

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-02

STATE OF MINNESOTA

DEPARTMENT COMMERCE/CONSUMER SERVICES

Office Memorandum

TO : Larry D. Starns
Special Assistant Attorney General

DATE: March 2, 1983

FROM : Connie Green CG
Support Program Supervisor

PHONE: 296-5934

SUBJECT: Amendments to Revisor's 2-22-83 Cosmetology Rules Printing

You will note that handwritten amendments have been made on several pages of the Revisor's 2-22-83 printing. For your information, I am providing this explanation with regard to those amendments.

The amendments on pp. 5, 43 & 44 are all amendments which were proposed by the agency in its final written comment to the Hearing Examiner on 12-23-82. The Hearing Examiner in his response approved each of these amendments. These amendments were given to the Revisor's Office to the 2-22 revision, but were not included by the revisor.

On p. 26 the Revisor's Office inserted the language "4 MCAR SS.10.100-10.143" instead of the previous language "in these rules". I have underlined the new language to show that it is a change. p.26

The repealer section on p. 52 was originally written inclusively to refer to rules 4 MCAR SS 10.001-10.090. The revisor determined that it would be preferable to specify each individual rule to be repealed. However, he neglected to include 10.001.

At the bottom of p. 52 and top of p. 53, we have stricken the language relating to rules becoming effective on April 1, 1983. This has been done because it now appears that the rules will not be completely through the promulgation process by that date. It is now our intention, as is generally the case, that the rules specified in this section will become effective five days after publication in the State Register.

Please feel free to call me if you have any questions about these matters or any other matters related to Consumer Services rules adoption process.

CG:ms

ADDENDUM

It was called to my attention late on March 2, 1983 that page 52 line 22 specified an April 1, 1983 deadline for schools to make requests for variance. For the same reasons discussed in the body of this memo with regard to the published effective date, this deadline has been changed to give the schools a reasonable opportunity to request a variance.

I discussed this amendment with Chief Hearing Examiner Duane Harves by telephone on March 2, 1983 and he indicated that the amendment would be acceptable to him and would not constitute a substantial change.

Connie Green
March 3, 1983
CG

Our File No. 891

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3/3/83
DATE FOR REVIEW 3/14/83
DATE DUE 3/23/83

Adopted w/a hearing ↘
Adopted w/o hearing
Temporary rule

Approved 3/23/83 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency 3/24/83

Date filed w/Secretary of State 3/24/83 Revisor approved 3/7/83 disapproved

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✓ Rule as Adopted but see my two notes re coming amendment.

✓ Rule as Proposed see SR.

✓ Order Adopting 2.17.83 Date

✓ Notice of Intent to Solicit Outside Opinion & comments (comments remain in brown folder in agency box) SR 12.21.81

✓ Order for rulemaking 11.29.82 and 12.1.82 and 12.3.82 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking ? Sufficiency see my comment re omission

✓ Affidavit of Mailing Notice or rulemaking 10.29.82 At least 30 days prior to hearing/~~adoption~~
Also see additional Affidavits re late mailing

✓ Mailing list Certificate, 11.4.82

✓ Publication in State Register 10.25.82 At least 30/~~20~~ days prior to hearing/~~adoption~~
see my comment re omission

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 1.25.83 Approving H.E.'s Report
✓ 2.28.83 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness (in white plastic binder)

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials) in legal folder in agency box

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General
incorrectly stated comment period as 20 days - should be "10".
incorrectly states Admin Div. address.

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : A. J. PERPICH, Director

DATE: 3/23/83

Attn: RODNEY WILSON,
Special Assistant Attorney General

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Minnesota Statutes Chapter 155A (Cometology)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Commerce

Office of Consumer Services

Adopted Rules Governing the Practice of Cosmetology

Rules as Adopted

4 MCAR S 10.100 Definitions.

A. Application. For the purposes of 4 MCAR SS 10.100-10.143, the terms defined in this rule have the meanings given them, unless their context clearly requires otherwise.

B. Accommodate. "Accommodate" or "to be accommodated" means the maximum number of students present on the school premises at any one time and for which the school has the required physical and program resources. In most cases this will be the maximum number of day student enrollees.

C. Advanced training. "Advanced training" means instruction conducted by a recognized expert in the field, offered to licensed individuals for the purpose of providing information or skills supplemental to that required for initial licensure.

D. Advertising. "Advertising" means any written or graphic representation designed to elicit enrollment or the sale of goods or services and includes signs, displays, circulars, brochures, and recruitment materials.

E. Application of artificial nails. "Application of artificial nails" includes the application, construction, and repair of sculptured nails, of nail tips, and nail wrapping.

F. Beauty coloring product. "Beauty coloring product" means foundation color, skin tints, eye color, mascara, eye liner, eyebrow color, and lip color.

G. Booth license. A "booth license" is an authorization to lease and independently operate a work station in a licensed salon.

H. Clean. "Clean" means free from all soil and dirt, washed with soap or detergent and hot water.

I. Clinic. "Clinic" means the portion of a cosmetology school where cosmetology services are offered to the public and

which are performed by students and for which compensation is given.

J. Communicable disease. "Communicable disease" means a contagious or infectious disease or condition.

K. Community education. "Community education" means a program of personal grooming, taught by a licensed cosmetologist, manicurist, or esthetician of less than ten hours duration, offered on a periodic basis.

L. Compensation. "Compensation" means a monetary or nonmonetary remuneration for services.

M. Demonstration. "Demonstration" means a presentation of less than eight hours duration, conducted by a recognized expert in the field, for the purposes of training cosmetology students or specialization by current licensees. The same demonstration may be repeated successive times which total more than eight hours. Demonstrations pursuant to nonretail sales are ~~not covered by this definition or~~ exempt from these rules.

N. Documentation. "Documentation" means a signed, notarized statement attesting the truth of the facts stated in it.

O. Evidence. "Evidence" means written proof.

P. Good repair. "Good repair" means that a thing is clean, with no holes, frayed wires, or tears in coverings, and fully operational for the purpose intended.

Q. Licensed services. "Licensed services" means those services defined as the practice of cosmetology under Minnesota Statutes, ~~chapter~~ section 155A.03, subdivision 2 and includes the fitting of wigs and hair pieces on the head and the dressing of wigs and hair pieces while on the head.

R. Office. "Office" means the Office of Consumer Services.

S. Retail sale. "Retail sale" means a sale directly to unlicensed individuals.

T. Staff. "Staff" means the personnel of the cosmetology unit, Office of Consumer Services.

U. ~~Unlicensed~~ Unregulated service. "~~Unlicensed~~ Unregulated service" means those services not defined as the practice of cosmetology under Minnesota Statutes, ~~chapter~~

section 155A.03, subdivision 2 and includes ear piercing, body wrapping, permanent depilitation, tattooing, artificial tanning of the skin; personal services incidental to performance in theatrical or musical productions or media appearances; any personal services performed incidental to mortuary practice; and massage services.

V. Wet disinfector. "Wet disinfector" means a nonporous receptacle containing a disinfectant solution.

4 MCAR S 10.101 Transfer of license prohibited.

Licenses shall not be transferable and shall be used only by the named licensee.

4 MCAR S 10.102 Requirements for obtaining individual licenses.

A. General requirements.

1. Applications for licensure shall be made in writing and contain the requirements of 2.-6.

2. The applicant shall provide evidence of completion of high school or a General Educational Development certificate.

3. The applicant shall provide written evidence on a standardized form, from a physician, dated within one year, that he or she is free from all communicable diseases and parasites.

4. The applicant shall demonstrate by examination minimal skills and knowledge necessary for the license sought. The applicant shall successfully complete a written examination demonstrating knowledge of professional, health, and safety methods and procedures and knowledge of Minnesota Statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

5. The applicant shall attach to the application a two-inch by two-inch photograph taken within the past year.

6. The applicant shall pay the required examination and license fees. Applicants whose professional training is documented under the provisions of B.2.-3. and E. shall also pay the processing fee.

B. Requirements for a cosmetologist, manicurist, and esthetician. In addition to the requirements of A., the

applicant shall provide documentation of having obtained the following professional training, within three years prior to this application:

1. successful completion of a full course of training in a Minnesota licensed school of cosmetology, as indicated by documentation from the school, of at least 1550 hours for a cosmetologist, 350 hours for a manicurist, and 600 hours for an esthetician. The documentation shall include a certification of skills; or

2. successful completion, as documented by the school and including a certification of skills, of a full course of training of at least the same number of hours in a state other than Minnesota. If an applicant has received training in another state, but has not completed that state's prescribed course of training, or if that course is less than the number of hours required by this rule, completion of training and certification of skills in a Minnesota school shall be attained. The applicant shall receive credit for all hours of training earned in the non-Minnesota school. He or she shall then attend a Minnesota school until the required number of hours has been completed; or

3. current licensure from another state, District of Columbia, territory, or country. A copy of the current license or a certified statement from the licensing body that the applicant is currently licensed shall be attached to the application. If the other jurisdiction does not issue a license, the applicant shall provide documentation of lawful practice for at least 1800 hours within three years prior to the application. Applicants claiming training and experience in a foreign country shall supply official English language transcripts of all documentation and evidence submitted to the office.

C. Requirement for a manager. In addition to the requirements of A., the applicant shall provide documentation of a current ~~Minnesota~~ cosmetologist or manicurist license, and at least 2700 hours of licensed practice, in a licensed salon and

supervised by a licensed manager, within the three years prior to this application. An individual wishing to manage a school shall also successfully complete an examination covering Minnesota laws and rules related to schools. The applicant shall pay the processing fee.

D. Requirements for an instructor. In addition to the requirements of A., the applicant shall pay a processing fee and shall successfully complete a practical examination demonstrating teaching skills and techniques as related to the instruction of cosmetology practices and provide documentation of:

1. successful graduation from a licensed school of cosmetology;

2. successful completion of at least 48 hours of training in a program or programs approved by the office and which will provide the knowledge and skills necessary to instruct in the field of cosmetology;

3. a current ~~Minnesota~~ cosmetologist, manicurist, or esthetician license; and

4. at least 1800 hours of experience as a licensed cosmetologist, manicurist, or esthetician ~~in Minnesota~~ in a ~~Minnesota~~ licensed salon, supervised by a licensed manager, within the three years prior to this application.

5. individuals whose practitioner license is as manicurist or esthetician shall be restricted to instruction in the area of their practitioner license only.

E. Reactivation of license. An individual who has an "inactive" Minnesota license and/or whose most recent active license has expired by more than three years who wishes to resume the practice of cosmetology shall document completion of a refresher program of a minimum of 155 hours for a cosmetologist, 60 hours for an esthetician, or 35 hours for a manicurist in a licensed ~~Minnesota~~ school of cosmetology. The documentation shall include a certification of skills.

4 MCAR S 10.103 Requirements for obtaining a license on the basis of reciprocity.

A. License issued. A license shall be issued to an individual applying from another jurisdiction if the requirements of B.-D. are met.

B. Compliance with state rules. The applicant shall demonstrate compliance with 4 MCAR S 10.102 A.~~2.~~-~~6.~~ 2., 3., 5., and 6. and shall successfully complete a written examination demonstrating knowledge of Minnesota Statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

C. Evidence of experience. The applicant shall provide documentation of at least 1800 hours of experience as a licensed practitioner at the level for which a Minnesota license is sought within three years prior to the application. The documentation must be from an employer or, in the case of self-employed applicants, from a reliable source.

D. Specific requirements for instructor. An applicant for an instructor's license shall provide evidence of 48 hours of training comparable to the requirement of 4 MCAR S 10.102 D.2., and 1800 hours of licensed or lawful practice as a cosmetologist, manicurist, or esthetician in a salon within the three years prior to application.

4 MCAR S 10.104 Requirements for maintenance of individual license.

A. Compliance with applicable law. The licensee shall continuously comply with all applicable provisions of Minnesota Statutes and rules.

B. Health requirement. The licensee shall continue to be free from communicable diseases and parasites.

C. Change of name or address. The licensee shall advise the office of a change of name or address in writing, including both new and old name and address, within 30 days of the change, and pay the duplicate license fee.

D. Renewal. The licensee shall renew the license as required by 4 MCAR S 10.105 prior to its expiration date.

E. Display of license. The licensee shall post his or her license as required by 4 MCAR S 10.116 A.18.a.

F. Additional requirements for manager. In addition to the requirements of A.-E., the manager shall ensure that all salon or school personnel comply with all applicable statutes and rules, and that the salon or school which he or she manages is in compliance with all applicable statutes and rules.

G. Additional requirements for instructor. In addition to the requirements of A.-E., the instructor shall carry out the curriculum of the school, as approved by the office, preparing students for licensure under the laws of Minnesota.

4 MCAR S 10.105 License renewal for individuals.

A. Application. The licensee shall submit a written renewal application request before his or her current license expires. This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, the licensee is still responsible for timely renewal.

B. Practical and educational requirements. The licensee shall establish that his or her knowledge and skills are up to date, by meeting the following requirements no later than the expiration of his or her current license:

1. a cosmetologist, manicurist, esthetician, or manager shall provide documentation of having ~~either~~ practiced in a licensed salon, or school for school managers, for at least 1800 hours at any time within the three years prior to the license expiration, or 400 hours acquired through approximately regular weekly experience within each of the last three years, or successfully completed an approved refresher course, of at least 40 hours, within the three years prior to the license expiration;

2. an instructor shall pay the processing fee and shall provide evidence of having successfully completed 45 hours of continuing education approved by the office, including at least 15 hours of teaching-related material and 15 hours related to analysis and use of professional clinical products;

~~3. a salon manager shall pay the examination fee and shall successfully pass a written examination covering Minnesota laws and rules pertinent to cosmetology salons prior to license renewal;~~

~~4.--a-school-manager-shall-pay-the-examination-fee-and shall-pass-a-written-examination-covering-Minnesota-laws-and rules-pertinent-to-cosmetology-schools-and-salons-prior-to license-renewal.~~

C. Fee. The licensee shall pay the required license fee before the expiration of the current license.

~~D.--Health-examination.--The-licensee-shall-provide-evidence on-a-standardized-form-from-a-physician-that-he-or-she-is-free from-communicable-diseases-and-parasites.~~

~~E.~~ D. Method of determining timely renewal. The postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

~~F.~~ E. An applicant who has ceased all practice of cosmetology and who wishes to receive an inactive license shall meet the requirements of A., C., and ED. An inactive license shall not authorize any individual to engage in the practice of cosmetology as defined in Minnesota Statutes, ~~chapter~~ section 155A.03, subdivision 2.

4 MCAR S 10.106 Lapsed practitioner license.

A. Failure to renew. Failure to renew a practitioner license prior to its expiration date results in a lapsed license. The applicant shall comply with the requirements of 4 MCAR S 10.105 B. ~~and-D.,~~ and:

1. if fewer than 30 days have elapsed since the license expiration, the applicant shall submit a written application for renewal of license, the license fee, and the late penalty;

2. if more than 30 days have elapsed, the individual shall not practice cosmetology until he or she has applied for and received a new license in accordance with the provisions of 4 MCAR S 10.102 A.3.-6. and, if applicable, E.

B. Procedure for inactive licensee. If a licensee has not actively practiced cosmetology during the period of 30 days to three years after expiration of the license, he or she shall be reissued a license after submission of an affidavit attesting to the fact that the applicant has not practiced cosmetology since

the expiration date, payment of the license fee, and payment of the processing fee. If more than three years have elapsed, the applicant shall apply for a new license in accordance with the provisions of 4 MCAR S 10.102.

C. Penalty. The manager of a salon or school shall pay a penalty of $25 for each ~~licensee whose license is past the expiration date and who is~~ individual practicing in the salon or school who was not properly licensed at the time he or she commenced this practice.

~~4 MCAR S 10.107 Retail sales.~~

~~It is not a violation of Minnesota Statutes, chapter 155A or these rules for an individual to demonstrate the application of a beauty coloring product, incidental to the original retail selling efforts for the product, if:~~

~~1. the individual is employed by a manufacturer, wholesaler, retailer, or distributor;~~

~~2. the individual has received a minimum of 16 hours of color application, safety, and sanitation training before conducting any application demonstrations on the public in accordance with Minnesota law;~~

~~3. the store in which the individual is employed shall maintain documentation of training;~~

~~4. appropriate sanitation procedures are followed:~~

~~a. purchasers themselves apply disposable headbands or other disposable items to secure their hair if necessary for the demonstration;~~

~~b. applicators for the products are either disinfected or disposed of after each purchaser;~~

~~c. the individual who is demonstrating the products cleanses his or her hands immediately before each application;~~

~~d. a used disposable towelette is thrown away or a clean towel is used for each hand cleansing; and~~

~~e. an appropriate receptacle is used for the disposal of items; and~~

~~5. no direct skin contact application of the product is performed on a purchaser or potential purchaser except by the~~

~~purchaser.~~

~~In the alternative, if the product is applied only to a model who is also employed as part of the sales process, then the product application is not violative of Minnesota Statutes, chapter 155A and these rules.~~

4 MCAR S 10.108 Examination administration.

A. Schedules and sites. Examination schedules and sites shall be determined by the office.

B. School to provide exam space. Each school shall make space available on its premises for the performance of the licensing examinations upon request by the office, if the request is reasonable and timely.

C. Instructor examination.

1. The office shall have access to the clinic area of a licensed school no more than once per year and to licensed instructors no more than twice per year for assistance in conducting the practical examination for instructors.

2. Each examinee is responsible for providing his or her own model for the practical examination and shall be responsible for insuring the suitability of that model for the examination. Models shall be over 16 years of age and shall be required to sign a waiver releasing the office, the examiners, the host school, and the examinee of all professional liability. The model shall not be a licensed cosmetologist or a cosmetology student.

D. Reexam limit. No license applicant may take an exam more than three times in 12 months. No passing score shall be considered valid for more than 12 months.

E. Exam administered in English. Examinations shall be administered and conducted in English without an interpreter or reader.

4 MCAR S 10.109 Reinstatement after denial, suspension, revocation of license.

An applicant shall have a license reinstated for the remainder of its unexpired term or shall be relicensed in the

following circumstances:

A. after suspension of license, by meeting the following requirements:

1. the applicant shall provide documentation of the correction or elimination of the grounds for the suspension;

2. the applicant shall make application for reinstatement of license, in writing and on forms supplied by the office;

3. the applicant shall pay the reinstatement fee;

4. if the suspended license has expired by no more than 30 days, an individual applicant shall comply with 4 MCAR S 10.105 B.-~~D~~C.; a salon shall comply with 4 MCAR S 10.120; and a school shall comply with 4 MCAR S 10.135;

B. after revocation or if the suspended license has expired by more than 30 days, by meeting the following requirements:

1. the applicant shall provide documentation of the correction or elimination of the grounds for the revocation;

2. the applicant shall make application for relicensure, in writing and on forms provided by the office ~~as-if-no-license had-been-previously-issued~~;

3. the applicant shall pay the reinstatement fee and the license fee; ~~and~~

4. the salon or school applicant shall meet the requirements for initial licensure; and

5. the individual applicant shall meet the requirements of 4 MCAR S 10.102 A.3.-6. and, if applicable, E., and the renewal requirements of 4 MCAR S 10.105 B.

4 MCAR S 10.110 General salon requirements.

A. Location. No cosmetology service shall be provided in a place other than a licensed cosmetology salon, manicurist salon, cosmetology school, or as otherwise provided by these rules.

B. License requirement. No salon shall operate without a license.

C. Employment of unlicensed persons. No salon shall employ or allow unlicensed persons to perform any cosmetology service.

