these Rules shall be punishable by a fine not less than $10 nor more than $100 or imprisonment for not less than 10 days nor more than 90 days and shall be cause for suspension or revocation of a certificate of

registration or shop registration card.

Rule 14. Facilities:

Section 1.

Unless equipped public facilities are available in the building in which a barber shop is located, each barber shop shall have sanitary, clean and operating toilet facilities. These facilities shall include a water flush toilet, including a wash basin with hot and cold running water, and soap and adequate drying facilities.

Section 2.

No person shall use any room or part of a place which is also used for residential purposes, or any business purpose other than barbering, unless such areas are separated by substantial partition, extending from the floor to the ceiling. Further, any door or other entrance leading into the residential or other business portion of the building must be used only for the passage of barbers or other employees. Each barber shop must have a main entrance, designated as a barber shop entrance, to the outside, or to a main corridor or public passage used exclusively for the transportation of persons to and from the outside. The foregoing notwithstanding, a beauty shop and a barber shop may be operated in conjunction, without the same being separated by a partition of ceiling height. When a barber shop is operated in conjunction with a beauty shop, the barber shop area must be designated as such by a prominently displayed sign stating "Barber Shop" with letters at least two inches high. Barber chairs must be spaced not less than five feet apart center to center. Any barber shop approved in a residence or residential building must have separate toilet and handwashing facilities

within the barber shop for use of the barber shop patrons only. This Section 2 of Rule 14 does not apply to shops in operation prior to January 1, 1978, with respect to persons operating such shops, but will, however, apply when a change of ownership or operation is made.

Rule 15. Shop Registration Card:

Upon application for a barber shop's first shop registration card pursuant to MSA 154.085, a proposed floor plan will be submitted for the Board's approval at least 30 days prior to the scheduled shop opening date.

CHAPTER SIX: INSPECTORS

BE 78 Inspection--Procedure.

An inspector employed pursuant to MSA 154.23 shall fill out an inspection slip for each inspection he makes and shall insert the time of the inspection on his first and last inspection slips for the day and each of those slips shall be signed by the barber of the place that was inspected.

Inspectors hired by the Board shall make their inspections in conformity with the following procedures:

A. Minnesota Board of Barber Examiners shall periodically designate the area in which inspection shall be made.

B. The Minnesota Board of Barber Examiners will periodically advise inspectors of those violations under MSA 154 concerning which the inspectors may summarily file complaints with the local Civil authorities. Inspectors will make written reports to the Board of all such complaints filed.

C. Any and all violations of MSA 154 shall be submitted to the Board by the inspectors. Thereafter, the Board may, at its discretion, take appropriate action regarding such violations in accordance with Minn. Stat., ch 15

and rules promulgated thereunder.

D. All written reports made by the inspector shall contain the name and address of the offender, the exact nature of the violation, the section of the Statute violated, the date of the violation, and the action taken by the inspector.

E. Each barber shop in the State of Minnesota must be permanently located at one address, due to the difficulty of implementation of inspection procedures.

APPROVED AS TO FORM AND LEGALITY

SEP. 15 1978 19___

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E Shuby

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 15 1978
Joan Anderson Growe
Secretary of State

1:50 P.M.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Commerce

Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General

DATE: September 11, 1978

FROM : Robert C. Carlson
Special Assistant
Attorney General

PHONE: 9412

SUBJECT: Board of Barber Examiner Administrative Rules

Bob Clayton, who is on vacation for several weeks, has asked me to forward these rules to you. It is my understanding that you have reviewed them once, and the Office of Hearing Examiners has again reviewed them for substantial changes from the rules as originally proposed.

If you have any questions, please feel free to contact me.

RCC:pl
Enclosure

RECEIVED
SEP 13 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Red. 444 file

Attorney General

[illegible]
Special Assistant
Attorney General

July [illegible], 197[illegible]

[illegible]
Special Assistant
Attorney General

296-1258

Bomber Board Proposed Rules 1-77

As we discussed, I am returning the above-captioned rules herewith which have not been filed with the Secretary of State. The following rules, or severable portions thereof, are disapproved for the following reasons:

1. BE 2, BE 23, BE 42: Each of these rules permits agency waiver of the application deadline upon a showing of hardship. However, the use of the phrase "may, in its sole discretion" implies that the Board may not grant a waiver even if a showing of hardship is made. The agency must establish by rule the criteria which it would use to discriminate in granting a waiver to one of two applications, each with a satisfactory hardship showing, if the agency ever intended to so discriminate. In either event, the word "shall" must be used to avoid giving the agency unfettered discretion and to establish that "every agency statements of general applicability and future effect..." are properly incorporated into the rule as adopted.

2. BE 6(c), BE 27(c): A problem similar to the one discussed in paragraph No. 1 above arises in these rules out of the use of the word "may". The agency must establish by rule "every agency statement of general applicability and future effect...", as required by Minn. Stat. § 15.0411, Subd. 3. This office interprets that requirement to necessitate agency promulgation of criteria upon which the agency will act in areas which affect the rights of or procedures available to the public. Such an area is posed by the above-listed rules. From the Hearing Examiner's Report, it appears this rule is intended to permit the Board to reject "precut" or other models in the practical parts of the examination which interfere or subvert a genuine testing of the participant's skills. The criteria upon which the agency will act must be established by rule and the word "shall" must be used for the reason discussed above.