D. Termination of license. A salon license shall not be transferable and shall terminate upon the occurrence of a change

of either ownership or location. The old license shall be returned to the office and an application for a new license shall be made in the same manner as if no license had been issued previously.

E. Change of name. The salon manager or owner shall inform the office in writing, within 30 days, of a name change, including old and new name, and pay the processing fee. A license will be issued in the new name for the remaining term of the old license. The old license shall be returned to the office upon receipt of the license in the new name.

4 MCAR S 10.111 Requirements for salon licensure.

A. General requirements for all salon licenses. The requirements of 4 MCAR SS 10.111-10.115, and 10.117, ~~and 10.118~~ shall be met by all applicants proposing to establish a salon. Upon compliance, the office will issue a provisional license which will enable the salon to open for business. The salon's compliance with all applicable provisions of Minnesota Statutes, chapter 155A and these rules shall be confirmed by an operational inspection by the office staff. A permanent license for the balance of the three-year license cycle shall be issued upon confirmation of the salon's compliance.

B. Application. The person, association, firm, or corporation proposing to establish a cosmetology or manicure salon shall apply in writing to the office, on forms supplied by the office, giving the following information:

1. the name of the salon, its address, and names and addresses of all owners of sole proprietorships or partnerships and controlling officers of corporations;

2. notarized signatures of the owners of sole proprietorships or partnerships and the controlling officers of corporations;

3. the days of the week and the hours which the salon will be open;

4. evidence of the salon's compliance with local ~~fire, zoning, health, and building codes, or in the absence of local codes, with the corresponding state codes~~ zoning requirements

and the regulations of the Minnesota Department of Health, State Building Code and Standards, and the State Fire Marshall;

5. the name of the licensed manager who will be employed by the salon, including that individual's license number and its expiration date; and

6. a floor plan of the salon, drawn to scale on 8-1/2" x 11" or 8-1/2" x 14" paper, providing the dimensions of the salon as a whole and designating the size and location of all entrances and exits, and indicating the location and dimensions of all required areas, facilities, and equipment.

C. Evidence of liability insurance. The applicant shall provide evidence of the salon's coverage by professional liability insurance, of at least $25,000 for each claim and $50,000 total coverage for each policy year for each operator.

D. Evidence of workers' compensation insurance. If applicable, the applicant shall provide evidence of his or her compliance with Minnesota Statutes, section 176.182.

E. Payment of fee. The applicant shall pay the license and processing fees.

4 MCAR S 10.112 Applicability of requirements for salon license.

The provisions of 4 MCAR SS 10.110-10.121 apply to both cosmetology and manicure salons, except for 4 MCAR SS 10.113 E.2., 10.114 B.-C., 10.115 A., and 10.116 A.1.-3., A.7., and A.12., which do not apply to manicure salons.

4 MCAR S 10.113 Physical requirements.

A. Space.

1. There shall be at least 120 square feet of work space exclusive of any restroom, reception, or supply area for a one-practitioner cosmetology salon, and 100 square feet of work space for a one-practitioner manicure salon.

2. There shall be at least 50 additional square feet of work space for each additional licensee simultaneously on duty in a cosmetology salon, and at least 35 additional square feet of work space of each additional licensee simultaneously on duty in a manicure salon.

3. The supply area shall not be accessible to the public.

B. Entrance and exits. Each salon shall have at least two entrance/exit points ~~which shall comply with state fire code requirements and local building code requirements. A salon located in a basement may have a window for one of its two exits.~~

C. Walls and ceilings. All walls and ceilings shall be kept clean and in good repair at all times, free from crevices, cracks, or holes which could collect dirt.

D. Floors.

1. All floors shall be kept clean and free from hair and other debris at all times and shall be in good repair, free from crevices, cracks, holes, or tears which could collect dirt or hair.

2. Carpet shall not be an acceptable floor covering unless it is commercial grade carpet.

E. Lighting and electricity.

1. Each salon shall provide direct lighting to all work areas. Light fixtures shall be clean and dust-free.

2. There shall be at least one electrical outlet in each work station.

F. Plumbing, water supply.

1. ~~All plumbing fixtures shall be of impervious material, and installed in accordance with local plumbing ordinances, and shall not constitute a cross connection.~~

~~2.~~ There shall be clean, hot, and sanitary running water provided in the work area, dispensary area, and toilet facilities.

~~3.~~ 2. Each salon shall provide ~~adequate~~ toilet facilities, on its premises or in an adjacent common area, which are not used for ~~no other~~ any unrelated purpose such as storage or as a dispensary. The toilet facilities shall ~~comply with the requirements of the state building code and the Occupational Safety and Health Administration~~ be clean and sanitary and shall contain, at a minimum, a commode, lavatory, soap dispenser, single-service sanitary towels, and a waste basket. The door shall be kept closed at all times ~~or the rest room shall be~~

~~screened from view~~.

G. Ventilation. Salon ventilation shall comply with the requirements of the state building code. Window ventilation shall not be acceptable as a method of meeting the standard.

4 MCAR S 10.114 Fixtures, furniture, and equipment.

A salon shall meet the following minimum requirements:

A. there shall be a work station with chair, storage space, and mirror assigned to each licensee on duty;

B. there shall be at least one shampoo bowl in good repair and operational for each six work stations;

C. there shall be at least one standard or hand-held blow dryer hair dryer in good repair, clean and operational for each six work stations;

D. there shall be at least one nonporous wet disinfecter large enough to completely immerse all items to be disinfected;

E. all furniture shall have a washable covering or finish and shall at all times be kept clean and in good repair;

F. there shall be a waste receptacle at each work station. This receptacle shall be emptied at least daily. It shall be lined with a disposable plastic bag or liner, or washed daily.

There shall be at least one covered metal container which shall be used exclusively as a receptacle for soiled towels and linen. It shall be kept closed at all times.

There shall be at least one large covered metal container for disposal of garbage. This container shall be emptied at intervals necessary to maintain cleanliness. The container shall be lined with a disposable plastic bag or liner, or be washed daily;

G. there shall be storage cabinets for all clean linen and towels. They shall be equipped with tight-fitting closable doors, which shall be kept closed;

H. there shall be storage space for all supplies. Supplies which contain any caustic or other harmful material shall be conspicuously labeled and kept inaccessible to clients;

I. each salon shall maintain a readily accessible first aid kit;

J. each salon shall have at least one readily accessible fire extinguisher which complies with state fire code requirements. All employees shall be instructed in the location and use of the fire extinguisher; and

K. emergency telephone numbers shall be posted next to the telephone at the reception desk.

~~4-MCAR-S-10.115-Supplies-and-materials.~~

~~A-salon-shall-meet-the-following-minimum-requirements:~~

~~A.--brush-rollers-shall-not-be-allowed;-and~~

~~B.--there-shall-be-at-least-two-dozen-clean-towels-per operator-per-day.~~

4 MCAR S 10.116 Operational requirements for salons.

A. Operational requirements. It is the responsibility of the manager of the salon and of each operator to comply with the following operational requirements:

1. each licensee shall maintain an adequate supply of clean and disinfected brushes, combs, and other implements and tools for use on his or her patrons. The licensee shall have at least 12 combs and 12 brushes;

2. all combs and brushes and brush rollers shall be cleaned and disinfected after use on each person. Hair shall be removed from all implements before disinfecting;

3. rollers, pins, clippies, hairnets, shears, razors, and all other hairdressing tools shall be cleaned thoroughly and disinfected at a minimum of once per week. These items shall be stored in a clean, closed container or be covered with a clean towel until reused;

4. clean linens and protective papers shall be used for each person. A clean towel shall be placed on the head rest of the facial chair before any person reclines in that chair. A clean towel shall be placed between the client's head and the shampoo bowl during shampooing. A paper strip or clean towel shall be placed completely around the neck of each client before any apron or hair cloth or any other protective covering is fastened around the neck;

5. all fluids, semi-fluids, creams, and powders shall be kept in clean covered containers and shall be dispensed with a clean disinfected spatula or from a shaker or pump or spray dispenser. Spatulas made of nonabsorbent material may be disinfected and reused; wooden spatulas shall be discarded after each use. Gauze or cotton applicators shall be discarded after each use. Waving fluids shall be dispensed from suitable containers, in a manner which prevents contamination of unused fluid. All containers shall be covered when not in use;

6. all bottles and containers shall be correctly and clearly labeled to disclose their contents. Poisonous substances shall be clearly and conspicuously marked;

7. permanent waving end papers and neck strips shall not be reused. All permanent wave rods and supplies shall be washed thoroughly after use on each client and shall be stored in clean, closed containers or covered by a clean towel when not in use;

8. all electrical tools and implements shall be kept on stands or hangers or otherwise be stored properly when not in use. One six-foot grounded ~~heavy-duty~~ extension cord may be used in a work station if necessary to service a client with an implement actually in use. The extension cord shall not extend beyond the area of the work station;

9. all clean towels, robes, and linen shall be stored in a clean, closed cabinet until used. The cabinet shall be made of a solid, completely closed material;

10. each towel, robe, and linen shall be used only once and then be properly laundered. After use and until laundering, each item shall be placed in the required metal receptacle, which shall be kept covered. All soiled towels and linens shall be laundered in washing machines with laundry detergent, in water of a temperature of at least 160 degrees Fahrenheit. Commerical laundering is acceptable;

11. The procedures contained in a.-g. shall be used to disinfect items.

a. All hair shall be removed before disinfection.

b. Each item shall be washed in hot water with soap or detergent and rinsed thoroughly with hot water.

c. Each item shall be immersed for at least ten minutes in a disinfectant solution comprised of the following: sodium hypochlorite (200 ppm of available chlorine); or iodophor germicidal detergent (200 ppm of available iodine); or quaternary ammonium germicidal detergent solution (200 ppm); or 70 percent ethyl alcohol or 95 percent isopropyl alcohol.

d. Metal implements and tools shall be disinfected by immersion in a solution of 70 percent ethyl alcohol or 95 percent isopropyl alcohol.

e. Items to be air dried shall not be rinsed after disinfection.

f. Each item shall be stored until used in a clean, closed container, drawer, or cabinet, or under a clean towel.

g. Used items and disinfected items shall not be stored in the same container, drawer, or cabinet.

12. wig blocks shall have a nonabsorbent covering which shall be kept clean and sanitary. Each nonabsorbent covering shall be removed after each servicing of the wig and shall be placed in a properly labeled container. Each wig accepted for service shall be stored in an individual sanitary receptacle such as a plastic bag and shall not be allowed to come into contact with any other wigs. New wigs shall not be allowed to come into contact with any client's hair, skin, or wig. Plastic wrap or other suitable covering material shall be placed over a prospective buyer's hair while trying on wigs;

13. each licensee on duty shall be assigned to a specific work station;

14. the licensee shall wash his or her hands with soap and hot water before any service to a new patron. Fingernails shall be kept clean;

15.

a. each licensee shall be responsible for the order, cleanliness, and sanitation of his or her work station and all equipment and materials used;

b. each licensee shall be responsible for using only clean and properly disinfected implements when providing any service;

c. each licensee shall ensure that all hair is removed from the floor after each haircut;

d. each licensee shall clean up any spills of water or other liquid from the floor immediately;

e. each licensee shall remove all hair and rinse the shampoo bowl immediately after each use;

16.

a. each licensee shall be clean and shall wear clean clothing and shoes;

b. each licensee shall be free from communicable diseases and parasites when performing services on any client;

c. licensees shall not smoke, eat, or drink while performing any services;

d. licensees shall not carry combs or other implements in the pockets of clothing;

17. services shall not knowingly be performed on any person who has a communicable disease, condition, or parasites;

18.

a. current licenses of salon personnel shall be conspicuously posted at approximately eye level in the reception area or in each licensee's assigned work station. The licensee's street address may be obliterated with tape, but name and town must remain unobstructed. A two-inch by two-inch photograph of the licensee, alone, taken within the last three years, shall be attached to each license. If the license is at the reception area, the licensee's name and type of license held shall be posted at the work station;

b. the current shop license~~,-a-copy-of-the-salon's-most-recent-inspection-report,~~ and the salon rules shall be conspicuously posted together in the reception area at approximately eye level;

19. no animals, birds, or pets shall be allowed in a salon. This ~~excludes~~ prohibition does not apply to guide dogs;

20. if a salon receives compensation for child care services, the following requirements shall be met:

a. the ~~unlicensed~~ unregulated service shall be identified in compliance with 4 MCAR S 10.122;

b. the child care activities shall be contained in a room separated from the salon. The square footage of this room shall not be included in the required minimum square footage for the salon;

c. an individual shall be hired to attend the children at all times and shall not simultaneously be responsible for the performance of any cosmetology services.

B. Salon supervision.

1. There shall be a manager responsible for each salon at all times.

2. Only one person shall be designated as manager for each salon. No manager may be concurrently responsible for more than one salon. When the manager is not on duty, he or she may specify a responsible person in his or her absence. The responsible person shall be a licensed cosmetologist in a cosmetology salon or licensed manicurist in a manicure salon.

3. The manager shall ensure that all licensees under his or her supervision comply with all provisions of these rules and Minnesota Statutes, chapter 155A.

4. The manager shall ensure that no unlicensed individual provides any cosmetology service in the salon.

5. The manager shall maintain, on the salon premises, the work ~~hour~~ time records of each employee, as required by Minnesota Statutes, section 177.30. Time records shall be provided upon written request to the licensee or to the office.

6. The manager shall ensure that all equipment required by these rules is operational and maintained in proper working condition, that adequate supplies are in stock at all times, and that sanitation and safety requirements are met.

4 MCAR S 10.117 Additional requirements for specific types of salon licenses.

In addition to the requirements of 4 MCAR SS 10.113-10.116,

the requirements contained in A.-EF. shall be met.

A. Beauty salon and barber shop. A beauty salon and a barber shop may be operated in the same establishment, if the beauty salon occupies a physically separate area comprised of continuous footage, and is clearly identified as a beauty salon by a conspicuously displayed sign which states, "Beauty Salon" in letters at least two inches in height.

B. Esthetician services. Esthetician services shall be provided only in a licensed cosmetology salon. Esthetician services shall not be offered in a manicurist salon.

C. Mobile salons.

1. Mobile homes, motor homes, trailers, or any type of recreational vehicle which contains a beauty salon shall be permanently stationed at one location.

2. Salons in a vehicle which moves from one location to another shall not be allowed.

D. Licensed health care facilities.

1. It is not necessary for a licensed health care facility to have a licensed salon in order for nursing and patient care personnel or volunteers to wash, set, or trim residents' hair.

2. Licensed operators with certificates of identification may provide cosmetology services to residents.

3. If the licensed health care facility chooses to have a licensed salon on the premises, all the requirements for a salon ~~must~~ shall be met.

E. Salons in private residences. Salons may be established in private residences, if the following conditions are met:

1. the salon shall not be used for any residential purposes at any time;

2. the salon shall be completely separated from the residential areas. There shall be a permanent, solid partition, from floor to ceiling, between the salon and the residential areas. Any door in this partition shall be kept closed at all times;

3. ~~the salon entrance/exit shall not lead through any~~

~~residential-area-or-through-a-garage;~~

~~4.~~ all cosmetology services offered by the salon shall be available within the salon;

~~5.~~ 4. laundry tubs shall not be used as shampoo bowls; and

~~6.~~ 5. the primary residential toilet facilities shall not be used for salon clients.

~~4-MCAR-S-10.118~~ F. Requirements for a booth license. A Minnesota licensed cosmetologist or manicurist manager may lease work space from a licensed salon and operate that space as an independent business upon obtaining a booth license. An applicant for a booth license shall meet the following requirements:

~~A.~~ 1. the applicant shall hold a current Minnesota manager license;

~~B.~~ 2. the applicant shall provide documentation of leased work space from a licensed Minnesota salon. The work space shall be at least 50 square feet for a cosmetologist or 35 square feet for a manicurist. The lease shall include provisions regarding responsibility for keeping records of hours worked by the booth licensee, maintenance responsibilities of the booth licensee, use of salon equipment, purchase of supplies, professional liability insurance coverage, and other agreements reached by the parties;

~~C.~~ 3. the applicant shall provide evidence of coverage by professional liability insurance in the amount required for salon licensees. It shall be acceptable for the salon owner's professional liability policy to cover the booth licensee;

~~D.~~ 4. the applicant shall be responsible for operating his or her work space in full compliance with these rules.

4 MCAR S 10.119 Requirements for maintaining a salon or booth license.

The following requirements shall be met by all salons and booths:

A. the licensee shall continuously comply with all

applicable provisions of Minnesota Statutes and rules;

B. the manager shall advise the office of a change in name of the salon in writing, including both new and old name and address, within 30 days of the change;

C. the licensee shall renew the license prior to its expiration date;

D. the licensee shall display the required documents.

4 MCAR S 10.120 Salon license renewal.

A. Requirements. The requirements of B.-G. shall be met in order to renew a license.

B. Request for renewal. The licensee shall be responsible for requesting renewal of his or her salon license, in writing, before the license expires. This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, responsiblity for proper and timely renewal remains with the licensee.

C. Liability insurance coverage. The licensee shall provide evidence of continued professional liability insurance coverage in the required amount.

D. Workers' compensation insurance coverage. <u>If applicable,</u> the licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182.

E. Fee. The licensee shall pay the required license fee before the expiration of the current license.

F. Timely renewal. The postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

G. Identity of manager. The licensee shall state the name of the salon manager and the number and expiration date of his or her license.

4 MCAR S 10.121 Delinquent salon licenses.

A. Failure to renew. Failure to renew a license prior to its expiration date shall result in a delinquent salon license. This license must be renewed within 30 days.

B. Renewal. If less than 30 days have elapsed since the expiration date of the license, the applicant shall submit a written application for renewal of license, the license fee, and the required late penalty. If more than 30 days have elapsed, the salon shall cease operation until a new salon application has been submitted and a provisional license has been issued.

4 MCAR S 10.122 ~~Unlicensed~~ Unregulated services.

A. Disclosure. All services not licensed as the practice of cosmetology offered within a salon or school clinic shall be clearly identified as "~~unlicensed~~ unregulated services" and listed on a sign conspicuously posted in the reception area. The sign shall contain lettering at least two inches high and shall state: "Unregulated services. The following services offered by (salon or school name) are not ~~licensed~~ regulated by the state of Minnesota:

.....

.....

....."

B. Disclosure of courses relating to ~~unlicensed~~ unregulated services. Each school shall clearly identify those courses and clinical experiences in its curriculum which are not required by the office and which pertain to services not licensed by the state. These courses shall be clearly identified in all recruitment advertising and written material used for the purposes of soliciting prospective students.

Nonrequired courses and ~~unlicensed~~ unregulated services shall be conspicuously identified in all written material, in type of the same size as the course or service name.

Instructional time and clinical experience in ~~unlicensed~~ unregulated services shall not be included in the minimum hours of schooling required for licensure.

4 MCAR S 10.123 Advertising.

The following provisions govern all advertising relating to the education, licensing, or practice of cosmetology:

A. all advertising shall comply with Minnesota Statutes,

sections 325F.67 to 325F.70 and related rules;

B. no advertisement shall state or imply favorable consideration by the Office of Consumer Services other than to state that the salon or school is licensed by the office;

C. any advertisement that a salon or school is licensed by the state of Minnesota shall specify the type of license held and the license number;

D. no salon or school advertisement stating licensure by the state of Minnesota shall include reference to any ~~unlicensed~~ unregulated services;

E. a school advertisement of cosmetology services shall clearly and conspicuously state that all services are performed by students, in boldface type of the same size as the most-used type size in the ad;

F. no school may advertise that its students will earn a commission, salary, or pay of any kind, other than gratuities, on cosmetology services performed in the school clinic.

4 MCAR S 10.124 Inspections.

A. Office staff to conduct. Salons and schools shall be inspected by the office staff. Advance notice of inspections shall not be given.

B. Grading. Inspectors shall grade items "S" for compliance with Minnesota Statutes, chapter 155A and these rules and "U" for noncompliance.

All items graded "U" shall be corrected within ten business days, and written notification of the correction shall be sent to the office within that time.

Failure to correct a noncompliance item may be grounds for suspension or revocation of the salon or school license, and of the individual license of the manager and the cosmetologist, manicurist, esthetician, or instructor involved.

C. Information on business hours and location. Each salon owner shall provide the office with:

1. an accurate schedule of the hours which the salon is open for business. If the salon is open by appointment only, the salon owner shall designate one-half day a month when he or

she shall be available at the salon for inspection of the salon;

2. for country shops, a detailed map indicating the salon's exact location and directions for driving to that salon.

D. Cost and frequency of inspections. Each cosmetology salon and school shall be inspected annually. Additional inspections may be made as necessary to confirm correction of previous noncompliance. The cost of the annual inspection shall be included in the licensing fee. The cost of additional inspections to confirm correction of previous noncompliance shall be assessed to the school.

E. Results. Inspectors shall discuss the results of the inspection at its conclusion, in private, with the salon or school owner, manager, or a responsible person so designated in writing by the manager. A written report shall also be given or sent to the manager.

F. Posting of reports. The most recent inspection report shall be posted in the dispensary area. A 5" x 7" notice shall be posted in the reception area stating in boldface letters: "THIS (SALON OR SCHOOL) HAS BEEN LICENSED AND INSPECTED BY THE STATE OF MINNESOTA. A COPY OF THE MOST RECENT INSPECTION REPORT IS AVAILABLE FOR YOUR REVIEW UPON REQUEST."

4 MCAR S 10.125 General requirements for schools.

A. Location where services taught. No cosmetology instruction shall be given in any place other than a licensed school of cosmetology or as otherwise provided in these rules.

B. License required. No cosmetology school shall be permitted to operate without a license.

C. Employment of licensed instructors. No cosmetology school shall employ an instructor who does not hold a current Minnesota cosmetology instructor license. A school may use occasional guest instructors or lecturers who do not hold a cosmetology license to provide supplemental information to students from related fields, such as medicine, public relations, or law.

D. Termination. A school license is nontransferable and shall terminate upon the occurrence of either of the following:

1. a change of ownership of the school. The new owner shall apply for a new school license in the same manner as if no license had been previously issued, at least 30 days before the effective date of the change; or

2. a change of location. An application for a new license shall be made in the same manner as if no license had been previously issued.

E. Change of name. The school owner or manager shall inform the office of a name change, in writing, 30 days before the effective date of the change and pay the school name change fee. A license will be issued in the new name for the unexpired term of the old license, which shall be returned to the office upon receipt of the license in the new name.

F. Separation of school from ~~business~~ salon.

1. Any cosmetology salon owned or operated by a school owner shall be operated as a separate and distinct business.

2. There shall be complete physical separation between the salon and school.

3. Salon and school shall have separate managers.

4. There shall be separate and clearly identified and differentiated entrances and telephone numbers for salon and school.

5. Salon employees shall not teach in the school unless they are licensed instructors included on the school staff roster.

6. No customer work may be done by an instructor in the salon during instructional hours stated on the school roster.

7. Each facility shall maintain the stock of supplies necessary for its operation.

G. Exclusive use as school. No school, or portion thereof, shall be used for any residential purposes.

4 MCAR S 10.126 Requirements for school licensure.

A. Application contents. The person, association, firm, or corporation proposing to establish a cosmetology school shall make written application to the office, on forms supplied by the office, giving the following information:

1. the name of the school, its address, and the names and addresses of all owners of sole proprietorships or partnerships and controlling officers of corporations;

2. notarized signatures of the owners of sole proprietorships or partnerships, controlling officers of corporations, and manager;

3. the days of the week and the hours which the school will be open;

4. the daily and weekly class schedule;

5. evidence of the school's compliance with local ~~fire, zoning, health, and building codes, or in the absence of local codes, with the corresponding state codes~~ zoning requirements and the regulations of the Minnesota Department of Health, State Building Code and Standards, and the State Fire Marshall;

6. the name of the licensed manager who will be employed by the school, including that individual's license number and expiration date;

7. a roster of all instructors, including license number, designation of employment status (full-time or part-time) and days of the week and hours scheduled for instruction;

8. a diagram of the school drawn to scale on 8-1/2" x 11" or 8-1/2" x 14" paper, providing the dimensions of the school as a whole and designating the size and location of all entrances and exits, and the location and dimensions of all required areas and facilities;

9. a complete inventory of facilities and equipment supportive of instructional and clinical operations, as required by these rules;

10. a designation of the licenses for which preparation will be offered;

11. a detailed outline of the courses of training to be offered, designating the preclinical and clinical curriculum, text materials, and the clinical plan designed for each license category;

12. the maximum possible number of enrollees the school will be able to accommodate;

13. copies of all financial aid and refund policies;

14. copies of all student rules and disciplinary policies;

15. a copy of the standard enrollment contract;

16. copies of all written material used to solicit prospective students, including but not limited to tuition, refund, and fee schedules, catalogs, brochures, and all recruitment advertisements;

17. a current balance sheet, income statement, or evidence of sufficient financial worth to conduct a school and to meet its financial obligations.

B. Evidence of liability insurance coverage. The applicant shall provide evidence of the school's coverage by professional liability insurance, of at least $25,000 per incident and an accumulation of ~~$75,000~~ $150,000 for each premium year ~~for each teaching station in the clinical operation of the school~~.

C. Evidence of workers' compensation insurance. The applicant shall provide evidence of the school's compliance with Minnesota Statutes, section 176.182.

D. Surety bond. The applicant shall file with the director of the office a continuous corporate surety bond in ~~an~~ the amount ~~equal to the full tuition for all of the maximum potential enrollees in the school~~ of $10,000, conditioned upon the faithful performance of all contracts and agreements with students made by the applicant. The bond shall run to the state of Minnesota and to any person who may have a cause of action against the applicant arising at any time after the bond is filed and before it is cancelled for breach of any contract or agreement made by the applicant with any student. The aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed ~~the full tuition for all of the maximum potential enrollees in the school~~ $10,000. The surety of the bond may cancel it upon giving 60 days notice in writing to the director of the office and shall be relieved of liability for any breach of condition occurring after the effective date of cancellation.

E. Payment of fee. The applicant shall pay the school

license and school application fees.

4 MCAR S 10.127 Facilities requirements for licensure.

In addition to the requirements of 4 MCAR SS 10.125 and 10.126, the requirements contained in 4 MCAR SS 10.128-10.131 shall be met by the school before a license will be issued. Compliance with these requirements shall be confirmed by an inspection by cosmetology unit staff. The license shall be issued after a satisfactory initial inspection.

4 MCAR S 10.128 Physical requirements.

A. Space.

1. There shall be a combined clinic and classroom size of at least 25 square feet for each enrollee to be accommodated. This space shall exclude all office space, storage areas, lounge facilities, and restrooms.

2. All supplies and materials shall be stored in a space inaccessible to the public.

3. The dispensary shall be a specified area inaccessible to the public.

4. There shall be a furnished student lounge of at least 120 contiguous square feet.

5. There shall be an instructors' lounge separate from the student lounge.

B. Entrances and exits. Each school shall have at least two entrance/exit points ~~which meet state fire code requirements and local building code requirements. A school located in a basement shall not be allowed to use a window as one of the required exits~~.

C. Electrical requirement. Each classroom shall be clearly lit and shall have at least two electrical outlets. Use of extension cords shall not be an acceptable means of meeting this requirement.

D. Toilet facilities. Each school shall provide adequate toilet facilities on its premises or in an adjacent common area for the use of students, staff, and customers. Separate restroom facilities must be provided for women and men. ~~Each~~

~~facility shall meet the same requirements designated for those in salons in 4 MCAR S 10.113 F.3.~~

E. Additional requirements. In addition, each school shall meet the physical requirements for salons contained in 4 MCAR S 10.113 C.; D.; E.; F.1. and F.2.; and G.

4 MCAR S 10.129 Fixtures, furniture, equipment.

A school shall meet the following minimum requirements:

A. there shall be one work station with chair, storage, and mirror for each student assigned to the clinic floor;

B. there shall be at least one hair dryer, clean, in good repair, and operational, for each six work stations;

C. there shall be at least one facial chair, clean and in good repair, for each six enrollees. This may be a work station chair with a reclining back and attachable headrest;

D. there shall be at least one manicure table, clean and in good repair, for each ten enrollees;

E. there shall be at least one heat cap;

F. there shall be skin care machines or models or diagrams sufficiently detailed to allow instruction in their use and operation;

G. there shall be at least one adult-size desk/table and chair in the classroom area for each enrollee to be accommodated;

H. there shall be at least one time clock or other reliable method of recording time to be used by the students when checking in and out of school. Each ~~student~~ student's hours shall ~~punch his or her own card~~ be recorded at the beginning and end of each day and before and after lunch;

I. in addition, each school shall meet the fixture, furniture, and supply requirements for salons as designated in 4 MCAR S 10.114 B. and D.-K.; and

J. there shall be locker space available for students requesting it.

4 MCAR S 10.130 Supplies and materials.

A. Basic supplies.

1. The school shall supply each student with a beginning

professional kit, containing the implements and the majority of equipment required for the course of training for which the student has enrolled. The cost shall be clearly indicated to the student prior to enrollment, even if it is included in the basic tuition fee.

2. The school shall provide the student with all supplies and materials necessary to perform all clinical services and classroom exercises.

3. The school shall supply at least one manikin with hair for each cosmetology enrollee, and one manikin without hair for each esthetician enrollee.

B. Towels and linens. There shall be one dozen towels per enrollee maintained in good repair and available to students.

C. Instructional materials. The school shall supply each enrollee with a copy of all textbooks to be used in the course of training, and copies of all other necessary instructional materials, including a copy of Minnesota Statutes, chapter 155A and these rules. Workbooks associated with the textbooks shall become the property of the student. The cost of these materials shall be clearly indicated to the student prior to enrollment, unless it is included in the tuition fee.

D. Instructional aids. The school shall have instructional aids to provide the required instruction to all enrollees. There shall be at least one bulletin board, located in the student lounge, which shall contain, but not be limited to, all communications addressed to the students from the office and copies of the student rules and disciplinary policies. There shall be at least one blackboard in each classroom.

E. Reference materials. Reference materials shall be centrally located and made available to all students, including:

1. an American language dictionary;

2. charts for basic anatomy (hair, skin, and nails);

3. trade magazines and publications;

4. a copy of Minnesota Statutes and rules pertaining to the regulation of the practice of cosmetology; and

5. copies of other related statutes and rules.

4 MCAR S 10.131 General operational requirements for schools.

It shall be the responsibility of the school owner and manager to ensure compliance with the requirements of A.-M.

A. Identification. Each school shall be identified as either a school of cosmetology, beauty school, beauty academy, beauty training center, or any other designation whereby the public may be able to distinguish it from a salon. Identification shall consist of signs conspicuously placed on the front of the school and in the reception area of the school clinic. Each school shall also have a sign conspicuously posted in its clinic reception area stating, "Beauty School. All work performed by students." in letters at least two and one-half inches in height.

B. Manager.

1. There shall be a manager responsible for each school at all times. There shall be only one person designated as manager for each school. No manager may concurrently be responsible for more than one school nor for a school and a salon. When the manager is not on duty, he or she shall specify a responsible person on the premises. <u>The responsible person shall be an instructor licensed in accordance with these rules.</u>

2. The manager shall ensure that all personnel and students under his or her supervision comply with all provisions of these rules.

3. The manager shall ensure that no unlicensed instructor conducts any class, demonstration, or any other educational experience within the school except as allowed by Minnesota Statutes, chapter 155A and these rules.

4. The manager shall ensure that all equipment required by these rules is clean and maintained in proper working condition, that proper supplies are in stock at all times, and that safety, sanitation, and operational requirements are met by the school. The manager shall be responsible for recruitment and advertising materials.

C. Instructors.

1. There shall be at least two licensed instructors on

the school premises ~~for-the-first~~ during the time students are present; and each school shall have a minimum ratio of one instructor for each 1 to 20 students to be accommodated; and ~~one additional-licensed-instructor-for-each-additional-1-to-20 students-to-be-accommodated~~ all students shall be under the direct supervision of an instructor at all times when in a classroom, clinic, or other area in which they are performing cosmetology services.

a. A school may operate for 30 days per year with an unlicensed substitute for one of the licensed instructors, if the school manager is on the school premises and available to supervise the substitute, and if there is at least one licensed instructor, available and responsible for the direct supervision of the unlicensed substitute.

b. The school shall notify the office in writing within three days of each occurence of failure to meet the required instructor quota.

2. If a school is not in compliance with C.1., students will be notified by the office that it will not accept hours accrued during the period of noncompliance.

3. Instructors shall devote the entire time scheduled to training and shall have no additional noninstructional duties or responsibilities.

4. All instructors shall wear identification badges at all times while providing training, stating their full name and "Instructor." These badges shall be at least two inches by one inch and shall be color-coded white or gold.

D. Enrollment contracts.

1. The student or his or her parent or guardian shall receive a fully executed copy of the contract at the time he or she signs the contract.

2. The school and a student who has enrolled for training because he or she failed the state examination and reciprocity applicants shall enter into a contract which specifies the precise nature of theory and clinical experience to be covered during the training course.

E. Refund policy.

1. Each school shall have a definite, written policy relating to the refund of tuition and fees when students terminate training. The policy shall at minimum provide for the following:

a. a complete refund of all monies paid if the school rejects the applicant, or if the applicant cancels the enrollment contract, in writing or in person, within three business days of the date upon which the contract was signed by both the student and agent of the school and prior to entering classes. The enrollment contract shall include a provision headed by the title in boldface ten-point type "Notice of Cancellation", which instructs the student as to what steps he or she must take to cancel the contract;

b. a refund of all monies paid except a registration or enrollment processing fee up to 15 percent of the contract price if the applicant cancels the enrollment contract more than three business days after conclusion of the contract but prior to entering classes;

c. if a student has entered classes the following minimum tuition refunds shall be made:

Percentage of Total Program Represented by the Hours of Training Completed.	Maximum Amount of Total Tuition School Shall Receive or Retain.
0 to 4.9 percent	20 percent
5 to 9.9 percent	30 percent
10 to 14.9 percent	40 percent
15 to 24.9 percent	45 percent
25 to 49.9 percent	70 percent
Over 50 percent	100 percent

2. Fees for the student kit, textbooks, and workbook may be deducted before application of the percentages in refund computations, if these fees are included in the tuition and if these items become the property of the student.

F. Student regulations. Student regulations shall be in writing and a copy shall be given to all students. A copy and

any changes shall be posted on the bulletin board in the student lounge. The rules may include a reasonable dress code. All rule changes shall be discussed with the student body at least ten days prior to the effective date and each student shall be given a copy of any changes.

G. Student records.

1. All records relating to students shall be maintained and up-to-date, in a secure and orderly fashion and shall be kept on the school premises. All student records shall be legible and shall be available for inspection by a representative of the office during normal business hours of the school or by mail upon the written request of the office.

2. The school shall maintain complete, accurate, and detailed records of all payments from and financial transactions with students, showing the date, amount, and source of income or disbursement.

3. The school shall maintain daily and monthly records of student hours, work progress, examination assessments, and daily clinical experience records for each student enrolled.

4. All student records shall be maintained by the school for at least five years from the date of the student's termination; or a transcript of the course work of each student may be kept, the transcript to contain the student's name, the date student enrolled, the date of termination of enrollment and the circumstances of termination, the total number of hours completed, and the school owner or manager's notarized signature verifying the contents of the transcript.

5. The school shall submit to the office the following reports for each student:

a. a student registration form containing the student's full and correct name, course of training for which enrolled, and start date. The status of the student shall be stated as full-time or part-time, day or night classes. This information must be received by the office within ten days of the student's start date and shall be accompanied by the processing fee;

b. evidence on a standardized form, from a physician, stating that the student is free from communicable diseases or parasites. This certification shall accompany the student registration;

c. certification of completion of preclinical courses. Documentation signed by the school owner or manager shall indicate that the student has successfully completed the required hours of preclinical work. A student shall not be allowed to perform any service or portion thereof in the school clinic on a client until this certification has been sent;

d. a progress evaluation report. Upon completion of one-half of the total required hours, the school shall give the student and the office a written progress evaluation assessing the student's progress towards successful fulfillment of the license requirements.

e. certification of readiness to take the written examination. Documentation signed by school owner or manager, shall indicate that the student has successfully completed 1,350, 500, and 315 hours, for cosmetologist, esthetician, and manicurist respectively, of preclinical and clinical training, and is prepared to take the written state licensing examinations. This certification must be received by the office before the student will be scheduled for the written examinations;

f. documentation signed by school owner or manager, shall indicate that the student has successfully completed the course of training for which he or she enrolled. Included shall be documentation of the student's completion of the practical exercises, as required by 4 MCAR S 10.133 B.4.a., C.4.a., and D.4.a. and documentation of the student's successful completion of the skills certification review, on a form provided by the office;

g. a statement shall be sent by the school to the office if a student withdraws, is suspended, or expelled from his or her course of training. The certification shall be signed by the school owner or manager, shall indicate the last

day on which the student was enrolled, the total number of hours the student has successfully completed as of that date, a transcript detailing the nature of those hours, and the reason for the withdrawal, suspension, or revocation. This certification must be received by the office within ten days of the end of enrollment.

H. Certification of student hours.

1. All student hours shall be recorded, on a daily and a monthly basis.

2. The daily record of hours shall list the number of hours earned by each student and the nature of training received, designating all clinical experiences; shall be signed by the instructor who provided or supervised the training; shall be signed by the student; and shall be based on the hours actually recorded on the student's timecard.

Each student shall register on the timeclock at the beginning and end of each school day and at the beginning and end of lunch breaks. Timecards which are improperly punched or inadvertently altered, or contain any error may be corrected and that correction initialed by the student, the school manager, and the appropriate instructor.

Original timecards shall be deemed to be the property of the school. A student, within ten days of a request, is entitled to receive copies of his or her timecards from the school. The school may not withold copies of his or her timecards after a proper request has been made.

3. Each school shall complete and maintain a monthly report for each student, summarizing the hours completed for that month, and signed by the school owner or manager. A copy of the report shall be given to the student within five days of the end of each month.

4. No school or student shall alter the content or the number of hours completed by a student unless because of error and signed by both parties.

5. Students shall receive credit only for hours spent in training for licensed cosmetology services.

6. No student shall receive credit for more than eight hours of training per calendar day.

7. Each student must be given a morning and afternoon break and at least one-half hour for lunch, or one hour for lunch and no breaks.

8. It shall be made clear to the students in materials designed to elicit their enrollment and at the time of enrollment, the circumstances under which Saturday and evening training will be held.

I. Students to complete training in required time. Individuals registering as students in a school of cosmetology must complete their training, successfully pass the examination, and be licensed within a period of not more than five years. Otherwise, records of student hours and training received will no longer be considered valid for licensure in Minnesota.