3. "Regulation": Legislative action in recent years has evidenced a strong intent to expunge the word "regulation" whenever possible from use when referring to "rules" as defined in Minn. Stat. § 15.0411, Subd. 3. This office strongly recommends that changes be made in the above-captioned rules to conform with this intent. Changes to comply with this recommendation would be required in at least the following rules: BE58(B), BE61(A), BE77(Rule 13), and BE78(C).

4. MR 78(Rule 13): This office initially disapproves the provision of this rule which makes a violation of any rule a misdemeanor. Minn. Stat. 154.19(9) appears on its face to make separate penalties for violations of rules other than the general misdemeanor penalty language which appears at the beginning of that statutory provision. As stated in the existing rules, the proper penalty for a violation of a rule is to "be fined not less than $10 or imprisoned for ten days and not more than $100 or imprisoned for 90 days". This office will, of course, entertain further argument from the agency if our reading of the statute appears to be clearly flawed.

I have retained a copy of documents in this matter should you wish to further discuss it with me. After reconsideration based on the above comments and appropriate action, where necessary, the agency may resubmit these rules to this office for final approval as to form and legality and filing with the Secretary of State. When the agency resubmits the rules, please insure that the original order adopting is submitted to this office so that it can be filed with the Secretary of State's office.

LES:mb

cc: Duane Harves

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Commerce

Office Memorandum

TO : LEE SHEEHY
Special Assistant
Attorney General

DATE: JUNE 28, 1978

FROM : ROBERT J. CLAYTON RJC
Special Assistant
Attorney General

PHONE: 9412

SUBJECT: BARBER BOARD RULES 1-78

Enclosed for your review and approval are rules BE1-78. The file contains an original and one copy of the post-hearing documents relating to these rules. These rules were originally proposed with Rule BE79 which was previously adopted. A copy of the entire file relating to the adoption Rule BE79 is already in your possession. Accordingly, the prehearing documents which relate to both Rule BE 79 and Rule BE1-78 are already in your possession. I also believe that a copy of the transcript in this matter would be filed with the documents relating to Rule BE79.

If in fact any of the file is not in your possession, please let me know and I will make extra copies of these other documents to send up to you.

If you have any questions in this matter, please feel free to contact me.

lf
Enc.

STATE OF MINNESOTA
BOARD OF BARBER EXAMINERS

In the Matter of the
Adoption of Rules by the
Board of Barber Examiners

Rules
As
Adopted

CHAPTER ONE: REGISTERED APPRENTICES

BE 1 Additional six-month practice-form IA.

An applicant who fails to satisfactorily pass an examination for a Certificate of Registration to practice as a registered barber, must file within 30 days after he begins his practice, Form IA with the Board to extend his registration for six months and enable him to continue practice as an apprentice. (See Form IA). The additional six-month practice required by MSA 154.05 (5) shall include not less than 1,040 hours of work time. The registered barber who supervises the additional six-month practice will file quarterly reports with the Board during the additional practice period.

BE 2 Application-filing dates.

An applicant for examination as a registered apprentice shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board may, in its sole discretion, upon the showing of a hardship, accept applications at a later date.

BE 3 Apprentices from other states-qualifications.

A. The Board must find the following to determine that another state or country has substantially the same requirements for registration of an apprentice as provided under Minn. Stat. ch. 154:

1. The same educational requirements as MSA 154.06 (1).

2. Graduation from a barber school that requires:

a. Approval by a state requiring at least the same number of hours of instruction for school approval as Minnesota does.

b. Instructors to have the same qualifications as MSA 154.065 Subd. 2 except the examination referred to in paragraph (e) shall be prescribed and conducted by the Barber Board of the state in which an instructor is teaching.

c. A curriculum that is equivalent to MSA 154.07 and rules and regulations of the Minnesota Board adopted pursuant thereto.

BE 4 Apprentices from other states-references.

A person making application for examination pursuant to MSA 154.12 shall file with the Board as part of his application three character references from any person over eighteen (18) years of age who is not related to the applicant.

BE 5 Examination dates.

Examinations for a certificate as a registered apprentice shall be held the first week in February, May, August and November of each year. Notice of the examination shall be given during the first week of the month preceding the month in which the examination is to be held.

BE 6 Examinations-grading.

The apprentice examinations given pursuant to MSA 154.09 shall be graded as follows:

A. Each examination shall have six parts, consisting of four practical performances, including a haircut, shave and two other practical performances, an oral part and a written part.

B. The grading criteria for the written part of the examination and the passing grade thereon will be established for each written examination at the time of its preparation; however, the lowest passing grade established hereunder shall never be less than 55. The grading for the practical performances and the oral part of the examination will be on a scale of 1 to 100 with 100 representing a perfect score. A score of 70 will be the minimum passing grade for the haircut portion, and 70 will also be the minimum passing score for the average of the remaining parts of the practical performances. The minimum passing score for the oral portion of the examination will be 70. If an applicant does not receive at least the established minimum passing grade on the written portion of the examination, or at least a grade of 70 on the oral portion of the examination, the haircut portion of the examination, or score an average of at least 70 on the remaining parts of the practical examination, such applicant will have failed the entire examination, and thereafter may only retake the entire examination after paying the necessary fee and meeting the requirements of MSA 154.06.

C. The Board of Barber Examiners, at its discretion, may change, supply or reject models for an applicant's use in the practical parts of the examination.

BE 7 Examinations-review.

An applicant, upon written request, may review his examination at the office of the Board of Barber Examiners during usual business hours.

BE 8 Grading system.

The grade of an examination conducted pursuant MSA 154.09 shall be determined under the following grading system: (See grading card.)

BE 9 Home Study Course.