J. Transfer students. A student shall apply to the office in writing for transfer of hours from one school to another. The office shall forward to the receiving school a certified copy of the previous school's certification of withdrawal, suspension or expulsion, or of the transcript of hours completed as indicated on that certification. No school shall give credit to a student for hours completed in another school without a certification of hours from the office or from a non-Minnesota licensing authority as to the total number of hours.

K. Full course of instruction required. No student, unless licensed under provisions of Minnesota Statutes, chapter 155A, shall be enrolled in a school for less than a full course of instruction of not less than 1,550 hours for cosmetologist, 600 hours for esthetician, or 350 hours for a manicurist, except for a licensed individual or a previously licensed individual requesting a refresher course, an applicant who has failed the state examination and requests additional training, a transfer student, a student who has enrolled only to learn ~~unlicensed~~ unregulated services, and reciprocity applicants who require additional schooling.

L. Display of licenses.

1. Current licenses of all school personnel shall be conspicuously posted in the reception area at approximately eye level. A two-inch by two-inch photograph of the licensee alone taken within the past three years shall be attached to each license.

2. The current school license shall be conspicuously posted with the personnel's licenses.

M. Pre-enrollment disclosures. If the school brochure does not contain the following information, it shall be given to prospective students along with the brochure and other materials designed to elicit their enrollment: minimum requirements for licensing in the fields in which the school offers instruction, tuition and all fees, the enrollment contract, refund policy, and student regulations.

4 MCAR S 10.132 Operational requirements for school clinics.

All instruction in school clinics and all work performed by students in school clinics shall comply with the operational requirements for a cosmetology salon in 4 MCAR S 10.116 A.1.-12. In addition:

A. no new school shall offer clinical services until the minimum preclinical hours required for students has been met;

B. no school shall be allowed to operate a student clinic at any location other than the school;

C. there shall be conspicuously displayed in the reception area of the school and its clinic a sign stating, "All services performed by students," in type at least 2-1/2 inches in height;

D. instructors shall perform no cosmetology services on any client in the school clinic except to the extent necessary to demonstrate or instruct students. The student shall be physically present, observing the instruction or demonstration and shall participate in the learning experience by actual performance of the complete service;

E. no student shall perform clinic services until he or she has successfully completed the required hours of preclinical training and the school has sent to the office a certification of that completion;

F. all services performed by students shall be supervised by instructors and shall be checked before, during, and after performance;

G. all students shall be required to wear an identification badge at all times. The badges shall be at least two inches by one inch; state the student's first and last name; and state that the student is either a "Cosmetologist Trainee," "Esthetician Trainee," or "Manicurist Trainee." A freshman is a student who has not completed the required hours of preclinical training. A senior is a student who has completed the preclinical training. Freshman badges shall be green and senior badges shall be blue. Different shades of blue may be used to designate various degrees or levels of senior students. Badges shall be furnished by the school as part of tuition costs;

H. each student shall wash his or her hands with soap and hot water before providing any service, and each instructor shall similarly wash his or her hands before demonstrating any service or portion thereof on a client;

I. instructors shall ensure that students and instructors maintain the clinic work area in the same manner and degree as is required for salon cleanliness under 4 MCAR S 10.116 A.15;

J. instructors shall ensure that all students working in the school clinic and all instructors observe the same personal hygiene and safety requirements as those imposed on salon practitioners in 4 MCAR S 10.116 A.16;

K. cosmetology services shall not knowingly be performed in a school clinic on any person who has a communicable disease, condition, or parasite;

L. it shall be permissible for the school to charge clients for services performed by students to the extent necessary to cover the cost of supplies and materials used, and expenses incurred in and for the operation of the school. These prices shall be conspicuously posted in the clinic reception area.

4 MCAR S 10.133 School curricula.

A. Requirements. Each cosmetology school shall have a curriculum approved by the office to provide instruction,

divided into daily lesson plans. The curriculum shall include theory and practical application of skills, including the instruction set forth in B.-E.

B. Cosmetologist training.

1. Cosmetologist training consists of a course of training of at least 1,550 hours. This course shall consist of the full manicurist course content, the full esthetician course content, and the balance in hairdressing, including the approximate breakdown of hours specified in 4.a. and the clinical exercises in provision of cosmetology services specified in 4.a.

2. The first 240 hours shall be preclinical instruction in the sciences of anatomy, dermatology, trichology, manicuring, and chemistry as related to cosmetology; electricity and light; sanitation; safety procedures related to the practice of cosmetology; and Minnesota Statutes and rules which pertain to the regulation of the practice of cosmetology; and elementary service skills.

3. There shall be instruction in applied science and skills in shampooing, scalp and hair conditioning, hair design and shaping, chemical hair control, hair coloring, hair styling, facials, and makeup, and manicuring and nail care of approximately 1130 hours and instruction in related theory and sciences of approximately 420 hours.

4. There shall be planned clinical instruction and experience in the applied sciences.

a. Each student shall be required to complete the following minimum number of clinical exercises in ~~each category:~~ column II. Clinical exercises may be performed upon customers in the school clinic, fellow students, models, or manikins in the classroom.

	Column I	Column II
	Hours	Service Exercises
(1) shampooing	50	300
(2) scalp and hair conditioning	80	150

(3)	hair design shaping	150	75
(4)	chemical hair control (including 6 chemical relaxing exercises)	200	60
(5)	hair coloring	100	50
(6)	hair styling	200	300
(7)	facials and makeup	200	60
(8)	manicures (including 10 applications of artificial nails, of which 3 are sculptured on the nail)	150	50
	skill hours	1130	
	related theory and lecture	420	
	total	1550	

b. Documentation of the student's completion of the required quotas in each category shall be sent to the office with the documentation of successful completion of the entire course of training.

5. There shall be instruction in business practices and in the Minnesota laws regulating those practices and labor relations.

C. Esthetician training.

1. Esthetician training consists of a course of training of at least 600 hours.

2. The first 120 hours shall be preclinical instruction in the sciences of anatomy, dermatology, and chemistry as related to skin care; electricity and light; sanitation; safety procedures related to the practice of skin care; and Minnesota Statutes and rules which pertain to the regulation of the practice of skin care; and elementary service skills.

3. There shall be instruction in applied science and skills in the cleaning, conditioning, shaping, reinforcing, coloring, and enchancing of the skin quality through the use of

facials and makeup.

4. There shall be planned clinical instruction and experience of approximately 200 hours in the applied sciences.

a. Each student shall be required to complete at least 60 facials or makeup appplications.

b. Documentation of the student's completion of the required facials or makeup applications shall be sent to the office with the documentation of successful completion of the entire course of training.

5. The requirements of B.5. shall be complied with.

D. Manicurist training.

1. Manicurist training consists of a course of training of at least 350 hours.

2. The first 50 hours shall be preclinical instruction in the sciences of anatomy, dermatology, and chemistry as related to manicuring; electricity and lights; sanitation; safety procedures related to the practice of manicuring; and Minnesota Statutes and rules which pertain to the practice of manicuring; and elementary service skills.

3. There shall be instruction on applied science and skills in the cleaning, conditioning, shaping, reinforcing, coloring, and enhancing of nails and in the application and repair of artificial nails.

4. There shall be planned clinical instruction and experience of approximately 150 hours in applied sciences and skills.

a. Each student shall be required to complete at least 50 manicures, including at least ten applications of artificial nails, of which three are sculptured applications on the nail.

b. The documentation of the student's completion of the required manicures shall be sent to the office with documentation of successful completion of the course of training.

5. The requirements of B.5. shall be complied with.

E. Refresher course. A licensed cosmetology school, salon, or a professional association may plan and offer a refresher course taught by licensed instructors of at least 40 hours in

length for cosmetologists, estheticians, and/or manicurists. The course shall focus on knowledge, skills, and product types related to chemical services and shall balance lectures, demonstrations, and clinical experiences. It shall be held in a licensed salon or school. Sponsors of a proposed course shall apply for office approval at least 45 days prior to the course date. The application shall be on a form provided by the office. The course sponsor shall pay the processing fee. The course sponsor shall provide the office with the name and license number of all individuals who successfully pass a final course examination.

F. Credit towards another license. A licensed esthetician or manicurist who received his or her training within the last five years may receive the following credit for that training toward another license:

1. esthetician training = 550 hours credit toward cosmetologist license;

2. manicurist training = 300 hours credit toward a cosmetologist license;

3. manicurist training = 200 hours credit toward an esthetician license;

4. esthetician training does not produce any credit toward a manicurist license.

G. A licensed esthetician or a licensed manicurist who returns to school for an additional license shall not perform any clinical services in the area for which he or she is already licensed.

4 MCAR S 10.134 Requirements for maintaining a school license.

A. Display of documents. Each school license and all personnel licenses shall be conspicuously displayed in the school or school clinic reception area~~.--A-copy-of-the-school's most-recent-inspection-report-shall-be-conspicuously-posted~~ at approximately eye level ~~in-the-clinic-reception-area~~.

B. Notification of changes in license information. Each school shall notify the office within 30 days of the effective date, unless otherwise indicated below, and in writing, of all

alterations, additions, and deletions in the information contained in its original license application, and supply current information, including but not limited to:

1. changes in managerial or instructional staff including additions and terminations, or changes in employment status (full-time, part-time, or number of hours worked). The school shall notify the office of all such changes within three days of the effective date of the change;

2. changes in any written material and advertising used to solicit prospective students;

3. changes in the education services or course of training offered, the curriculum, text materials, or clinical experience plan;

4. remodeling or significant alteration of the physical plant in which the school is housed;

5. the most current balance sheet, income statement, or evidence of financial worth shall be submitted to the office on January 1 of each year.

C. Retention of ad copies. The school shall maintain copies of all advertisements for clinic services for three years. They shall be provided to the office at its request.

4 MCAR S 10.135 School license renewal.

All of the following requirements shall be met in order to renew a license:

A. the licensee shall be responsible for requesting renewal of his or her school license, in writing, before that license expires. This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, it is still the licensee's responsibility to properly renew the school license;

B. the licensee shall provide evidence of continued professional liability insurance coverage in the required amount;

C. the licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182;

D. all unsatisfactory inspections report items shall be corrected before a license will be renewed;

E. the licensee shall provide a current and complete roster of manager and instructional staff, including license number and expiration date, employment status, and days and hours scheduled to work;

F. the licensee shall have filed with the director of the office a surety bond as required by 4 MCAR S 10.126 D.;

G. the licensee shall pay the required license fee, before the expiration of the current license; and

H. the postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

4 MCAR S 10.136 Delinquent school license.

Failure to renew a school license prior to its expiration date shall result in a delinquent license. The applicant shall comply with the following:

A. if less than 30 days have elapsed since the expiration date of the license, the applicant shall submit a written application for renewal of license, the license fee, and the required late penalty;

B. if more than 30 days have elapsed since the expiration of the license, the licensee shall reapply for a school license as if no license had been previously issued. The school's operation without a valid license shall be a violation of the law and no student training provided during that period will be recognized by the office.

4 MCAR S 10.137 Advanced training and demonstrations.

It is permissible to offer instruction in cosmetology in a place other than a licensed school of cosmetology in the following situations:

A. an advanced training class or demonstration, if no clinic services are offered to the public incidental to the training or demonstration;

B. community education classes, as defined by Minnesota Statutes, chapter 155A.

4 MCAR S 10.138 Certificate of identification.

A. Issuance. Upon written request to the office, a licensee may be issued a certificate of identification authorizing his or her lawful practice in a place other than a licensed salon. To obtain the certificate, the individual shall:

1. hold a current Minnesota cosmetologist, manicurist, or esthetician license;

2. provide documentation to the office of at least 2700 hours of lawful practice in Minnesota;

3. provide documentation of current employment in a Minnesota licensed cosmetology or manicuring salon; and

4. attest that the services shall be provided only in a licensed health care facility, or in the residence of a home-bound individual.

B. Retention. The certificate shall remain with the salon manager at all times except when work is actually being performed outside the shop. It is the manager's responsibility to ensure that use conforms to the restrictions of A.4.

C. Observance of health and safety procedures. The licensee shall observe all sanitary and safety procedures as far as reasonably possible.

4 MCAR S 10.139 Fee adjustments.

A. Refunds. Refunds shall be given in the following situations: overpayment; death or permanent disability before license effective date; or an individual's ineligibility for licensure. Ineligible instructor and manager applicants shall be refunded the license fee only. Ineligible cosmetologist, manicurist, or esthetician applicants shall be refunded the license fee minus the processing fee.

B. Other licenses. A licensee who applies for licensing in a second category shall pay the full license fee for the second category of license.

4 MCAR S 10.140 Fee schedule.

A. Three-year license fees.

1. Cosmetologist, manicurist, esthetician	$ 30
2. Instructor, manager	45

3. Salon, booth	50
4. School	750
B. Penalties.	
1. Late penalty	
a. School license renewal	100
b. Salon and booth license renewal	50
c. Individual license renewal	10
2. Reinstatement	30
3. Insufficient funds checks	10
4. Reinspection fee	Variable
5. Manager with lapsed practitioner	25
C. Administrative fees.	
1. Duplicate license (includes individual name or address change)	10
2. Certificate of identification	20
3. Examination fees	
a. Written exam (cosmetologist, manicurist, esthetician)	8
b. Written exam (manager or instructor)	12
c. Practical exam	18
4. Processing fee (covers student enrollment, course evaluation, verification of hours/training experience, restoration of lapsed license, salon name change)	15
5. School name change	100
6. School original application	150

4 MCAR S 10.141 Duplicate license.

A duplicate license will be issued only upon the loss or destruction of the initial license. The licensee shall submit to the office an affidavit indicating why a duplicate license is required, and submit the required fee.

4 MCAR S 10.142 Intoxicants and controlled substances.

No licensee or student shall perform cosmetology services while consuming or under the influence of an intoxicant or

controlled substance~~,-or-serve-them-to-a-client-during-business hours~~.

4 MCAR S 10.143 Compliance by present licensees and students.

A. General requirements. All individual licenses in effect on the effective date of these rules shall continue to be valid under the following circumstances.

1. cosmetologist, manicurist, and esthetician and manager licenses shall be valid until their expiration date. Licenses which expire before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR S 10.105 A. and C.-FE. Licenses which expire on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR S 10.105 A., B.1., and C.-FE.;

2.

a. Senior instructor licenses shall be renewed as instructor licenses. Licenses which expire before January 1, 1988 shall be renewed upon compliance with the requirements of 4 MCAR S 10.105 A. and C.-FE. Licenses which expire on or after January 1, 1988 shall be renewed upon compliance with 4 MCAR S 10.105 A., B.2., and C.-FE.

b. In addition to the requirements of 2.a., all individuals holding licenses as senior instructor or instructor shall comply with the requirements of 4 MCAR S 10.102 D.2. on or before December 31, 1984. Failure to do so shall result in revocation of license;

3. Junior instructors licensed on the promulgation date shall comply with the instructor license requirements of 4 MCAR S 10.102 A., D.1., D.3., and D.5. on or before December 31, 1983. Upon completion of these requirements they shall be issued an instructor license which shall remain valid in accordance with the provisions of 2.a.-b.;

4.

~~a.--Current-salon-manager-licenses-shall-remain-valid until-expiration.--Licenses-expiring-before-July-1,-1984-shall be-renewed-upon-compliance-with-the-requirements-of-4-MCAR-S 10.105-A.-and-C.-F.--Licenses-expiring-on-or-after-July-1,-1984~~

~~shall be renewed upon compliance with the requirements of 4 MCAR S 10.105 A., B.3., and C. F.~~

~~b.~~ In addition to the provisions of ~~4.a.~~ A.1., licenses of managers of schools shall be conditioned upon the licensee's successful passage of a written examination covering Minnesota laws and rules related to cosmetology schools before December 31, 1983;

5. Salons and booths licensed on April 1, 1983 shall be exempt from the following provisions:

a. Rule 4 MCAR S 10.113 A.-B.; D.2. until replacement; ~~F.3. provided that the toilet facilities are used for no other purposes, the door is kept closed, the room is clean and sanitary, and it contains a commode, lavatory, soap dispenser, single service sanitary towels, and a waste basket;~~ G. until July 1, 1984.

b. Rule 4 MCAR S 10.114 B.;

c. Rule 4 MCAR S 10.117 A. continuous footage provision only; E.2. permanent solid partition requirement only; ~~E.3.;~~ E.65. ~~provided that the toilet facilities meet the requirements of A.5.a. of this section.~~;

~~d. Rule 4 MCAR S 10.118 B.~~ F.2. square footage requirement and lease provision requirements until expiration of current lease;

6. Schools licensed on April 1, 1983 shall be exempt from the following provisions:

a. Rule 4 MCAR S 10.128 A.4.-5.; ~~D. provided that there are separate toilet facilities for men and women and that they meet the requirements of A.5.a. of this rule;~~ E. ~~school~~ schools shall have the same time extensions for compliance with 4 MCAR S 10.113 D.2. and G. as provided for salons in A.5.a. of this rule.

b. Rule 4 MCAR S 10.129 I. exemption from requirements of 4 MCAR S 10.114 B.; J. until December 31, 1983.

c. Rule 4 MCAR S 10.130 A.1., A.3., and C. shall apply to students enrolling on or after April 1, 1983.

d. Rule 4 MCAR S 10.131 B.-F.; G.5.f. with regard to

practical exercises; H.8.; and K., shall be effective July 1, 1983.

e. Rule 4 MCAR S 10.133 shall be effective July 1, 1983.

B. Interpreter for certain students. Foreign language students whose enrollment registration is on file in the office on the effective date of these rules may use an interpreter at the examinations, provided that they have first demonstrated to the director that they have a sufficient grasp of the English language to read, comprehend, and follow chemical product labels and instructions.

C. Students enrolled on effective date. Cosmetology and manicure students whose enrollment registration is on file in the office on the effective date of these rules and who graduate after July 1, 1983 shall be exempt from the requirement of 4 MCAR S 10.102 A.2. and shall be required to complete 1500 hours for a cosmetologist license and 250 hours for a manicurist license. The minimum number of clinical exercises they will be required to complete will be adjusted in relation to their date of graduation, but shall not be less than 75 percent of the requirements stated in 4 MCAR S 10.133 B.4.a. or D.4.a.

D. Variances. The director may grant to schools a variance from physical requirements not otherwise exempted by this rule upon receipt of documentation demonstrating an existing physical limitation or economic hardship in excess of reasonably anticipated costs of meeting the requirement. All requests for variance shall be submitted prior to May 15, 1983.

4 MCAR S 10.144 Separability of rules.

If any provision of these rules or the application thereof to any party or circumstances is held invalid, the remainder of the rules and the application of these provisions to other parties or circumstances shall not be affected thereby.

Repealer. 4 MCAR SS 10.001, 10.002, 10.003, 10.004, 10.005, 10.006, 10.007, 10.008, 10.020, 10.021, 10.022, 10.023, 10.024, 10.025, 10.026, 10.027, 10.028, 10.029, 10.030, 10.040, 10.041,

10.042, 10.060, 10.061, 10.062, 10.063, 10.065, 10.081, 10.082, 10.083, 10.084, 10.085, 10.086, 10.087, 10.088, 10.089, and 10.90 are repealed.

Effective dates. ~~Rules 4 MCAR SS 10.106, 10.107, 10.110, 10.111, 10.112, 10.113, 10.114, 10.115, 10.116, 10.117, 10.118, 10.119, 10.120, 10.121, 10.125, 10.126, 10.127, 10.128, 10.129, 10.130, 10.131, 10.132, 10.134, 10.135, 10.136, 10.137, 10.138, and 10.142, are effective April 1, 1983.~~

Rules 4 MCAR SS 10.102; 10.103; 10.104; 10.105; 10.108 A.-C.; 10.109; 10.122; 10.123; ~~10.124,~~ and 10.133, are effective July 1, 1983.