The 15 months practice of a registered apprentice pursuant to MSA 154.05 shall include completion of the program entitled "Related Home Study Course for Apprentice Barbers" prepared by the Minnesota Department of Education: Vocational-Technical Education Division, and such course must be passed before the examination may be taken.

BE 10 Quarterly Reports.

The requirement of MSA 154.05 (4) regarding the practicing as a registered apprentice for a period of 15 months shall mean licensure for not less than 450 days and not less than 2,500 hours of work time.

The registered barber who supervises the practice of a registered apprentice will file a quarterly report during the 15-month apprenticeship period. (See quarterly report.)

BE 11 Requirements of MSA 154.05 (4).

A registered apprentice meets the requirements of MSA 154.05 (4) if he completes his 15 months practice at any time prior to or within the week in which the examination is given pursuant to MSA 154.05 (5).

BE 12 Student Permit Fee.

An applicant for a Certificate of registration to practice as an apprentice who is required to complete a further course of study of not less than

500 hours pursuant to MSA 154.06 shall not be required to pay an additional Student Permit Fee, provided, however, that there is no interruption in his course of study.

BE 13 Supervision of Practice--Form I.

A registered apprentice who practices under the immediate personal supervision of a registered barber must file the following form with the Board to receive credit for the practice. This form must be filed within 30 days after the registered apprentice begins his practice. (See Form I.)

BE 14 Supervision Terminated--Form II.

A registered apprentice who ceases to practice under the immediate personal supervision of a registered barber must file the following form with the Board before he will be allowed to file another Form I: (See Form II.)

BE 15 Expiration of Certificate.

Upon the expiration of a certificate of registration to practice as an apprentice pursuant to MSA 154.06, an individual will be required to pass an apprentice Examination to attain apprentice status. If the applicant fails the apprentice examination so taken, the applicant must complete an additional 500 hours of training in a duly licensed Minnesota Barber School to qualify to retake the apprentice examination.

BE 16-25 Reserved for Future Use.

CHAPTER TWO: REGISTERED BARBERS

BE 26 Examinations--Dates.

Examinations for a certificate as a registered barber shall be held in the second week of February, May, August and November of each year. Notice of the examination shall be given during the first week of the month preceding the month in which the examination is to be held.

BE 27 Examinations--Grading.

The registered barber examinations given pursuant to MSA 154.09 shall be graded as follows:

A. Each examination shall have six parts, consisting of four practical performances, including a haircut, shave, and two other practical performances, an oral part and a written part.

B. The grading criteria for the written part of the examination and the passing grade thereon will be established for each written examination at the time of its preparation; however, the lowest passing grade established hereunder shall never be less than 55. The grading for the practical performances and the oral part of the examination will be on a scale of 1 to 100 with 100 representing a perfect score. A score of 75 will be the minimum passing grade for the haircut portion, and 75 will also be the minimum passing score for the average of the remaining parts of the practical performances. The minimum passing score for the oral portion of the examination will be 75. If an applicant does not receive at least the established minimum passing grade on the written portion of the examination, or at least a grade of 75 on the oral portion of the examination, the haircut portion of the examination, or score an average of at least 75 on the remaining parts of the practical examination, such applicant will have failed the entire examination, and thereafter may only retake the entire examination after paying the necessary fee and meeting the require-

ments of MSA 154.05.

C. The Board of Barber Examiners, at its discretion, may change, supply or reject models for an applicant's use in the practical parts of the examination.

BE 28 Examinations--Filing.

An applicant for examination as a registered barber shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board may, in its sole discretion, upon the showing of a hardship, accept applications at a later date.

BE 29 Out of State Barbers--Qualifications.

A. The Board must find the following to determine that another state or country has substantially the same requirements for licensing or registering barbers as provided under Minn. Stat. ch. 154:

1. The same educational requirements as MSA 154.05 (1).

2. Graduation from a barber school that requires:

a. Approval by a state requiring at least the same number of hours of instruction for school approval as Minnesota does.

b. An instructor to have the same qualifications as MSA 154.065 subd. 2 except the examination referred to in paragraph (e) shall be prescribed and conducted by the Barber Board of the state in which the instructor is teaching.

c. A curriculum that is equivalent to MSA 154.07 and rules and regulations of the Minnesota Barber Board adopted pursuant thereto.

3. The same practice requirements for a registered apprentice as set forth in MSA 154.05 (4).

BE 30 Out of State Barbers--References.

A person making application for examination under MSA 154.11 must file with the Board, together with his application, character references from three individuals over the age of eighteen years who are not related to the applicant.

BE 31 Practicing Barber--A Registered Barber.

The following phrases contained in MSA 154.11 have the following meanings:

A. "A license or certificate of registration as practicing barber" means a current certificate of registration as a certified barber and not just as an apprentice.

B. "Has practiced as a barber" means that a person has performed the acts of barbering under a certificate of registration as either a registered barber or a registered apprentice.

BE 32 Failure to Renew Certificate Within One Year Period.

A registered barber who has failed to renew his certificate of registration for one year or more from the date of expiration, must take and pass the registered barber examination before a certificate of registration may be issued.

BE 33-41 Reserved for Future Use.

CHAPTER THREE: BARBER SCHOOL INSTRUCTORS

BE 42 Applications--Filing Date.

An applicant for examination as a registered teacher or instructor in a barber school shall file his application with the Board not later than the 20th day of the month preceding the month in which the examination is to be given, provided, however, that the Board may, in its sole discretion, upon the showing of a hardship, accept applications at a later date.

BE 43 Examinations--Grading.

Examinations given to applicants for an instructor's license shall be graded as follows:

A. An applicant for an instructor's certificate must receive a minimum grade of at least 70 on each phase of the examination and an average of at least 75 on all phases to pass the examination, and if any part of the examination is failed, the entire examination must be retaken.

BE 44 Instructor's License--Renewal.

The Board will not renew an instructor's license if the person does not hold a current vocational teacher's certificate.

BE 45 Vocational Teacher's Certificate--Procedure.

A. The procedure for a person making application for examination pursuant to MSA 154.065 (2) (c) as a registered teacher in a barber school shall be as follows:

1. The Trade and Industrial Unit of the State Board of Education will verify teacher training credits of individuals contemplating the instructor's exam. It will also require verification of at least three years of practical experience beyond apprenticeship.

2. The Trade and Industrial Unit will issue a memorandum to the Barber Board stating that the individual is (or is not) qualified for a vocational certificate.

3. The Board will then admit the individual for the instructor's examination.

4. Upon passing the examination and when the individual has obtained his job in a school, the Trade and Industrial Unit will issue the regular vocational certificate for which the person has previously qualified providing the proper fee is paid and a recommendation as to character, and competency, etc., is received from the employer.

5. The first certificate will be issued for a period of two years upon evidence of at least 24 clock hours of teacher training. Renewals are for one year and will be renewed only on evidence of additional teacher training from a recognized vocational teacher trainer. The final 5 year renewal is given on completion of 192 clock hours. The teacher training provided by this regulation is subject to requirements imposed by the Minnesota Department of Education; Vocational-Technical Education Division.

6. To qualify for an instructor's vocational certificate in barbering, the applicant, other than temporary teacher, must satisfactorily complete the Board's recommended Course Sequence.

Course Sequence must contain:

EITHER

VO. ED.	5300	Philosophy and practice of vocational education, or
IND.	5325	Philosophy and practice of industrial education
		And each of the following:
IND.	5330	Industrial course instruction
IND.	5301	Tests in industrial subjects
IND.	5360	Industrial instruction:
		Together with at least two of the following alternate choices:
IND.	3900	Independent study (In barbering)

IND. 5314 Administration of industrial education

IND. 5303 Industrial aids

IND. 5306 Industrial education workshop

IND. 5600 Instruction materials laboratory, or

(Any other course approved in writing by the Board)

BE 46-55 Reserved for Future Use.

CHAPTER FOUR: BARBER SCHOOLS

BE 56 License--Requirement.

No person shall operate a barber school in Minnesota without having first obtained a license therefore from the Board of Barber Examiners. Persons holding a permit for the conduct of a barber school which was issued prior to the adoption of these rules shall have a period of sixty (60) days after the adoption of these rules to file the necessary documents showing conformance with these rules with the execption of the course outline required by Rule BE 57 6. After the date of adoption of these rules all barber schools operating or requesting a license to operate will be governed by and shall proceed in accordance with these rules.

BE 57 License--Contents of Application.

A. A person desiring to operate a barber school in Minnesota shall present to the Board a verified statement showing at least the following:

1. All information required by Minn. Stat. ch. 154 or elsewhere in these rules.

2. The name of the applicant or applicants together with their occupations and residences for the ten years immediately prior to making

applications.

3. The address of the proposed school.

4. A complete financial statement showing all assets and liabilities of the applicant or applicants and their plan of financing.

5. A plan of operation of the school setting forth the following information:

a. Drawings showing the number of chairs to be installed and showing a minimum of five feet between barber chairs, measuring from center to center. Waiting area must be separate from work stations.

b. Drawings showing classroom space with a minimum area of 25 square feet available for each proposed student in classroom space.

c. A statement showing that the following will be available: One desk for each student enrolled; One chart on skin and hair; One chart on blood supply to face and neck; One chart on the muscles of the face, head and neck; One chart on the nerves of the face, head and neck; One chart on the bones of the face, head and neck; and One blackboard of a size not less than 6 feet by 3-½ feet.

d. Plans showing the following: Separate toilet and washroom facilities for men and women; plumbing and sewer system appropriate to the size and use of the building as a barber school; a statement regarding the availability and intended use of municipal sewer and water supplies.

e. Plans for appropriate lighting and ventilating systems.

f. Plans showing use of a type of floor material such as tile or linoleum which may be easily kept clean and sanitary.

g. Plans for proper sanitization facilities including the following:

One sink for each barber chair; One closed cabinet for clean towels for each barber chair; One closed container for soiled towels for each barber chair; One time clock; One hair dryer; two mechanical hand vibrators for each 15 chairs; and two stimulator machines for scalp manipulations for each 15 chairs.

h. Plans for adequate waiting chairs and clothes racks.

6. All barber schools shall submit to the Board a full course outline including each instructional unit, showing a course of instruction comprising an aggregate of not less than 1500 hours to be completed within 12 months, of not more than eight work instruction hours in any one working day. A copy of each school's curriculum will be filed with the Board. In the case of applicants for a license to operate a barber school submitted to the Board after the adoption of these rules, the application will contain the foregoing statements. Barber schools in existence at the time of adoption of these rules shall have two months from the date of adoption for submission of the outline prescribed by this rule. All schools shall submit a complete student course syllabus to the Board at the time of application for license and any renewal thereof.

7. All barber schools shall maintain on a current basis an observation sheet upon which will be recorded an analysis of the behavior and attitude of each student enrolled. The observation sheets will be open to inspection by the Board, any member of the Board, or a duly authorized agent of the Board at all times.