APPROVED AS TO LEGALITY

March 23 19 83

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Ted A. Mathison
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 24 1983
Joan Anderson Growe
Secretary of State
10:38 AM

STATE OF MINNESOTA
OFFICE OF CONSUMER SERVICES
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota/Department of Commerce Governing Cosmetology

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson on the 29th day of November, 1982, at 9:00 A.M., in the State Office Building Auditorium, St. Paul, Minnesota; on the 1st day of December, 1982, 9:00 A.M., Duluth Public Library, Duluth, Minnesota;and on the 3rd day of December 1982, 9:00 A.M., Minnesota Valley Regional Library, Mankato, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Office of Consumer Services for that purpose.

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

NOW, THEREFORE, IT IS ORDERED that these rules identified as "Cosmetology Operations and Licensing Rules" are adopted this 17th day of February, 1983, pursuant to authority vested in me by Minnesota Statutes section 155A.05.

STATE OF MINNESOTA



DIRECTOR OF OFFICE OF CONSUMER SERVICES
DEPARTMENT OF COMMERCE

STATE REGISTER

STATE OF MINNESOTA



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Pages 1153-1176

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota State Agricultural Society
Minnesota State Fair

Annual Meeting Notice

The 123rd annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held Jan. 17, 18 and 19 at the Radisson St. Paul Hotel. The annual meeting will be followed by meetings of the society's board of managers January 19.

A complete schedule of all scheduled meetings is available during regular business hours at the Administration Building on the fairgrounds, St. Paul, or at the hotel during the meeting.

Department of Commerce
Office of Consumer Services, Cosmetology Unit

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Practice of Cosmetology

Notice is hereby given that the Minnesota Office of Consumer Services, Cosmetology Unit, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing all aspects of the practice of cosmetology, including but not limited to requirements for licensure of individual practitioners (cosmetologists, manicurists, estheticians, managers and instructors), cosmetology schools and beauty salons. The promulgation of these rules is authorized by Minnesota Statutes § 155A.05, which requires the agency to develop and adopt rules to carry out the provisions of §§ 155A.01 to 155A.18.

The Minnesota Office of Consumer Services, Cosmetology Unit, requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements should be addressed to:

Paula Stenlund, Supervisor
Minnesota Office of Consumer Services
Cosmetology Unit
Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

All statements of information and comment shall be accepted until March 31, 1982. Any written material received by the Minnesota Office of Consumer Services shall become part of the record in the event that the rules are promulgated.

Krista Sanda
Director

Minnesota Pollution Control Agency

Notice Regarding Metropolitan Council's 208 or Water Quality Management Plan

On November 1, 1981 the Minnesota Pollution Control Agency (MPCA) received the Metropolitan Council's submission of its 208 or Water Quality Management Plan for the 7-County Metropolitan Area. In accordance with Federal requirements the MPCA has 120 days to review and have the Governor certify the Metropolitan Council's 208 Plan to the U.S. Environmental Protection Agency. The staff of the MPCA will present the council's plan to the MPCA board at its January 1982 board meeting. All comments and observations on the plan should be submitted to the MPCA prior to January 13, 1982.

Following MPCA board action and prior to the Governor's certification, a public notice will be given of the board's action. Following this notice, the plan will be transmitted to the Governor for certification.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed
Adoption of Rules of the State
of Minnesota Governing the
Practice of Cosmetology

ORDER FOR HEARING

IT IS ORDERED this 11th day of October, 1982, that a public hearing on the proposed rules captioned above be held in the State Office Building Auditorium, 435 Park Street, Saint Paul, Minnesota, on November 29, 1982, commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard. Public hearings on the proposed rules will also be held in the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota 55802 on December 1, 1982, commencing at 9:00 A.M., and in the Minnesota Valley Regional Library, 100 East Main Street, Mankato, Minnesota 56001, on December 3, 1982, commencing at 9:00 A.M.

IT IS FURTHER ORDERED that notice of said hearing be given to all persons who have registered their names with the Office of Consumer Services for that purpose, and such notice shall be published in the State Register.

STATE OF MINNESOTA

Krista L. Sanda

KRIS SANDA, Director
Office of Consumer Services

PROPOSED RULES

Department of Commerce
Office of Consumer Services

Proposed Rules Governing the Practice of Cosmetology

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1981) in the above-entitled matter in the State Office Building Auditorium, 435 Park Street, Saint Paul, Minnesota, on November 29, 1982, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard, concerning adoption of the proposed rules captioned above, by submitting either oral or written

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data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing. Written comments may be submitted to Hearing Examiner Peter C. Erickson at the Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota 55415. Public hearings on the proposed rules will also be held in the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota 55802, on December 1, 1982, commencing at 9:00 a.m., and in the Minnesota Valley Regional Library, 100 East Main Street, Mankato, Minnesota 56001, on December 3, 1982, commencing at 9:00 a.m.

The director proposes to adopt rules relating to the following matters: Licensing requirements for individual licenses for cosmetologists, manicurists, estheticians and instructors; requirements for maintenance and renewal of such licenses; the administration of examinations for such licenses; general salon requirements and requirements for licensure; advertising; inspections; general school requirements and requirements for school licensure; school enrollment contracts; operational requirements for school clinics and school curricula; and fee schedules.

The authority to promulgate the proposed rules is contained in Minn. Stat. ch. 155A (1981 Supp.).

The rule hearing procedure is covered by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions about the procedure may be directed to Hearing Examiner Peter C. Erickson at (612) 341-7606.

Lobbyists must register with the State Ethical Practices Board. A "lobbyist" is defined by Minn. Stat. § 10A.01, subd. 11 (1980):

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials;

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding *his own* travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Any questions should be directed to the State Ethical Practices Board, Room 41, State Office Building, 435 Park Street, Saint Paul, Minnesota 55155 (Tel. 612-296-5148).

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at

the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

One free copy of this notice and the proposed rules may be obtained by contacting Ailie Norlin, 128 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota 55101, (612) 296-8458. Additional copies will be available at the door on the date of the hearing.

October 11th, 1982.

Kris Sanda, Director
Office of Consumer Services

Rules as Proposed (all new material)

4 MCAR § 10.100 Definitions.

A. Application. For the purposes of 4 MCAR §§ 10.100-10.143, the terms defined in this rule have the meanings given them, unless their context clearly requires otherwise.

B. Accommodate. "Accommodate" or "to be accommodated" means the maximum number of students present on the school premises at any one time for which the school has the required physical and program resources. In most cases this will be the maximum number of day student enrollees.

C. Advanced training. "Advanced training" means instruction conducted by a recognized expert in the field, offered to licensed individuals for the purpose of providing information or skills supplemental to that required for initial licensure.

D. Advertising. "Advertising" means any written or graphic representation designed to elicit enrollment or the sale of goods or services and includes signs, displays, circulars, brochures, and recruitment materials.

E. Application of artificial nails. "Application of artificial nails" includes the application, construction, and repair of sculptured nails, of nail tips, and nail wrapping.

F. Beauty coloring product. "Beauty coloring product" means foundation color, skin tints, eye color, mascara, eye liner, eyebrow color, and lip color.

G. Booth license. A "booth license" is an authorization to lease and independently operate a work station in a licensed salon.

H. Clean. "Clean" means free from all soil and dirt, washed with soap or detergent and hot water.

I. Clinic. "Clinic" means the portion of a cosmetology school where cosmetology services are offered to the public and which are performed by students and for which compensation is given.

J. Communicable disease. "Communicable disease" means a contagious or infectious disease or condition.

K. Community education. "Community education" means a program of personal grooming, taught by a licensed cosmetologist, manicurist, or esthetician of less than ten hours duration, offered on a periodic basis.

L. Compensation. "Compensation" means a monetary or nonmonetary remuneration for services.

M. Demonstration. "Demonstration" means a presentation of less than eight hours duration, conducted by a recognized expert in the field, for the purposes of training cosmetology students or specialization by current licensees. The same demonstration may be repeated successive times which total more than eight hours. Demonstrations pursuant to nonretail sales are not covered by this definition or these rules.

N. Documentation. "Documentation" means a signed, notarized statement attesting the truth of the facts stated in it.

O. Evidence. "Evidence" means written proof.

P. Good repair. "Good repair" means that a thing is clean, with no holes, frayed wires, or tears in coverings, and fully operational for the purpose intended.

Q. Licensed services. "Licensed services" means those services defined as the practice of cosmetology under Minnesota

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Statutes, chapter 155A.03, subdivision 2 and includes the fitting of wigs and hair pieces on the head and the dressing of wigs and hair pieces while on the head.

R. Office. "Office" means the Office of Consumer Services.

S. Retail sale. "Retail sale" means a sale directly to unlicensed individuals.

T. Staff. "Staff" means the personnel of the cosmetology unit, Office of Consumer Services.

U. Unlicensed service. "Unlicensed service" means those services not defined as the practice of cosmetology under Minnesota Statutes, chapter 155A.03, subdivision 2 and includes ear piercing, body wrapping, depilitation, tattooing, artificial tanning of the skin; personal services incidental to performance in theatrical or musical productions or media appearances; any personal services performed incidental to mortuary practice; and massage services.

V. Wet disinfector. "Wet disinfector" means a nonporous receptacle containing a disinfectant solution.

4 MCAR § 10.101 Transfer of license prohibited. Licenses shall not be transferable and shall be used only by the named licensee.

4 MCAR § 10.102 Requirements for obtaining individual licenses.

A. General requirements.

1. Applications for licensure shall be made in writing and contain the requirements of 2.-6.

2. The applicant shall provide evidence of completion of high school or a General Educational Development certificate.

3. The applicant shall provide written evidence on a standardized form, from a physician, dated within one year, that he or she is free from all communicable diseases and parasites.

4. The applicant shall demonstrate by examination minimal skills and knowledge necessary for the license sought. The applicant shall successfully complete a written examination demonstrating knowledge of professional, health, and safety methods and procedures and knowledge of Minnesota Statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

5. The applicant shall attach to the application a two-inch by two-inch photograph taken within the past year.

6. The applicant shall pay the required examination and license fees. Applicants whose professional training is documented under the provisions of B.2.-3. and E. shall also pay the processing fee.

B. Requirements for a cosmetologist, manicurist, and esthetician. In addition to the requirements of A., the applicant shall provide documentation of having obtained the following professional training, within three years prior to this application:

1. successful completion of a full course of training in a Minnesota licensed school of cosmetology, as indicated by documentation from the school, of at least 1550 hours for a cosmetologist, 350 hours for a manicurist, and 600 hours for an esthetician. The documentation shall include a certification of skills; or

2. successful completion, as documented by the school and including a certification of skills, of a full course of training of at least the same number of hours in a state other than Minnesota. If an applicant has received training in another state, but has not completed that state's prescribed course of training, or if that course is less than the number of hours required by this rule, completion of training and certification of skills in a Minnesota school shall be attained. The applicant shall recieve credit for all hours of training earned in the non-Minnesota school. He or she shall then attend a Minnesota school until the required number of hours has been completed; or

3. current licensure from another state, District of Columbia, territory, or country. A copy of the current license or a certified statement from the licensing body that the applicant is currently licensed shall be attached to the application. If the other jurisdiction does not issue a license, the applicant shall provide documentation of lawful practice for at least 1800 hours within three years prior to the application. Applicants claiming training and experience in a foreign country shall supply official English language transcripts of all documentation and evidence submitted to the office.

C. Requirement for a manager. In addition to the requirements of A., the applicant shall provide documentation of a current Minnesota cosmetologist or manicurist license, and at least 2700 hours of licensed practice, in a licensed salon and supervised by a licensed manager, within the three years prior to this application. An individual wishing to manage a school shall also successfully complete an examination covering Minnesota laws and rules related to schools. The applicant shall pay the processing fee.

D. Requirements for an instructor. In addition to the requirements of A., the applicant shall pay a processing fee and shall successfully complete a practical examination demonstrating teaching skills and techniques as related to the instruction of cosmetology practices and provide documentation of:

1. successful graduation from a licensed school of cosmetology;

2. successful completion of at least 48 hours of training in a program or programs approved by the office and which will provide the knowledge and skills necessary to instruct in the field of cosmetology;

3. a current Minnesota cosmetologist, manicurist, or esthetician license; and

4. at least 1800 hours of experience as a licensed cosmetologist, manicurist, or esthetician in Minnesota in a Minnesota licensed salon, supervised by a licensed manager, within the three years prior to this application.

Individuals whose practitioner license is as manicurist or esthetician shall be restricted to instruction in the area of their practitioner license only.

E. Reactivation of license. An individual who has an "inactive" Minnesota license and/or whose most recent active license has expired by more than three years who wishes to resume the practice of cosmetology shall document completion of a refresher program of a minimum of 155 hours for a cosmetologist, 60 hours for an esthetician, or 35 hours for a manicurist in a licensed Minnesota school of cosmetology. The documentation shall include a certification of skills.

4 MCAR § 10.103 Requirements for obtaining a license on the basis of reciprocity.

A. License issued. A license shall be issued to an individual applying from another jurisdiction if the requirements of B.-D. are met.

B. Compliance with state rules. The applicant shall demonstrate compliance with 4 MCAR § 10.102 A.2.-6.

C. Evidence of experience. The applicant shall provide documentation of at least 1800 hours of experience as a licensed practitioner at the level for which a Minnesota license is sought within three years prior to the application. The documentation must be from an employer or, in the case of self-employed applicants, from a reliable source.

D. Specific requirements for instructor. An applicant for an instructor's license shall provide evidence of 48 hours of training comparable to the requirement of 4 MCAR § 10.102 D.2., and 1800 hours of licensed or lawful practice as a cosmetologist, manicurist, or esthetician in a salon.

4 MCAR § 10.104 Requirements for maintenance of individual license.

A. Compliance with applicable law. The licensee shall continuously comply with all applicable provisions of Minnesota Statutes and rules.

B. Health requirements. The licensee shall continue to be free from communicable diseases and parasites.

C. Change of name or address. The licensee shall advise the office of a change of name or address in writing, including both new and old name and address, within 30 days of the change, and pay the duplicate license fee.

D. Renewal. The licensee shall renew the license as required by 4 MCAR § 10.105 prior to its expiration date.

E. Display of license. The licensee shall post his or her license as required by 4 MCAR § 10.116 A.18.a.

F. Additional requirements for manager. In addition to the requirements of A.-E., the manager shall ensure that all salon or school personnel comply with all applicable statutes and rules, and that the salon or school which he or she manages is in compliance with all applicable statutes and rules.

G. Additional requirements for instructor. In addition to the requirements of A.-E., the instructor shall carry out the curriculum of the school, as approved by the office, preparing students for licensure under the laws of Minnesota.

4 MCAR § 10.105 License renewal for individuals.

A. Application. The licensee shall submit a written renewal application request before his or her current license expires. This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, the licensee is still responsible for timely renewal.

B. Practical and educational requirements. The licensee shall establish that his or her knowledge and skills are up to date, by meeting the following requirements no later than the expiration of his or her current license:

1. a cosmetologist, manicurist, esthetician, or manager shall provide documentation of having either practiced in a licensed salon, or school for school managers, for at least 1800 hours within the three years prior to the license expiration, or successfully completed an approved refresher course, of at least 40 hours, within the three years prior to the license expiration;

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2. an instructor shall pay the processing fee and shall provide evidence of having successfully completed 45 hours of continuing education approved by the office, including at least 15 hours of teaching-related material and 15 hours related to analysis and use of professional clinical products;

3. a salon manager shall pay the examination fee and shall successfully pass a written examination covering Minnesota laws and rules pertinent to cosmetology salons prior to license renewal;

4. a school manager shall pay the examination fee and shall pass a written examination covering Minnesota laws and rules pertinent to cosmetology schools and salons prior to license renewal.

C. Fee. The licensee shall pay the required license fee before the expiration of the current license.

D. Health examination. The licensee shall provide evidence on a standardized form from a physician that he or she is free from communicable diseases and parasites.

E. Method of determining timely renewal. The postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

F. An applicant who has ceased all practice of cosmetology and who wishes to receive an inactive license shall meet the requirements of A., C., and E. An inactive license shall not authorize any individual to engage in the practice of cosmetology as defined in Minnesota Statutes, chapter 155A.03, subdivision 2.

4 MCAR § 10.106 Lapsed practitioner license.

A. Failure to renew. Failure to renew a practitioner license prior to its expiration date results in a lapsed license. The applicant shall comply with the requirements of 4 MCAR § 10.105 B. and D., and:

1. if fewer than 30 days have elapsed since the license expiration, the applicant shall submit a written application for renewal of license, the license fee, and the late penalty;

2. if more than 30 days have elapsed, the individual shall not practice cosmetology until he or she has applied for and received a new license in accordance with the provisions of 4 MCAR § 10.102.

B. Procedure for inactive licensee. If a licensee has not actively practiced cosmetology during the period of 30 days to three years after expiration of the license, he or she shall be reissued a license after submission of an affidavit attesting to the fact that the applicant has not practiced cosmetology since the expiration date, payment of the license fee, and payment of the processing fee. If more than three years have elapsed, the applicant shall apply for a new license in accordance with the provisions of 4 MCAR § 10.102.

C. Penalty. The manager of a salon or school shall pay a penalty of $25 for each licensee whose license is past the expiration date and who is practicing in the salon or school.

4 MCAR § 10.107 Retail sales.

It is not a violation of Minnesota Statutes, chapter 155A or these rules for an individual to demonstrate the application of a beauty coloring product, incidental to the original retail selling efforts for the product, if:

1. the individual is employed by a manufacturer, wholesaler, retailer, or distributor;

2. the individual has received a minimum of 16 hours of color application, safety, and sanitation training before conducting any application demonstrations on the public in accordance with Minnesota law;

3. the store in which the individual is employed shall maintain documentation of training;

4. appropriate sanitation procedures are followed:

a. purchasers themselves apply disposable headbands or other disposable items to secure their hair if necessary for the demonstration;

b applicators for the products are either disinfected or disposed of after each purchaser;

c. the individual who is demonstrating the products cleanses his or her hands immediately before each application;

d. a used disposable towelette is thrown away or a clean towel is used for each hand cleansing; and

e. an appropriate receptacle is used for the disposal of items; and

5. no direct skin-contact application of the product is performed on a purchaser or potential purchaser except by the purchaser.

In the alternative, if the produce is applied only to a model who is also employed as part of the sales process, then the product application is not violative of Minnesota Statutes, chapter 155A and these rules.

4 MCAR § 10.108 Examination administration.

A. Schedules and sites. Examination schedules and sites shall be determined by the office.

B. School to provide exam space. Each school shall make space available on its premises for the performance of the licensing examinations upon request by the office, if the request is reasonable and timely.

C. Instructor examination.

1. The office shall have access to the clinic area of a licensed school no more than once per year and to licensed instructors no more than twice per year for assistance in conducting the practical examination for instructors.

2. Each examinee is responsible for providing his or her own model for the practical examination and shall be responsible for insuring the suitability of that model for the examination. Models shall be over 16 years of age and shall be required to sign a waiver releasing the office, the examiners, the host school, and the examinee of all professional liability. The model shall not be a licensed cosmetologist or a cosmetology student.

D. Reexam limit. No license applicant may take an exam more than three times in 12 months. No passing score shall be considered valid for more than 12 months.

E. Exam administered in English. Examinations shall be administered and conducted in English without an interpreter or reader.