8. Applicants for a license to operate a barber school shall submit a copy of a brochure which will be made available to students upon approval of their application. This brochure shall list the fees which will be charged; together with enrollment and termination procedures for students. Any change in the tuition fee listed in this brochure must be immediately reported, in writing, to the Board.

9. Owners of barber schools shall make annual application for renewal of their licenses in accordance with the rules and regulations of the Board. The Board shall make a new determination annually that the school meets the requirements of Minn. Stat., ch. 154, as amended, and the rules and regulations of the Board before renewal of the license shall issue.

BE 58 License--Location.

A. Licenses shall issue for only a specific location upon the application of an individual who is to operate the school. Licenses shall not be transferable to any other individual or location without the approval by the Board. The facilities of an approved barber school shall not be expanded or increased without the prior approval of the Board, as provided in paragraph B. of this section.

B. The licensee may, by written application to the Board, request a hearing for transfer of a license, change of location of the barber school facility, or expansion of the school. Upon receipt of such an application, the Board shall conduct a public hearing in accordance with Minnesota Statutes, Chapter 15, and regulations promulgated thereunder. The criteria for determining the application for a transfer, change of location, or expansion shall be the same standards applicable to the issuance of an original license.

BE 59 License Applicants.

No license shall issue to a corporation.

BE 60 License--Considerations Involved in Issuance.

A. The Board shall give consideration upon receipt of an application for the establishment of a barber school to the following factors:

1. Any detriment to the public welfare and the need for barber school facilities in the community and neighborhood where the proposed barber school is to be located, giving particular consideration to:

a. The economic character of the community and neighborhood;

b. The effect on existing barber shops and barber schools in the community;

c. The availability of adequate support for the proposed barber school in the community and neighborhood with particular regard to adequate practice for students;

d. The extent to which the proposed barber school would draw patrons from adjacent communities or neighborhoods and the character thereof;

e. The effect of the establishment of a barber school on the social and economic aspects of the community and neighborhood and adjacent communities and neighborhoods in regard to the proposed site.

2. For purposes of this rule, it is deemed by the Board as not being in the interest of the public welfare to approve the issuance of a license for the establishment of a barber school in a municipality of less than 100,000 population, or where there would be in excess of one barber school for each 75,000 of population.

3. No applicant to whom a license for the operation of a barber school has been issued shall commence operation of such school with fewer than ten students enrolled.

4. "License" as used herein contemplates an enrollment of 15 students per license issued.

BE 61 License--Public Hearing.

A. Upon receipt of an application for the establishment of a barber school, the Board shall conduct a public hearing in accordance with Minn. Stat., ch. 15, and regulations promulgated thereunder. The applicant shall show at such hearing, by competent evidence, the factual basis of the assertions of his application and his qualifications as required by Minn. Stat., ch. 154, and the rules and regulations of the Board. The applicant shall further show his financial qualifications and it shall be a sufficient reason for denial of the application that the Board considers the financial

resources of the applicant to be insufficient to maintain and operate a barber school and assure the graduation of students who are registered in such school and have paid their tuition.

B. In the event that a license is not renewed by the Board upon application pursuant to these rules, the aggrieved applicant may by written notice to the Board request a public hearing concerning the denial of his application in accordance with Minn. Stat., ch. 15, and regulations promulgated thereunder.

BE 62 Instructors.

A. The provisions of MSA 154.07 requiring one instructor for every 15 students or minor fraction in excess thereof applies to classroom instruction as well as practical instruction. An applicant shall name in his application the names of all instructors. The Board will not issue a temporary instructor's certificate for a new school.

B. A barber school student must complete all services given to the patron of a barber school. Under no circumstances will the barber school owner or instructor finish the services on patrons.

BE 63 Barber Schools--Students.

A. Each barber school shall be required to give an aptitude test to each prospective student. The aptitude test shall be approved by the Board of Barber Examiners and shall include examination for dexterity in addition to examinations for other aptitudes.

B. Each student shall receive a physical examination for communicable or infectious diseases and either a mantoux test or a chest x-ray. The student shall, upon completion of such examination, submit a doctor's certificate

to the Board that he is free from contagious or infectious disease.

BE 64 Hours of Instruction.

The course of instruction required by MSA 154.07 shall include a training day including both classroom and practical instruction. Practical instruction shall not be given for more than 6-½ hours per day. Classroom instruction shall be given for 1-½ hours each day for each 8 hour day and 1 hour for each 6-½ hour day.

BE 65 Student Report--Monthly.

A. All approved barber schools shall file with the Board of Barber Examiners a monthly student report in substantially the following form: (See monthly report.) Failure to comply with this requirement shall be grounds for denial of an annual barber school permit authorized under MSA 154.07.

BE 66 Miscellaneous.

A. No barber school shall act as an agent in any respect to either students or prospective students regarding any attempt to transfer, sell or assign a student's place in a barber school.

B. No barber school shall advertise for patrons.

C. All barber schools shall have prominently displayed a sign stating "BARBER SCHOOL--ALL WORK DONE BY STUDENTS" with letters at least 6" high.

BE 67-76 Reserved for Future Use.

BE 77 Sanitary Rules and Regulations Governing Barber Shops and Barber Schools in the State of Minnesota.

Rule 1. Walls, Ceiling, Floor and Furniture:

The walls, ceilings, floor and furniture in every barber shop or barber school shall be kept clean and in good repair. Floors of barber shops or barber schools shall be covered with hardwood, linoleum, composition tile, or some other washable and nonporous material. These requirements shall include the proper cleaning of floors, shelves, cabinets, chairs, trays and other barber shop or barber school equipment.