4 MCAR § 10.109 Reinstatement after denial, suspension, revocation of license.

An applicant shall have a license reinstated for the remainder of its unexpired term or shall be relicensed in the following circumstances:

A. after suspension of license, by meeting the following requirements:

1. the applicant shall provide documentation of the correction or elimination of the grounds for the suspension;

2. the applicant shall make application for reinstatement of license, in writing and on forms supplied by the office;

3. the applicant shall pay the reinstatement fee;

4. if the suspended license has expired by no more than 30 days, an individual applicant shall comply with 4 MCAR § 10.105 B.-D.; a salon shall comply with 4 MCAR § 10.120; and a school shall comply with 4 MCAR § 10.135;

B. after revocation or if the suspended license has expired by more than 30 days, by meeting the following requirements:

1. the applicant shall provide documentation of the correction or elimination of the grounds for the revocation;

2. the applicant shall make application for relicensure, in writing and on forms provided by the office as if no license had been previously issued;

3. the applicant shall pay the reinstatement fee and the license fee; and

4. the applicant shall meet the requirements for initial licensure.

4 MCAR § 10.110 General salon requirements.

A. Location. No cosmetology service shall be provided in a place other than a licensed cosmetology salon, manicurist salon, cosmetology school, or as otherwise provided by these rules.

B. License requirement. No salon shall operate without a license.

C. Employment of unlicensed persons. No salon shall employ or allow unlicensed persons to perform any cosmetology service.

D. Termination of license. A salon license shall not be transferable and shall terminate upon the occurrence of a change of either ownership or location. The old license shall be returned to the office and an application for a new license shall be made in the same manner as if no license had been issued previously.

E. Change of name. The salon manager or owner shall inform the office in writing, within 30 days, of a name change, including old and new name, and pay the processing fee. A license will be issued in the new name for the remaining term of the old license. The old license shall be returned to the office upon receipt of the license in the new name.

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4 MCAR § 10.111 Requirements for salon licensure.

A. General requirements for all salon licenses. The requirements of 4 MCAR §§ 10.111-10.115, 10.117, and 10.118 shall be met by all applicants proposing to establish a salon. Upon compliance, the office will issue a provisional license which will enable the salon to open for business. The salon's compliance with all applicable provisions of Minnesota Statutes, chapter 155A and these rules shall be confirmed by an operational inspection by the office staff. A permanent license for the balance of the three-year license cycle shall be issued upon confirmation of the salon's compliance.

B. Application. The person, association, firm, or corporation proposing to establish a cosmetology or manicure salon shall apply in writing to the office, on forms supplied by the office, giving the following information:

1. the name of the salon, its address, and names and addresses of all owners and controlling officers;

2. notarized signatures;

3. the days of the week and the hours which the salon will be open;

4. evidence of the salon's compliance with local fire, zoning, health, and building codes, or in the absence of local codes, with the corresponding state codes;

5. the name of the licensed manager who will be employed by the salon, including that individual's license number and its expiration date; and

6. a floor plan of the salon, drawn to scale on 8½" × 11" or 8½" × 14" paper, providing the dimensions of the salon as a whole and designating the size and location of all entrances and exits, and indicating the location and dimensions of all required areas, facilities, and equipment.

C. Evidence of liability insurance. The applicant shall provide evidence of the salon's coverage by professional liability insurance, of at least $25,000 for each claim and $50,000 total coverage for each policy year for each operator.

D. Evidence of worker's compensation insurance. The applicant shall provide evidence of his or her compliance with Minnesota Statutes, section 176.182.

E. Payment of fee. The applicant shall pay the license and processing fee.

4 MCAR § 10.112 Applicability of requirements for salon license.

The provisions of 4 MCAR §§ 10.110-10.121 apply to both cosmetology and manicure salons, except for 4 MCAR §§ 10.113 E.2., 10.114 B.-C., 10.115 A., and 10.116 A.1.-3., A.7., and A.12, which do not apply to manicure salons.

4 MCAR § 10.113 Physical requirements.

A. Space.

1. There shall be at least 120 square feet of work space exclusive of any restroom, reception, or supply area for a one-practitioner cosmetology salon, and 100 square feet of work space for a one-practitioner manicure salon.

2. There shall be at least 50 additional square feet of work space for each additional licensee simultaneously on duty in a cosmetology salon, and at least 35 additional square feet of work space of each additional licensee simultaneously on duty in a manicure salon.

3. The supply area shall not be accessible to the public.

B. Entrance and exits. Each salon shall have at least two entrance/exit points which shall comply with state fire code requirements and local building code requirements. A salon located in a basement may have a window for one of its two exits.

C. Walls and ceilings. All walls and ceilings shall be kept clean and in good repair at all times, free from crevices, cracks, or holes which could collect dirt.

D. Floors.

1. All floors shall be kept clean and free from hair and other debris at all times and shall be in good repair, free from crevices, cracks, holes, or tears which could collect dirt or hair.

2. Carpet shall not be an acceptable floor covering unless it is commercial grade carpet.

E. Lighting and electricity.

1. Each salon shall provide direct lighting to all work areas. Light fixtures shall be clean and dust-free.

2. There shall be at least one electrical outlet in each work station.

F. Plumbing, water supply.

1. All plumbing fixtures shall be of impervious material, and installed in accordance with local plumbing ordinances, and shall not constitute a cross-connection.

2. There shall be clean, hot, and sanitary running water provided in the work area, dispensary area, and toilet facilities.

3. Each salon shall provide adequate toilet facilities, on its premises or in an adjacent common area, which are used for no other purpose. The toilet facilities shall comply with the requirements of the state building code and the Occupational Safety and Health Administration. The door shall be kept closed at all times or the rest room shall be screened from view.

G. Ventilation. Salon ventilation shall comply with the requirements of the state building code. Window ventilation shall not be acceptable as a method of meeting the standard.

4 MCAR § 10.114 Fixtures, furniture, and equipment.

A salon shall meet the following minimum requirements:

A. there shall be a work station with chair, storage space, and mirror assigned to each licensee on duty;

B. there shall be at least one shampoo bowl in good repair and operational for each six work stations;

C. there shall be at least one standard or hand-held blow dryer hair dryer in good repair; clean and operational for each six work stations;

D. there shall be at least one nonporous wet disinfecter large enough to completely immerse all items to be disinfected;

E. all furniture shall have a washable covering or finish and shall at all times be kept clean and in good repair;

F. there shall be a waste receptacle at each work station. This receptacle shall be emptied at least daily. It shall be lined with a disposable plastic bag or liner, or washed daily.

There shall be at least one covered metal container which shall be used exclusively as a receptacle for soiled towels and linen. It shall be kept closed at all times.

There shall be at least one large covered metal container for disposal of garbage. This container shall be emptied at intervals necessary to maintain cleanliness. The container shall be lined with a disposable plastic bag or liner, or be washed daily;

G. there shall be storage cabinets for all clean linen and towels. They shall be equipped with tight-fitting closable doors, which shall be kept closed;

H. there shall be storage space for all supplies. Supplies which contain any caustic or other harmful material shall be conspicuously labeled and kept inaccessible to clients;

I. each salon shall maintain a readily accessible first aid kit;

J. each salon shall have at least one readily accessible fire extinguisher which complies with state fire code requirements. All employees shall be instructed in the location and use of the fire extinguisher; and

K. emergency telephone numbers shall be posted next to the telephone at the reception desk.

4 MCAR § 10.115 Supplies and materials.

A salon shall meet the following minimum requirements:

A. brush rollers shall not be allowed; and

B. there shall be at least two dozen clean towels per operator per day.

4 MCAR § 10.116 Operational requirements for salons.

A. Operational requirements. It is the responsibility of the manager of the salon and of each operator to comply with the following operational requirements:

1. each licensee shall maintain an adequate supply of clean and disinfected brushes, combs, and other implements and tools for use on his or her patrons. The licensee shall have at least 12 combs and 12 brushes;

2. all combs and brushes shall be cleaned and disinfected after use on each person. Hair shall be removed from all implements before disinfecting;

3. rollers, pins, clippies, hairnets, shears, razors, and all other hairdressing tools shall be cleaned thoroughly and

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disinfected at a minimum of once per week. These items shall be stored in a clean, closed container or be covered with a clean towel until reused;

4. clean linens and protective papers shall be used for each person. A clean towel shall be placed on the head rest of the facial chair before any person reclines in that chair. A clean towel shall be placed between the client's head and the shampoo bowl during shampooing. A paper strip or clean towel shall be placed completely around the neck of each client before any apron or hair cloth or any other protective covering is fastened around the neck;

5. all fluids, semi-fluids, creams, and powders shall be kept in clean covered containers and shall be dispensed with a clean disinfected spatula or from a shaker or pump or spray dispenser. Spatulas made of nonabsorbent material may be disinfected and reused; wooden spatulas shall be discarded after each use. Gauze or cotton applicators shall be discarded after each use. Waving fluids shall be dispensed from suitable containers, in a manner which prevents contamination of unused fluid. All containers shall be covered when not in use;

6. all bottles and containers shall be correctly and clearly labeled to disclose their contents. Poisonous substances shall be clearly and conspicuously marked;

7. permanent waving end papers and neck strips shall not be reused. All permanent wave rods and supplies shall be washed thoroughly after use on each client and shall be stored in clean, closed containers or covered by a clean towel when not in use;

8. all electrical tools and implements shall be kept on stands or hangers or otherwise be stored properly when not in use. One six-foot grounded heavy-duty extension cord may be used in a work station if necessary to service a client with an implement actually in use. The extension cord shall not extend beyond the area of the work station;

9. all clean towels, robes, and linen shall be stored in a clean, closed cabinet until used. The cabinet shall be made of a solid, completely closed material;

10. each towel, robe, and linen shall be used only once and then be properly laundered. After use and until laundering, each item shall be placed in the required metal receptacle, which shall be kept covered. All soiled towels and linens shall be laundered in washing machines with laundry detergent, in water of a temperature of at least 160 degrees Fahrenheit. Commercial laundering is acceptable;

11. The procedures contained in a.-g. shall be used to disinfect items.

a. All hair shall be removed before disinfection.

b. Each item shall be washed in hot water with soap or detergent and rinsed thoroughly with hot water.

c. Each item shall be immersed for at least ten minutes in a disinfectant solution comprised of the following: sodium hypochlorite (200 ppm of available chlorine); or iodophor germicidal detergent (200 ppm of available iodine); or quaternary ammonium germicidal detergent solution (200 ppm); or 70 percent ethyl alcohol or 95 percent isopropyl alcohol.

d. Metal implements and tools shall be disinfected by immersion in a solution of 70 percent ethyl alcohol or 95 percent isopropyl alcohol.

e. Items to be air dried shall not be rinsed after disinfection.

f. Each item shall be stored until used in a clean, closed container, drawer, or cabinet, or under a clean towel.

g. Used items and disinfected items shall not be stored in the same container, drawer, or cabinet.

12. wig blocks shall have a nonabsorbent covering which shall be kept clean and sanitary. Each nonabsorbent covering shall be removed after each servicing of the wig and shall be placed in a properly labeled container. Each wig accepted for service shall be stored in an individual sanitary receptacle such as a plastic bag and shall not be allowed to come into contact with any other wigs. New wigs shall not be allowed to come into contact with any client's hair, skin, or wig. Plastic wrap or other suitable covering material shall be placed over a prospective buyer's hair while trying on wigs;

13. each licensee on duty shall be assigned to a specific work station;

14. the licensee shall wash his or her hands with soap and hot water before any service to a new patron. Fingernails shall be kept clean;

15.

a. each licensee shall be responsible for the order, cleanliness, and sanitation of his or her work station and all equipment and materials used;

b. each licensee shall be responsible for using only clean and properly disinfected implements when providing any service;

c. each licensee shall ensure that all hair is removed from the floor after each haircut;

d. each licensee shall clean up any spills of water or other liquid from the floor immediately;

e. each licensee shall remove all hair and rinse the shampoo bowl immediately after each use;

16.

a. each licensee shall be clean and shall wear clean clothing and shoes;

b. each licensee shall be free from communicable diseases and parasites when performing services on any client;

c. licensees shall not smoke, eat, or drink while performing any services;

d. licensees shall not carry combs or other implements in the pockets of clothing;

17. services shall not knowingly be performed on any person who has a communicable disease, condition, or parasites;

18.

a. current licenses of salon personnel shall be conspicuously posted at approximately eye level in the reception area or in each licensee's assigned work station. The licensee's street address may be obliterated with tape, but name and town must remain unobstructed. A two-inch by two-inch photograph of the licensee, alone, taken within the last three years, shall be attached to each license. If the license is at the reception area, the licensee's name and type of license held shall be posted at the work station;

b. the current shop license, a copy of the salon's most recent inspection report, and the salon rules shall be conspicuously posted together in the reception area at approximately eye level;

19. no animals, birds, or pets shall be allowed in a salon. This excludes guide dogs;

20. if a salon receives compensation for child care services, the following requirements shall be met:

a. the unlicensed service shall be identified in compliance with 4 MCAR § 10.122;

b. the child care activities shall be contained in a room separated from the salon. The square footage of this room shall not be included in the required minimum square footage for the salon;

c. an individual shall be hired to attend the children at all times and shall not simultaneously be responsible for the performance of any cosmetology services.

B. Salon supervision.

1. There shall be a manager responsible for each salon at all times.

2. Only one person shall be designated as manager for each salon. No manager may be concurrently responsible for more than one salon. When the manager is not on duty, he or she may specify a responsible person in his or her absence.

3. The manager shall ensure that all licensees under his or her supervision comply with all provisions of these rules and Minnesota Statutes, chapter 155A.

4. The manager shall ensure that no unlicensed individual provides any cosmetology service in the salon.

5. The manager shall maintain, on the salon premises, the work hour records of each employee, as required by Minnesota Statutes, section 177.30.

6. The manager shall ensure that all equipment required by these rules is operational and maintained in proper working condition, that adequate supplies are in stock at all times, and that sanitation and safety requirements are met.

4 MCAR § 10.117 Additional requirements for specific types of salon licenses.

In addition to the requirements of 4 MCAR §§ 10.113-10.116, the requirements contained in A.-E. shall be met.

A. Beauty salon and barber shop. A beauty salon and a barber shop may be operated in the same establishment, if the beauty salon occupies a physically separate area comprised of continuous footage, and is clearly identified as a beauty salon by a conspicuously displayed sign which states, "Beauty Salon" in letters at least two inches in height.

B. Esthetician services. Esthetician services shall be provided only in a licensed cosmetology salon. Esthetician services shall not be offered in a manicurist salon.

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C. Mobile salons.

1. Mobile homes, motor homes, trailers, or any type of recreational vehicle which contains a beauty salon shall be permanently stationed at one location.

2. Salons in a vehicle which moves from one location to another shall not be allowed.

D. Licensed health care facilities.

1. It is not necessary for a licensed health care facility to have a licensed salon in order for nursing and patient care personnel or volunteers to wash, set, or trim residents' hair.

2. Licensed operators with certificates of identification may provide cosmetology services to residents.

3. If the licensed health care facility chooses to have a licensed salon on the premises, all the requirements for a salon must be met.

E. Salons in private residences. Salons may be established in private residences, if the following conditions are met:

1. the salon shall not be used for any residential purposes at any time;

2. the salon shall be completely separated from the residential areas. There shall be a permanent, solid partition, from floor to ceiling, between the salon and the residential areas. Any door in this partition shall be kept closed at all times;

3. the salon entrance/exit shall not lead through any residential area or through a garage;

4. all cosmetology services offered by the salon shall be available within the salon;

5. laundry tubs shall not be used as shampoo bowls; and

6. the residential toilet facilities shall not be used for salon clients.

4 MCAR § 10.118 Requirements for a booth license.

A Minnesota licensed cosmetologist or manicurist manager may lease work space from a licensed salon and operate that space as an independent business upon obtaining a booth license. An applicant for a booth license shall meet the following requirements:

A. the applicant shall hold a current Minnesota manager license;

B. the applicant shall provide documentation of leased work space from a licensed Minnesota salon. The work space shall be at least 50 square feet for a cosmetologist or 35 square feet for a manicurist. The lease shall include provisions regarding responsibility for keeping records of hours worked by the booth licensee, maintenance responsibilities of the booth licensee, use of salon equipment, purchase of supplies, professional liability insurance coverage, and other agreements reached by the parties;

C. the applicant shall provide evidence of coverage by professional liability insurance in the amount required for salon licensees. It shall be acceptable for the salon owner's professional liability policy to cover the booth licensee;

D. the applicant shall be responsible for operating his or her work space in full compliance with these rules.

4 MCAR § 10.119 Requirements for maintaining a salon or booth license.

The following requirements shall be met by all salons and booths:

A. the licensee shall continuously comply with all applicable provisions of Minnesota Statutes and rules;

B. the manager shall advise the office of a change in name of the salon in writing, including both new and old name and address, within 30 days of the change;

C. the licensee shall renew the license prior to its expiration date;

D. the licensee shall display the required documents.

4 MCAR § 10.120 Salon license renewal.

A. Requirements. The requirements of B.-G. shall be met in order to renew a license.

B. Request for renewal. The licensee shall be responsible for requesting renewal of his or her salon license, in writing, before the license expires. This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, responsibility for proper and timely renewal remains with the licensee.

C. Liability insurance coverage. The licensee shall provide evidence of continued professional liability insurance coverage in the required amount.

D. Worker's compensation insurance coverage. The licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182.

E. Fee. The licensee shall pay the required license fee before the expiration of the current license.

F. Timely renewal. The postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

G. Identity of manager. The licensee shall state the name of the salon manager and the number and expiration date of his or her license.

4 MCAR § 10.121 Delinquent salon licenses.

A. Failure to renew. Failure to renew a license prior to its expiration date shall result in a delinquent salon license. This license must be renewed within 30 days.

B. Renewal. If less than 30 days have elapsed since the expiration date of the license, the applicant shall submit a written application for renewal of license, the license fee, and the required late penalty. If more than 30 days have elapsed, the salon shall cease operation until a new salon application has been submitted and a provisional license has been issued.

4 MCAR § 10.122 Unlicensed services.

A. Disclosure. All services not licensed as the practice of cosmetology offered within a salon or school clinic shall be clearly identified as "unlicensed services" and listed on a sign conspicuously posted in the reception area. The sign shall contain lettering at least two inches high and shall state: "The following services offered by (salon or school name) are not licensed by the state of Minnesota:

. . . . . .

. . . . . .

. . . . . ."

B. Disclosure of courses relating to unlicensed services. Each school shall clearly identify those courses and clinical experiences in its curriculum which are not required by the office and which pertain to services not licensed by the state. These courses shall be clearly identified in all recruitment advertising and written material used for the purposes of soliciting prospective students.

Nonrequired courses and unlicensed services shall be conspicuously identified in all written material, in type of the same size as the course or service name.

Instructional time and clinical experience in unlicensed services shall not be included in the minimum hours of schooling required for licensure.

4 MCAR § 10.123 Advertising.

The following provisions govern all advertising relating to the education, licensing, or practice of cosmetology:

A. all advertising shall comply with Minnesota Statutes, sections 325F.67 to 325F.70 and related rules;

B. no advertisement shall state or imply favorable consideration by the Office of Consumer Services other than to state that the salon or school is licensed by the office;

C. any advertisement that a salon or school is licensed by the state of Minnesota shall specify the type of license held and the license number;

D. no salon or school advertisement stating licensure by the state of Minnesota shall include reference to any unlicensed services;

E. a school advertisement of cosmetology services shall clearly and conspicuously state that all services are performed by students, in boldface type of the same size as the most-used type size in the ad;

F. no school may advertise that its students will earn a commission, salary, or pay of any kind, other than gratuities, on cosmetology services performed in the school clinic.

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4 MCAR § 10.124 Inspections.

A. Office staff to conduct. Salons and schools shall be inspected by the office staff. Advance notice of inspections shall not be given.

B. Grading. Inspectors shall grade items "S" for compliance with Minnesota Statutes, chapter 155A and these rules and "U" for noncompliance.

All items graded "U" shall be corrected within ten business days, and written notification of the correction shall be sent to the office within that time.

Failure to correct a noncompliance item may be grounds for suspension or revocation of the salon or school license, and of the individual license of the manager and the cosmetologist, manicurist, esthetician, or instructor involved.

C. Information on business hours and location. Each salon owner shall provide the office with:

1. an accurate schedule of the hours which the salon is open for business. If the salon is open by appointment only, the salon owner shall designate one-half day a month when he or she shall be available at the salon for inspection of the salon;

2. for country shops, a detailed map indicating the salon's exact location and directions for driving to that salon.

D. Cost and frequency of inspections. Each cosmetology salon and school shall be inspected annually. Additional inspections may be made as necessary to confirm correction of previous noncompliance. The cost of the annual inspection shall be included in the licensing fee. The cost of additional inspections to confirm correction of previous noncompliance shall be assessed to the school.

E. Results. Inspectors shall discuss the results of the inspection at its conclusion, in private, with the salon or school owner, manager, or a responsible person so designated in writing by the manager. A written report shall also be given or sent to the manager.

4 MCAR § 10.125 General requirements for schools.

A. Location where services taught. No cosmetology instruction shall be given in any place other than a licensed school of cosmetology or as otherwise provided in these rules.

B. License required. No cosmetology school shall be permitted to operate without a license.

C. Employment of licensed instructors. No cosmetology school shall employ an instructor who does not hold a current Minnesota cosmetology instructor license. A school may use occasional guest instructors or lecturers who do not hold a cosmetology license to provide supplemental information to students from related fields, such as medicine, public relations, or law.

D. Termination. A school license is nontransferable and shall terminate upon the occurrence of either of the following:

1. a change of ownership of the school. The new owner shall apply for a new school license in the same manner as if no license had been previously issued, at least 30 days before the effective date of the change; or

2. a change of location. An application for a new license shall be made in the same manner as if no license had been previously issued.

E. Change of name. The school owner or manager shall inform the office of a name change, in writing, 30 days before the effective date of the change and pay the school name change fee. A license will be issued in the new name for the unexpired term of the old license, which shall be returned to the office upon receipt of the license in the new name.

F. Separation of school from business.

1. Any cosmetology salon owned or operated by a school owner shall be operated as a separate and distinct business.

2. There shall be complete physical separation between the salon and school.

3. Salon and school shall have separate managers.

4. There shall be separate and clearly identified and differentiated entrances and telephone numbers for salon and school.

5. Salon employees shall not teach in the school unless they are licensed instructors included on the school staff roster.

6. No customer work may be done by an instructor in the salon during instructional hours stated on the school roster.

7. Each facility shall maintain the stock of supplies necessary for its operation.

G. Exclusive use as school. No school, or portion thereof, shall be used for any residential purposes.

4 MCAR § 10.126 Requirements for school licensure.

A. Application contents. The person, association, firm, or corporation proposing to establish a cosmetology school shall make written application to the office, on forms supplied by the office, giving the following information:

1. the name of the school, its address, and the names and addresses of all owners and controlling officers;

2. notarized signatures of the owners, controlling officers, and managers;

3. the days of the week and the hours which the school will be open;

4. the daily and weekly class schedule;

5. evidence of the school's compliance with local fire, zoning, health, and building codes, or in the absence of local codes, with the corresponding state codes;

6. the name of the licensed manager who will be employed by the school, including that individual's license number and expiration date;

7. a roster of all instructors, including license number, designation of employment status (full-time or part-time) and days of the week and hours scheduled for instruction;

8. a diagram of the school drawn to scale on 8½" × 11" or 8½" × 14' paper, providing the dimensions of the school as a whole and designating the size and location of all entrances and exits, and the location and dimensions of all required areas and facilities;

9. a complete inventory of facilities and equipment supportive of instructional and clinical operations, as required by these rules;

10. a designation of the licenses for which preparation will be offered;

11. a detailed outline of the courses of training to be offered, designating the preclinical and clinical curriculum, text materials, and the clinical plan designed for each license category;

12. the maximum possible number of enrollees the school will be able to accommodate;

13. copies of all financial aid and refund policies;

14. copies of all student rules and disciplinary policies;

15. a copy of the standard enrollment contract;

16. copies of all written material used to solicit prospective students, including but not limited to tuition, refund, and fee schedules, catalogs, brochures, and all recruitment advertisements;

17. a current balance sheet, income statement, or evidence of sufficient financial worth to conduct a school and to meet its financial obligations.

B. Evidence of liability insurance coverage. The applicant shall provide evidence of the school's coverage by professional liability insurance, of at least $25,000 per incident and an accumulation of $75,000 for each premium year for each teaching station in the clinical operation of the school.

C. Evidence of worker's compensation insurance. The applicant shall provide evidence of the school's compliance with Minnesota Statutes, section 176.182.

D. Surety bond. The applicant shall file with the director of the office a continuous corporate surety bond in an amount equal to the full tuition for all of the maximum potential enrollees in the school, conditioned upon the faithful performance of all contracts and agreements with students made by the applicant. The bond shall run to the state of Minnesota and to any person who may have a cause of action against the applicant arising at any time after the bond is filed and before it is cancelled for breach of any contract or agreement made by the applicant with any student. The aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the full tuition for all of the maximum potential enrollees in the school. The surety of the bond may cancel it upon giving 60 days notice in writing to the director of the office and shall be relieved of liability for any breach of condition occurring after the effective date of cancellation.

E. Payment of fee. The applicant shall pay the school license and school application fees.

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4 MCAR § 10.127 Facilities requirements for licensure.

In addition to the requirements of 4 MCAR §§ 10.125 and 10.126, the requirements contained in 4 MCAR §§ 10.128-10.131 shall be met by the school before a license will be issued. Compliance with these requirements shall be confirmed by an inspection by cosmetology unit staff. The license shall be issued after a satisfactory initial inspection.

4 MCAR § 10.128 Physical requirements.

A. Space.

1. There shall be a combined clinic and classroom size of at least 25 square feet for each enrollee to be accommodated. This space shall exclude all office space, storage areas, lounge facilities, and restrooms.

2. All supplies and materials shall be stored in a space inaccessible to the public.

3. The dispensary shall be a specified area inaccessible to the public.

4. There shall be a furnished student lounge of at least 120 contiguous square feet.

5. There shall be an instructors' lounge separate from the student lounge.

B. Entrances and exits. Each school shall have at least two entrance/exit points which meet state fire code requirements and local building code requirements. A school located in a basement shall not be allowed to use a window as one of the required exits.

C. Electrical requirements. Each classroom shall be clearly lit and shall have at least two electrical outlets. Use of extension cords shall not be an acceptable means of meeting this requirement.

D. Toilet facilities. Each school shall provide adequate toilet facilities on its premises or in an adjacent common area for the use of students, staff, and customers. Separate restroom facilities must be provided for women and men. Each facility shall meet the same requirements designated for those in salons in 4 MCAR § 10.113 F.3.

E. Additional requirements. In addition, each school shall meet the physical requirements for salons contained in 4 MCAR § 10.113 C.; D.; E.; F.1. and F.2.; and G.

4 MCAR § 10.129 Fixtures, furniture, equipment.

A school shall meet the following minimum requirements:

A. there shall be one work station with chair, storage, and mirror for each student assigned to the clinic floor;

B. there shall be at least one hair dryer, clean, in good repair, and operational, for each six work stations;

C. there shall be at least one facial chair, clean and in good repair, for each six enrollees. This may be a work station chair with a reclining back and attachable headrest;

D. there shall be at least one manicure table, clean and in good repair, for each ten enrollees;

E. there shall be at least one heat cap;

F. there shall be skin care machines or models or diagrams sufficiently detailed to allow instruction in their use and operation;

G. there shall be at least one adult-size desk/table and chair in the classroom area for each enrollee to be accommodated;

H. there shall be at least one time clock to be used by the students when checking in and out of school. Each student shall punch his or her own card at the beginning and end of each day and before and after lunch;

I. in addition, each school shall meet the fixture, furniture, and supply requirements for salons as designated in 4 MCAR § 10.114 B. and D.-K.; and

J. there shall be locker space available for students requesting it.

4 MCAR § 10.130 Supplies and materials.

A. Basic supplies.

1. The school shall supply each student with a beginning professional kit, containing the implements and the majority of equipment required for the course of training for which the student has enrolled. The cost shall be clearly indicated to the student prior to enrollment, even if it is included in the basic tuition fee.

2. The school shall provide the student with all supplies and materials necessary to perform all clinical services and classroom exercises.

3. The school shall supply at least one manikin with hair for each cosmetology enrollee, and one manikin without hair for each esthetician enrollee.

B. Towels and linens. There shall be one dozen towels per enrollee maintained in good repair and available to students.

C. Instructional materials. The school shall supply each enrollee with a copy of all textbooks to be used in the course of training, and copies of all other necessary instructional materials, including a copy of Minnesota Statutes, chapter 155A and these rules. Workbooks associated with the textbooks shall become the property of the student. The cost of these materials shall be clearly indicated to the student prior to enrollment, unless it is included in the tuition fee.

D. Instructional aids. The school shall have instructional aids to provide the required instruction to all enrollees. There shall be at least one bulletin board, located in the student lounge, which shall contain, but not be limited to, all communications addressed to the students from the office and copies of the student rules and disciplinary policies. There shall be at least one blackboard in each classroom.

E. Reference materials. Reference materials shall be centrally located and made available to all students, including:

1. an American language dictionary;
2. charts for basic anatomy (hair, skin, and nails);
3. trade magazines and publications;
4. a copy of Minnesota Statutes and rules pertaining to the regulation of the practice of cosmetology; and
5. copies of other related statutes and rules.

4 MCAR § 10.131 General operational requirements for schools.

It shall be the responsibility of the school owner and manager to ensure compliance with the requirements of A.-M.

A. Identification. Each school shall be identified as either a school of cosmetology, beauty school, beauty academy, beauty training center, or any other designation whereby the public may be able to distinguish it from a salon. Identification shall consist of signs conspicuously placed on the front of the school and in the reception area of the school clinic. Each school shall also have a sign conspicuously posted in its clinic reception area stating, "Beauty School. All work performed by students." in letters at least two and one-half inches in height.

B. Manager.

1. There shall be a manager responsible for each school at all times. There shall be only one person designated as manager for each school. No manager may concurrently be responsible for more than one school nor for a school and a salon. When the manager is not on duty, he or she shall specify a responsible person on the premises.

2. The manager shall ensure that all personnel and students under his or her supervision comply with all provisions of these rules.

3. The manager shall ensure that no unlicensed instructor conducts any class, demonstration, or any other educational experience within the school except as allowed by Minnesota Statutes, chapter 155A and these rules.

4. The manager shall ensure that all equipment required by these rules is clean and maintained in proper working condition, that proper supplies are in stock at all times, and that safety, sanitation, and operational requirements are met by the school. The manager shall be responsible for recruitment and advertising materials.

C. Instructors.

1. There shall be at least two licensed instructors on the school premises for the first 1 to 20 students to be accommodated and one additional licensed instructor for each additional 1 to 20 students to be accommodated.

a. A school may operate for 30 days per year with an unlicensed substitute for one of the licensed instructors, if the school manager is on the school premises and available to supervise the substitute, and if there is at least one licensed instructor, available and responsible for the direct supervision of the unlicensed substitute.

b. The school shall notify the office in writing within three days of each occurrence of failure to meet the required instructor quota.

2. If a school is not in compliance with C.1., students will be notified by the office that it will not accept hours accrued during the period of noncompliance.

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3. Instructors shall devote the entire time scheduled to training and shall have no additional noninstructional duties or responsibilities.

4. All instructors shall wear identification badges at all times while providing training, stating their full name and "Instructor." These badges shall be at least two inches by one inch and shall be color-coded white.

D. Enrollment contracts.

1. The student or his or her parent or guardian shall receive a fully executed copy of the contract at the time he or she signs the contract.

2. The school and a student who has enrolled for training because he or she failed the state examination and reciprocity applicants shall enter into a contract which specifies the precise nature of theory and clinical experience to be covered during the training course.

E. Refund policy.

1. Each school shall have a definite, written policy relating to the refund of tuition and fees when students terminate training. The policy shall at minimum provide for the following:

a. a complete refund of all monies paid if the school rejects the applicant, or if the applicant cancels the enrollment contract, in writing or in person, within three business days of the date upon which the contract was signed by both the student and agent of the school and prior to entering classes. The enrollment contract shall include a provision headed by the title in boldface ten-point type "Notice of Cancellation", which instructs the student as to what steps he or she must take to cancel the contract;

b. a refund of all monies paid except a registration or enrollment processing fee up to 15 percent of the contract price if the applicant cancels the enrollment contract more than three business days after conclusion of the contract but prior to entering classes;

c. if a student has entered classes the following minimum tuition refunds shall be made:

Percentage of Total Program Represented by the Hours of Training Completed.	Maximum Amount of Total Tuition School Shall Receive or Retain.
0 to 4.9 percent	20 percent
5 to 9.9 percent	30 percent
10 to 14.9 percent	40 percent
15 to 24.9 percent	45 percent
25 to 49.9 percent	70 percent
Over 50 percent	100 percent

2. Fees for the student kit, textbooks, and workbook may be deducted before application of the percentages in refund computations, if these fees are included in the tuition and if these items become the property of the student.

F. Student regulations. Student regulations shall be in writing and a copy shall be given to all students. A copy and any changes shall be posted on the bulletin board in the student lounge. The rules may include a reasonable dress code. All rule changes shall be discussed with the student body at least ten days prior to the effective date and each student shall be given a copy of any changes.

G. Student records.

1. All records relating to students shall be maintained and up-to-date, in a secure and orderly fashion and shall be kept on the school premises. All student records shall be legible and shall be available for inspection by a representative of the office during normal business hours of the school or by mail upon the written request of the office.

2. The school shall maintain complete, accurate, and detailed records of all payments from and financial transactions with students, showing the date, amount, and source of income or disbursement.

3. The school shall maintain daily and monthly records of student hours, work progress, examination assessments, and daily clinical experience records for each student enrolled.

4. All student records shall be maintained by the school for at least five years from the date of the student's termination; or a transcript of the course work of each student may be kept, the transcript to contain the student's name, the date student enrolled, the date of termination of enrollment and the circumstances of termination, the total number of hours completed, and the school owner or manager's notarized signature verifying the contents of the transcript.

5. The school shall submit to the office the following reports for each student:

a. a student registration form containing the student's full and correct name, course of training for which enrolled,

and start date. The status of the student shall be stated as full-time or part-time, day or night classes. This information must be received by the office within ten days of the student's start date and shall be accompanied by the processing fee;

b. evidence on a standardized form, from a physician, stating that the student is free from communicable diseases or parasites. This certification shall accompany the student registration;

c. certification of completion of preclinical courses. Documentation signed by the school owner or manager shall indicate that the student has successfully completed the required hours of preclinical work. A student shall not be allowed to perform any service or portion thereof in the school clinic on a client until this certification has been sent;

d. a progress evaluation report. Upon completion of one-half of the total required hours, the school shall give the student and the office a written progress evaluation assessing the student's progress towards successful fulfillment of the license requirements.

e. certification of readiness to take the written examination. Documentation signed by school owner or manager, shall indicate that the student has successfully completed 1,350, 500, and 315 hours, for cosmetologist, esthetician, and manicurist respectively, of preclinical and clinical training, and is prepared to take the written state licensing examinations. This certification must be received by the office before the student will be scheduled for the written examinations;

f. documentation signed by school owner or manager, shall indicate that the student has successfully completed the course of training for which he or she enrolled. Included shall be documentation of the student's completion of the practical exercises, as required by 4 MCAR § 10.133 B.4.a., C.4.a., and D.4.a. and documentation of the student's successful completion of the skills certification review, on a form provided by the office;

g. a statement shall be sent by the school to the office if a student withdraws, is suspended, or expelled from his or her course of training. The certification shall be signed by the school owner or manager, shall indicate the last day on which the student was enrolled, the total number of hours the student has successfully completed as of that date, a transcript detailing the nature of those hours, and the reason for the withdrawal, suspension, or revocation. This certification must be received by the office within ten days of the end of enrollment.

H. Certification of student hours.

1. All student hours shall be recorded, on a daily and a monthly basis.

2. The daily record of hours shall list the number of hours earned by each student and the nature of training received, designating all clinical experiences; shall be signed by the instructor who provided or supervised the training; shall be signed by the student; and shall be based on the hours actually recorded on the student's timecard.

Each student shall register on the timeclock at the beginning and end of each school day and at the beginning and end of lunch breaks. Timecards which are improperly punched or inadvertently altered, or contain any error may be corrected and that correction initialed by the student, the school manager, and the appropriate instructor.

Original timecards shall be deemed to be the property of the school. A student, within ten days of a request, is entitled to receive copies of his or her timecards from the school. The school may not withhold copies of his or her timecards after a proper request has been made.

3. Each school shall complete and maintain a monthly report for each student, summarizing the hours completed for that month, and signed by the school owner or manager. A copy of the report shall be given to the student within five days of the end of each month.

4. No school or student shall alter the content or the number of hours completed by a student unless because of error and signed by both parties.

5. Students shall receive credit only for hours spent in training for licensed cosmetology services.

6. No student shall receive credit for more than eight hours of training per calendar day.

7. Each student must be given a morning and afternoon break and at least one-half hour for lunch, or one hour for lunch and no breaks.

8. It shall be made clear to the students in materials designed to elicit their enrollment and at the time of enrollment, the circumstances under which Saturday and evening training will be held.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

I. Students to complete training in required time. Individuals registering as students in a school of cosmetology must complete their training, successfully pass the examination, and be licensed within a period of not more than five years. Otherwise, records of student hours and training received will no longer be considered valid for licensure in Minnesota.

J. Transfer students. A student shall apply to the office in writing for transfer of hours from one school to another. The office shall forward to the receiving school a certified copy of the previous school's certification of withdrawal, suspension or expulsion, or of the transcript of hours completed as indicated on that certification. No school shall give credit to a student for hours completed in another school without a certification of hours from the office or from a non-Minnesota licensing authority as to the total number of hours.

K. Full course of instruction required. No student, unless licensed under provisions of Minnesota Statutes, chapter 155A, shall be enrolled in a school for less than a full course of instruction of not less than 1,550 hours for cosmetologist, 600 hours for esthetician, or 350 hours for a manicurist, except for a licensed individual or a previously licensed individual requesting a refresher course, an applicant who has failed the state examination and requests additional training, a transfer student, a student who has enrolled only to learn unlicensed services, and reciprocity applicants who require additional schooling.

L. Display of licenses.

1. Current licenses of all school personnel shall be conspicuously posted in the reception area at approximately eye level. A two-inch by two-inch photograph of the licensee alone taken within the past three years shall be attached to each license.

2. The current school license shall be conspicuously posted with the personnel's licenses.

M. Pre-enrollment disclosures. If the school brochure does not contain the following information, it shall be given to prospective students along with the brochure and other materials designed to elicit their enrollment: minimum requirements for licensing in the fields in which the school offers instruction, tuition and all fees, the enrollment contract, refund policy, and student regulations.