Rule 2. Section 1, Instruments:

Razors, shears, combs, clipper blades, hairbrush and all other instruments or appliances that come in contact with the head, neck or face must be thoroughly cleaned and sanitized by submersion for a minimum of two minutes after use on each patron. As an alternative to submersion, clipper blades and shears may be treated by spraying them with a commercial spray containing active ingredients not less than 0.25% o-Phenyl phenol, 11.00% Isopropyl alcohol, and 88.75% Inert ingredients. When not in use, they must be kept in a clean closed compartment provided for and used only for storage of such equipment. Styptic pencil and lump alum are positively prohibited.

Section 2, Sanitization:

All barber shops and barber schools shall have in use at all times at each chair, a wet or dip sanitizer which is adequate in size to accommodate

all instruments to be used on each patron. The wet sanitizer shall contain a suitable chemical bactericide solution which shall be bacteriologically effective, such as 0.1% suitable quaternary ammonium compound, or by other means having a solution equivalent to 5% phenol, or other chemical sanitizing agent having equivalent bactericidal effect. The chemical solution shall be changed daily, or more often, as needed.

One dip disinfectant solution container will be kept for each barber chair in operation. Instruments immersed in the dip disinfectant solution container will be carefully rinsed in warm running water before use. Failure to provide a sink or dip disinfectant solution container constitutes prima facie evidence that instruments are not properly sanitized.

Rule 3. Towels:

A separate, clean towel or neck band shall be used for each patron. All barber shops and barber schools shall have sufficient closed sanitary towel cabients for storage of clean towels and closed hampers for soiled towels. All soiled towels after use on each customer shall be placed in a closed hamper and shall not be left on the lavatory or workstand. The headrest shall be provided with a clean towel or clean paper for each patron served.

Rule 4. Water Supply:

The water supply, sewage disposal system, and toilet facilities shall comply with the requirements of the Minnesota State Board of Health. Water heating equipment capable of supplying ample hot water of at least 160 degrees Fahrenheit shall be provided. At least one sink or lavatory shall be provided in each room, booth, stall, compartment or the immediate area in which barbers work. If more than two barber chairs are in any room, booth, stall or compartment, at least one sink or lavatory will be provided for each two barber

chairs at which barbers are currently working, with each barber having free access to such sink or lavatory without obstruction from other chairs, partitions, wall dividers or other barriers. The failure to provide a sink or lavatory as herein provided is prima facie evidence that proper sterilization and hand washing does not occur.

Rule 5. Cleanliness of Personnel:

The operator shall wear clean uniforms or clean clothes at all times. The operator shall cleanse his hands thoroughly with soap and clean water before attending each patron.

Rule 6. Medical Treatment:

No barber, apprentice barber, or student barber shall undertake to treat any disease of the skin nor shall he apply any medicine or treatment which administration is not distinctly a part of barbering. No barber shall apply drops to the eyes.

Rule 7. Licensing:

No person shall practice, or attempt to practice barbering without a certificate of registration issued pursuant to the provisions of Chapter 154.

Rule 8. Lighting and Ventilation:

Barber shops and barber schools shall have adequate lighting and be properly ventilated.

Rule 9. Right of Entry:

Any duly authorized employee of the Minnesota Board of Barber Examiners, Minnesota Board of Health, or Local Board of Health shall have authority to enter upon and inspect any barber shop or barber school at any time during business hours.

Rule 10. Health of Personnel:

No owner or manager shall permit any person suffering from a communicable disease to act as a barber.

Rule 11. Posting Regulations:

The owner or manager of any barber shop or barber school shall post a copy of these Rules and Regulations in a conspicuous place where they can be read by the patrons of the establishment.

Rule 12. Responsibility:

For the purpose of this Act, barbers, apprentice barbers, student barbers, or the proprietor or manager shall be responsible for all violations of the sanitary provisions of the Act.

Rule 13. Establishment:

For the purpose of this Act, no establishment shall be open for service to the public until all sanitary provisions of this Act have been complied with. These Rules and Regulations pursuant to Minn. Stat. § 154 have been approved by the Minnesota Board of Barber Examiners and the Minnesota Board of Health. A violation of any of these Rules and Regulations shall be a misdemeanor and cause for suspension or revocation of a certificate of

registration or shop registration card.

Rule 14. Facilities:

Section 1.

Unless equipped public facilities are available in the building in which a barber shop is located, each barber shop shall have sanitary, clean and operating toilet facilities. These facilities shall include a water flush toilet, including a wash basin with hot and cold running water, and soap and adequate drying facilities.

Section 2.

No person shall use any room or part of a place which is also used for residential purposes, or any business purpose other than barbering, unless such areas are separated by substantial partition, extending from the floor to the ceiling. Further, any door or other entrance leading into the residential or other business portion of the building must be used only for the passage of barbers or other employees. Each barber shop must have a main entrance, designated as a barber shop entrance, to the outside, or to a main corridor or public passage used exclusively for the transportation of persons to and from the outside. The foregoing notwithstanding, a beauty shop and a barber shop may be operated in conjunction, without the same being separated by a partition of ceiling height. When a barber shop is operated in conjunction with a beauty shop, the barber shop area must be designated as such by a prominently displayed sign stating "Barber Shop" with letters at least two inches high. Barber chairs must be spaced not less than five feet apart center to center. Any barber shop approved in a residence or residential building must have separate toilet and handwashing facilities

within the barber shop for use of the barber shop patrons only. This Section 2 of Rule 14 does not apply to shops in operation prior to January 1, 1978, with respect to persons operating such shops, but will, however, apply when a change of ownership or operation is made.

Rule 15. Shop Registration Card:

Upon application for a barber shop's first shop registration card pursuant to MSA 154.085, a proposed floor plan will be submitted for the Board's approval at least 30 days prior to the scheduled shop opening date.

CHAPTER SIX: INSPECTORS

BE 78 Inspection--Procedure.

An inspector employed pursuant to MSA 154.23 shall fill out an inspection slip for each inspection he makes and shall insert the time of the inspection on his first and last inspection slips for the day and each of those slips shall be signed by the barber of the place that was inspected.

Inspectors hired by the Board shall make their inspections in conformity with the following procedures:

A. Minnesota Board of Barber Examiners shall periodically designate the area in which inspection shall be made.

B. The Minnesota Board of Barber Examiners will periodically advise inspectors of those violations under MSA 154 concerning which the inspectors may summarily file complaints with the local Civil authorities. Inspectors will make written reports to the Board of all such complaints filed.

C. Any and all violations of MSA 154 shall be submitted to the Board by the inspectors. Thereafter, the Board may, at its discretion, take appropriate action regarding such violations in accordance with Minn. Stat., ch 15

and regulations promulgated thereunder.

D. All written reports made by the inspector shall contain the name and address of the offender, the exact nature of the violation, the section of the Statute violated, the date of the violation, and the action taken by the inspector.

E. Each barber shop in the State of Minnesota must be permanently located at one address, due to the difficulty of implementation of inspection procedures.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Eileen A. Gaiovnik, being first duly sworn, hereby deposes and says:

That at the City of St. Paul, county and state aforementioned, on the 18th day of November, 1977, she did serve the Report of Hearing Examiner, BE-78-001-PE

upon Robert J. Clayton, Special Assistant Attorney General by personally handing to Adam Mikrot, Executive Secretary, Board of Barber Examiners, said Report of Hearing Examiner.

Eileen A. Gaiovnik

Subscribed and sworn to before me this 18th day of November, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF BARBER EXAMINERS

In the Matter of the Proposed Adoption of Rules by the Board of Barber Examiners.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Monday, October 24, 1977 in Room 81 of the State Office Building, St. Paul, Minnesota.

Robert J. Clayton, Special Assistant Attorney General, Fifth Floor, Metro Square Building, appeared as counsel for the Board of Barber Examiners. Francis Singer, Administrative Management Director for the Department of Commerce, and Adam Mikrot, Executive Secretary of the Board, testified on behalf of the Board in support of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Board of Barber Examiners shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On August 30, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On September 12, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 410.

3. On September 20, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On September 28, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.
(i) A Department of Finance approval.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through October 31, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 214.06 and 154.24.

7. The proposed amendments to BE 1 add necessary clarifying language and incorporate present BE 12 for organizational purposes.

8. The proposed amendment to BE 2 allows the Board needed discretion to accept late applications for registered apprentice examinations.

9. In several of the current rules, the lettering and numbering have been changed to comply with the rules of the Minnesota State Register.

10. The proposed amendment to BE 4 changes an age requirement to comply with the statutory age of majority.

11. BE 5 is amended by deleting an unnecessary comma.

12. The proposed amendments to BE 6 clarify the apprentice examination grading procedures and allow the Board to substitute models if the model brought in by the applicant has been precut.

13. BE 7 has been amended to simplify office procedures if an applicant wishes to review his examination.

14. The proposed amendment to BE 9 is necessary to clarify the rule title and education requirements that must be met.

15. BE 10 has been changed to simplify the reporting procedures for barbers who supervise apprentices.

a. The following amendment was proposed to clarify the intent and meaning of BE 10:

> ". . . for a period of 15 months shall mean licensure for not less than 450 days and not less than 2,500 hours of work time."

16. Current BE 12 has been incorporated into proposed BE 1. BE 13, 14 and 15 have been renumbered accordingly. Newly renumbered BE 12 has been changed by deleting fee language which is covered in BE 79.

17. New BE 15 is necessary to specify the licensing procedures to be followed by an apprentice whose certificate expires.

18. The proposed amendments to BE 27 clarify the registered barber examination grading procedures and allow the Board to substitute models if the model brought in by the applicant has been precut.

19. The proposed amendment to BE 28 allows the Board needed discretion to accept late applications for registered barber examinations.

20. The proposed amendments to BE 29 are only relettering and renumbering and no new language has been added as was erroneously shown in the State Register publication.

21. The proposed amendment to BE 30 changes an age requirement to comply with the statutory age of majority.

22. BE 31 has been amended by deleting unnecessary language.

23. New BE 33 is necessary to specify the licensing procedure that must be followed by a registered barber who has failed to renew his certificate for one or more years.

a. New BE 33 should be renumbered to be BE 32, and the line following the rule should read, "BE 33-41 Reserved for further use."

24. The proposed amendment to BE 42 allows the Board needed discretion to accept late applications for registered teacher or instructor examinations.

25. BE 43 has been amended to specify that if any part of the instructor's examination is failed, the entire examination must be retaken.

26. The proposed amendments to BE 45 clarify that teacher training is governed by VoTech requirements and set out new course numbers and titles.

27. BE 56 and 57 have been amended by making minor clarifying changes.

28. The proposed amendment to BE 58 is necessary to specify that hearings held on license transfers, change of location or school expansion are conducted pursuant to Chapter 15.