4 MCAR § 10.132 Operational requirements for school clinics.

All instruction in school clinics and all work performed by students in school clinics shall comply with the operational requirements for a cosmetology salon in 4 MCAR § 10.116 A.1.-12. In addition:

A. no new school shall offer clinical services until the minimum preclinical hours required for students has been met;

B. no school shall be allowed to operate a student clinic at any location other than the school;

C. there shall be conspicuously displayed in the reception area of the school and its clinic a sign stating, "All services performed by students," in type at least 2½ inches in height;

D. instructors shall perform no cosmetology services on any client in the school clinic except to the extent necessary to demonstrate or instruct students. The student shall be physically present, observing the instruction or demonstration and shall participate in the learning experience by actual performance of the complete service;

E. no student shall perform clinic services until he or she has successfully completed the required hours of preclinical training and the school has sent to the office a certification of that completion;

F. all services performed by students shall be supervised by instructors and shall be checked before, during, and after performance;

G. all students shall be required to wear an identification badge at all times. The badges shall be at least two inches by one inch; state the student's first and last name; and state that the student is either a "Cosmetologist Trainee," "Esthetician Trainee," or "Manicurist Trainee." A freshman is a student who has not completed the required hours of preclinical training. A senior is a student who has completed the preclinical training. Freshman badges shall be green and senior badges shall be blue. Different shades of blue may be used to designate various degrees or levels of senior students. Badges shall be furnished by the school as part of tuition costs;

H. each student shall wash his or her hands with soap and hot water before providing any service, and each instructor shall similarly wash his or her hands before demonstrating any service or portion thereof on a client;

I. instructors shall ensure that students and instructors maintain the clinic work area in the same manner and degree as is required for salon cleanliness under 4 MCAR § 10.116 A.15;

J. instructors shall ensure that all students working in the school clinic and all instructors observe the same personal hygiene and safety requirements as those imposed on salon practitioners in 4 MCAR § 10.116 A.16;

K. cosmetology services shall not knowingly be performed in a school clinic on any person who has a communicable disease, condition, or parasite;

L. it shall be permissible for the school to charge clients for services performed by students to the extent necessary to cover the cost of supplies and materials used, and expenses incurred in and for the operation of the school. These prices shall be conspicuously posted in the clinic reception area.

4 MCAR § 10.133 School curricula.

A. Requirements. Each cosmetology school shall have a curriculum approved by the office to provide instruction, divided into daily lesson plans. The curriculum shall include theory and practical application of skills, including the instruction set forth in B.-E.

B. Cosmetologist training.

1. Cosmetologist training consists of a course of training of at least 1,550 hours. This course shall consist of the full manicurist course, the full esthetician course, and the balance in hairdressing.

2. The first 240 hours shall be preclinical instruction in the sciences of anatomy, dermatology, trichology, manicuring, and chemistry as related to cosmetology; electricity and light; sanitation; safety procedures related to the practice of cosmetology; and Minnesota Statutes and rules which pertain to the regulation of the practice of cosmetology.

3. There shall be instruction in applied science and skills in shampooing, scalp and hair conditioning, hair design and shaping, chemical hair control, hair coloring, hair styling, facials, and makeup, and manicuring and nail care.

4. There shall be planned clinical instruction and experience in the applied sciences.

a. Each student shall be required to complete the following minimum number of clinical exercises in each category:

(1) shampooing	300
(2) scalp and hair conditioning	150
(3) hair design shaping	75
(4) chemical hair control (including 6 chemical relaxing exercises)	60
(5) hair coloring	50
(6) hair styling	300
(7) facials and makeup	60
(8) manicures (including 10 applications of artificial nails, of which 3 are sculptured on the nail)	50

b. Documentation of the student's completion of the required quotas in each category shall be sent to the office with the documentation of successful completion of the entire course of training.

5. There shall be instruction in business practices and in the Minnesota laws regulating those practices and labor relations.

C. Esthetician training.

1. Esthetician training consists of a course of training of at least 600 hours.

2. The first 120 hours shall be preclinical instruction in the sciences of anatomy, dermatology, and chemistry as related to skin care; electricity and light; sanitation; safety procedures related to the practice of skin care; and Minnesota Statutes and rules which pertain to the regulation of the practice of skin care.

3. There shall be instruction in applied science and skills in the cleaning, conditioning, shaping, reinforcing, coloring, and enhancing of the skin quality through the use of facials and makeup.

4. There shall be planned clinical instruction and experience in the applied sciences.

a. Each student shall be required to complete at least 60 facials or makeup applications.

b. Documentation of the student's completion of the required facials or makeup applications shall be sent to the office with the documentation of successful completion of the entire course of training.

5. The requirements of B.5. shall be complied with.

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D. Manicurist training.

1. Manicurist training consists of a course of training of at least 350 hours.

2. The first 50 hours shall be preclinical instruction in the sciences of anatomy, dermatology, and chemistry as related to manicuring; electricity and lights; sanitation; safety procedures related to the practice of manicuring; and Minnesota Statutes and rules which pertain to the practice of manicuring.

3. There shall be instruction on applied science and skills in the cleaning, conditioning, shaping, reinforcing, coloring, and enhancing of nails and in the application and repair of artificial nails.

4. There shall be planned clinical instruction and experience in applied sciences and skills.

a. Each student shall be required to complete at least 50 manicures, including at least ten applications of artificial nails, of which three are sculptured applications on the nail.

b. The documentation of the student's completion of the required manicures shall be sent to the office with documentation of successful completion of the course of training.

5. The requirements of B.5. shall be complied with.

E. Refresher course. A licensed cosmetology school, salon, or a professional association may plan and offer a refresher course taught by licensed instructors of at least 40 hours in length for cosmetologists, estheticians, and/or manicurists. The course shall focus on knowledge, skills, and product types related to chemical services and shall balance lectures, demonstrations, and clinical experiences. It shall be held in a licensed salon or school. Sponsors of a proposed course shall apply for office approval at least 45 days prior to the course date. The application shall be on a form provided by the office. The course sponsor shall pay the processing fee. The course sponsor shall provide the office with the name and license number of all individuals who successfully pass a final course examination.

F. Credit towards another license. A licensed esthetician or manicurist who received his or her training within the last five years may receive the following credit for that training toward another license:

1. esthetician training = 550 hours credit toward cosmetologist license;

2. manicurist training = 300 hours credit toward a cosmetologist license;

3. manicurist training = 200 hours credit toward an esthetician license;

4. esthetician training does not produce any credit toward a manicurist license.

4 MCAR § 10.134 Requirements for maintaining a school license.

A. Display of documents. Each school license and all personnel licenses shall be conspicuously displayed in the school or school clinic reception area. A copy of the school's most recent inspection report shall be conspicuously posted at approximately eye level in the clinic reception area.

B. Notification of changes in license information. Each school shall notify the office within 30 days of the effective date, unless otherwise indicated below, and in writing, of all alterations, additions, and deletions in the information contained in its original license application, and supply current information, including but not limited to:

1. changes in managerial or instructional staff including additions and terminations, or changes in employment status (full-time, part-time, or number of hours worked). The school shall notify the office of all such changes within three days of the effective date of the change;

2. changes in any written material and advertising used to solicit prospective students;

3. changes in the education services or course of training offered, the curriculum, text materials, or clinical experience plan;

4. remodeling or significant alteration of the physical plant in which the school is housed;

5. the most current balance sheet, income statement, or evidence of financial worth shall be submitted to the office on January 1 of each year.

C. Retention of ad copies. The school shall maintain copies of all advertisements for clinic services for three years. They shall be provided to the office at its request.

4 MCAR § 10.135 School license renewal.

All of the following requirements shall be met in order to renew a license:

A. the licensee shall be responsible for requesting renewal of his or her school license, in writing, before that license expires.

This may be accomplished on the license renewal notice form provided by the office. However, if this renewal notice is not received, it is still the licensee's responsibility to properly renew the school license;

B. the licensee shall provide evidence of continued professional liability insurance coverage in the required amount;

C. the licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182;

D. all unsatisfactory inspections report items shall be corrected before a license will be renewed;

E. the licensee shall provide a current and complete roster of manager and instructional staff, including license number and expiration date, employment status, and days and hours scheduled to work;

F. the licensee shall have filed with the director of the office a surety bond as required by 4 MCAR § 10.126 D.;

G. the licensee shall pay the required license fee, before the expiration of the current license; and

H. the postmark date on the transmittal envelope of the renewal request and fee shall be determinative in ascertaining whether receipt was prior to the current license expiration date.

4 MCAR § 10.136 Delinquent school license.

Failure to renew a school license prior to its expiration date shall result in a delinquent license. The applicant shall comply with the following:

A. if less than 30 days have elapsed since the expiration date of the license, the applicant shall submit a written application for renewal of license, the license fee, and the required late penalty;

B. if more than 30 days have elapsed since the expiration of the license, the licensee shall reapply for a school license as if no license had been previously issued. The school's operation without a valid license shall be a violation of the law and no student training provided during that period will be recognized by the office.

4 MCAR § 10.137 Advanced training and demonstrations.

It is permissible to offer instruction in cosmetology in a place other than a licensed school of cosmetology in the following situations:

A. an advanced training class or demonstration, if no clinic services are offered to the public incidental to the training or demonstration;

B. community education classes, as defined by Minnesota Statutes, chapter 155A.

4 MCAR § 10.138 Certificate of identification.

A. Issuance. Upon written request to the office, a licensee may be issued a certificate of identification authorizing his or her lawful practice in a place other than a licensed salon. To obtain the certificate, the individual shall:

1. hold a current Minnesota cosmetologist, manicurist, or esthetician license;

2. provide documentation to the office of at least 2700 hours of lawful practice in Minnesota;

3. provide documentation of current employment in a Minnesota licensed cosmetology or manicuring salon; and

4. attest that the services shall be provided only in a licensed health care facility, or in the residence of a home-bound individual.

B. Retention. The certificate shall remain with the salon manager at all times except when work is actually being performed outside the shop. It is the manager's responsibility to ensure that use conforms to the restrictions of A.4.

C. Observance of health and safety procedures. The licensee shall observe all sanitary and safety procedures as far as reasonably possible.

4 MCAR § 10.139 Fee adjustments.

A. Refunds. Refunds shall be given in the following situations: overpayment; death or permanent disability before license effective date; or an individual's ineligibility for licensure. Ineligible instructor and manager applicants shall be refunded the license fee only. Ineligible cosmetologist, manicurist, or esthetician applicants shall be refunded the license fee minus the processing fee.

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B. Other licenses. A licensee who applies for licensing in a second category shall pay the full license fee for the second category of license.

4 MCAR § 10.140 Fee schedule.

A. Three-year license fees.	
1. Cosmetologist, manicurist, esthetician	$ 30
2. Instructor, manager	45
3. Salon, booth	50
4. School	750
B. Penalties.	
1. Late penalty	
a. School license renewal	100
b. Salon and booth license renewal	50
c. Individual license renewal	10
2. Reinstatement	30
3. Insufficient funds checks	10
4. Reinspection fee	Variable
5. Manager with lapsed practitioner	25
C. Administrative fees.	
1. Duplicate license (includes individual name or address change)	10
2. Certificate of identification	20
3. Examination fees	
a. Written exam (cosmetologist, manicurist, esthetician)	8
b. Written exam (manager or instructor)	12
c. Practical exam	18
4. Processing fee (covers student enrollment, course evaluation, verification of hours/training experience, restoration of lapsed license, salon name change)	15
5. School name change	100
6. School original application	150

4 MCAR § 10.141 Duplicate license.

A duplicate license will be issued only upon the loss or destruction of the initial license. The licensee shall submit to the office an affidavit indicating why a duplicate license is required, and submit the required fee.

4 MCAR § 10.142 Intoxicants and controlled substances.

No licensee or student shall perform cosmetology services while consuming or under the influence of an intoxicant or controlled substance, or serve them to a client during business hours.

4 MCAR § 10.143 Compliance by present licensees and students.

A. General requirements. All individual licenses in effect on the effective date of these rules shall continue to be valid under the following circumstances.

1. cosmetologist, manicurist, and esthetician licenses shall be valid until their expiration date. Licenses which expire before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses which expire on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A., B.1., and C.-F.;

2.

a. Senior instructor licenses shall be renewed as instructor licenses. Licenses which expire before January 1, 1988 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses which expire on or after January 1, 1988 shall be renewed upon compliance with 4 MCAR § 10.105 A., B.2., and C.-F.

b. In addition to the requirements of 2.a., all individuals holding licenses as senior instructor or instructor shall comply with the requirements of 4 MCAR § 10.102 D.2. on or before December 31, 1984. Failure to do so shall result in revocation of license;

3. Junior instructors licensed on the promulgation date shall comply with the instructor license requirements of 4 MCAR § 10.102 A., D.1., D.3., and D.5. on or before December 31, 1983. Upon completion of these requirements they shall be issued an instructor license which shall remain valid in accordance with the provisions of 2.a.-b.;

4.

a. Current salon manager licenses shall remain valid until expiration. Licenses expiring before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses expiring on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A., B.3., and C.-F.

b. In addition to the provisions of 4.a., licenses of managers of schools shall be conditioned upon the licensee's successful passage of a written examination covering Minnesota laws and rules related to cosmetology schools before December 31, 1983;

5. Salons and booths licensed on April 1, 1983 shall be exempt from the following provisions:

a. Rule 4 MCAR § 10.113 A.-B.; D.2. until replacement; F.3. provided that the toilet facilities are used for no other purposes, the door is kept closed, the room is clean and sanitary, and it contains a commode, lavatory, soap dispenser, single service sanitary towels, and a waste basket; G. until July 1, 1984.

b. Rule 4 MCAR § 10.114 B.;

c. Rule 4 MCAR § 10.117 A. continuous footage provision only; E.2. permanent solid partition requirement only; E.3.; E.6. provided that the toilet facilities meet the requirements of A.5.a. of this section.

d. Rule 4 MCAR § 10.118 B. square footage requirement and lease provision requirements until expiration of current lease;

6. Schools licensed on April 1, 1983 shall be exempt from the following provisions:

a. Rule 4 MCAR § 10.128 A.4.-5.; D. provided that there are separate toilet facilities for men and women and that they meet the requirements of A.5.a. of this rule; E. school shall have the same time extensions for compliance with 4 MCAR § 10.113 D.2. and G. as provided for salons in A.5.a. of this rule.

b. Rule 4 MCAR § 10.129 I. exemption from requirements of 4 MCAR § 10.114 B.; J. until December 31, 1983.

c. Rule 4 MCAR § 10.130 A.1., A.3., and C. shall apply to students enrolling on or after April 1, 1983.

d. Rule 4 MCAR § 10.131 B.-F.; G.5.f. with regard to practical exercises; H.8.; and K., shall be effective July 1, 1983.

e. Rule 4 MCAR § 10.133 shall be effective July 1, 1983.

B. Interpreter for certain students. Foreign language students whose enrollment registration is on file in the office on the effective date of these rules may use an interpreter at the examinations.

Effective dates. Rules 4 MCAR §§ 10.106; 10.107; 10.110; 10.111; 10.112; 10.113; 10.114; 10.115; 10.116; 10.117; 10.118; 10.119; 10.120; 10.121; 10.125; 10.126; 10.127; 10.128; 10.129; 10.130; 10.131; 10.132; 10.134; 10.135; 10.136; 10.137; 10.138; and 10.142, are effective April 1, 1983.

Rules 4 MCAR §§ 10.102; 10.103; 10.104; 10.105; 10.108; A.-C.; 10.109; 10.122; 10.123; 10.124; and 10.133, are effective July 1, 1983.

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing the Practice of Cosmetology

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1981) in the above-entitled matter in the State Office Building Auditorium, 435 Park Street, Saint Paul, Minnesota, on November 29, 1982, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard, concerning adoption of the proposed rules captioned above, by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing. Written comments may be submitted to Hearing Examiner Peter C. Erickson at the Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota 55415. Public hearings on the proposed rules will also be held in the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota 55802, on December 1, 1982, commencing at 9:00 a.m., and in the Minnesota Valley Regional Library, 100 East Main Street, Mankato, Minnesota 56001, on December 3, 1982, commencing at 9:00 a.m.

The Director proposes to adopt rules relating to the following matters: Licensing requirements for individual licenses for cosmetologists, manicurists, estheticians and instructors; requirements for maintenance and renewal of such licenses; the administration of examinations for such licenses; general salon

requirements and requirements for licensure; advertising; inspections; general school requirements and requirements for school licensure; school enrollment contracts; operational requirements for school clinics and school curricula; and fee schedules.

The authority to promulgate the proposed rules is contained in Minn. Stat. ch. 155A (1981 Supp.).

The rule hearing procedure is covered by Minn. Stat. § 15.0411 - 15.0417 and § 15.052, and by 9 MCAR § 2.101 - 2.113 (Minnesota Code of Agency Rules). Questions about the procedure may be directed to Hearing Examiner Peter C. Erickson at 612-341-7606.

Lobbyists must register with the State Ethical Practices Board. A "lobbyist" is defined by Minn. Stat. § 10A.01, subd. 11 (1980):

> "Lobbyist" means any individual:
>
> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials;
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

> (a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;
>
> (b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Any questions should be directed to the State Ethical Practices Board, Room 41, State Office Building, 435 Park Street, Saint Paul, Minnesota 55155 (Tel. 612-296-5148).

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the

hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

One free copy of this Notice and the proposed rules may be obtained by contacting Ailie Norlin, 128 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota 55101 (Tel. No. 612-296-8458). Additional copies will be available at the door on the date of the hearing.

Dated: October 11, 1982.

STATE OF MINNESOTA

Krista L. Sanda

KRIS SANDA, Director
Office of Consumer Services

RECEIVED
NOV 4 1982
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing the Practice of Cosmetology

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Gilie Norlin, being first duly sworn deposes and says:

That on the 29th day of October, 1982, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Office of Consumer Services, Department of Commerce, for the purpose of receiving notice of the proposed adoption of rules by this Office.

Gilie Norlin
Name

November 4, 1982
Date

Subscribed and sworn to before me this 4th day of November, 1982.

Dorothy M. Queener

DOROTHY M. QUEENER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DEC. 9, 1984

RECEIVED
NOV 4 1982
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing the Practice of Cosmetology

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Krista L. Sanda, being first duly sworn, deposes and says:

That on the 4th day of November, 1982, at the City of Saint Paul, County of Ramsey, State of Minnesota, she determined that a group of about 10 individuals who had requested Notice of Hearings by the State Office of Consumer Services in 1980, prior to the time the Office of Consumer Services became involved with Cosmetology, had not been sent Notice of Hearing in the above-captioned matter and on the 4th day of November, 1982, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a copy thereof, properly enveloped, with postage prepaid, on these individuals who had requested that their names be placed on file.

Krista L. Sanda

Subscribed and sworn to before me
this 4th day of November, 1982.

Dorothy M. Queener

DOROTHY M. QUEENER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DEC. 9, 1984

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ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing The Practice of Cosmetology

AFFIDAVIT OF MAILING OF ADDITIONAL NOTICE

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Lilie Norlin, Being first duly sworn, deposes and says:

That on the 29th day of October, 1982, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served additional notice by depositing in the United States mails at said City of Saint Paul additional notice to other persons not on the Office of Consumer Services' list of its intention to hold hearings on the above-captioned matter.

Lilie Norlin
Name

November 4, 