29. The proposed amendments to BE 61 delete language struck down by the Minnesota Supreme Court and specify that hearings on barber school licenses be conducted pursuant to Chapter 15.

30. BE 63 has been amended by allowing barber students to have either a Mantoux test or a chest X-ray as part of the required physical examination. This alternative is the policy now followed by the Department of Health.

31. The proposed amendment to BE 64 specifies the requirement for classroom instruction.

a. The following language was proposed to further clarify the classroom requirement:

> "Classroom instruction shall be given for 1 1/2 hours each day for each 8 hour day and 1 hour for each 6 1/2 hour day."

32. The proposed amendments to Rule 2 of BE 77 specify a sanitation alternative to submersion of instruments and mandate that one sterilizer be provided for each barber chair.

33. The proposed amendment to Rule 4 of BE 77 mandates that one sink or lavatory be provided for each booth or compartment where barbers work. The Board has found it necessary to impose this requirement so that proper sanitary methods are followed.

34. Rule 13 of BE 77 has been amended by clarifying the penalties that may be imposed for a violation of the sanitation requirements.

35. Proposed new Rule 14, section 1, of BE 77 mandates that toilet facilities must be available to the patrons of every barber shop. Section 2 sets out requirements for the operation of a barber shop in a building used for other purposes and for the joint operation of beauty and barber shops.

a. Ms. Cynthia Allen, a member of the State Board of Cosmetology, proposed that language be added to Section 2 requiring that a six-foot high partition be placed between jointly operated barber and beauty booths or compartments. She stated that a partition is necessary for the protection of consumers who may not realize the differences in training and services rendered.

b. James Grassman spoke in opposition to a partition requirement and stated that no notice as to the proposed requirement was served on anyone. That many more persons would be very interested in the use of a partition had they known the idea would be considered.

c. The Board of Barber Examiners responded to the issue by commenting that if an amendment to require a partition is appropriate at this time, they are in favor of it.

36. Rule 15 of BE 77 has been amended by requiring that a floor plan be submitted at least 30 days prior to the opening of a new shop and by deleting duplicated sanitation rules.

37. The Board proposed to correct a printed mistake in Rule 1 of BE 77 by revising the final sentence to read:

> "These requirements shall include the proper cleaning of floors, shelves, cabinets, chairs, trays[,] and other barber shop or barber school equipment."

38. BE 78 has been amended by incorporating a reference to Chapter 15 regarding hearings on certain violations.

a. The Board proposed to delete the language "gated thereunder" which was erroneously printed at the end of BE 78, paragraph C.

39. Proposed BE 79 sets out a new fee structure which was approved by the Department of Finance on August 24, 1977.

a. The Board proposed to amend BE 79 by deleting the language after the word "Fees" and the entire "Present Fee" structure as it is unnecessary and confusing to the rule.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Board of Barber Examiners. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3, it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that the proposed rules be amended as set out in Findings 15a, 23a, 31a, 37, 38a and 39a for the reasons stated therein.

4. The Examiner concludes that the fee schedule was shown to be reasonable.

5. Presently, the State Board of Cosmetology is about to publish adopted rules which contain the following provision:

> MSCB 40K. A beauty shop and a barber shop may be operated in the same physical area if they are physically separated, the beauty shop area must be properly identified by a prominently displayed sign stating "beauty shop" with letters at least two inches high and the beauty shop area must have a minimum of 120 square feet of area.

Minn. Stat. § 154.19(6) states that, "a barber shop and beauty parlor may be operated in conjunction, without the same being separated

by partition of ceiling height." Minn. Stat. § 154.04(4) states that, "Persons practicing beauty culture. . . shall not . . . practice their occupation in a barber shop." Minn. Stat. § 155.19 prohibits barbers from practicing barbering in a beauty shop.

The Cosmetology rule, MSBC 40K., speaks of a physical separation between jointly operated barber and beauty shops. Section 154.19 states that ceiling-high partitions are not required; however, §§ 154.04 and 155.19 prohibit a barber or cosmetologist from operating in the other's shop. The Examiner concludes that proposed BE 77, Rule 14, section 2, which requires only that a single sign with two-inch high letters reading "Barber Shop" be posted in the barbering area, is not sufficient to guard against the commingling of barbers and cosmetologists. Some kind of physical separation between the barbering and beauty area is necessary for consumer protection and to comply with §§ 154.19 and 154.04. The Board of Barber Examiners could adopt BE 77, Rule 14, section 2, as proposed, however, as the soon-to-be effective Cosmetology rule will provide for the necessary "physical separation."

Mr. Grassman's "notice" objection to this issue is well taken. The Examiner concludes that the inclusion of a partition requirement would be a major substantive change which would invite further reaction if the public had been put on notice. See Minn. Rule HE 108. As such, it would be a substantial change.

Needless to say, the joint operation of Barber and Beauty shops is embroiled in both legislative and regulatory controversy. See also, SBC-77-007-PE issued September 14, 1977. It appears that a legislative directive will be necessary to resolve the issue.

6. The Examiner concludes that the Board has documented its statutory authority to promulgate the proposed rules and demonstrated the reasonableness of the proposed rules (bearing in mind the discussion in Conclusion 5) by an affirmative presentation of facts.

7. The Examiner concludes that the amendments he is suggesting to the rules make the rules more reasonable, and that none of these amendments constitute a substantial change.

Based upon the foregoing Conclusions, the Examiner makes the following:

RECOMMENDATION

That the Board of Barber Examiners adopt the proposed rules as recommended to be amended in this Report.

Dated this 18th day of November, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner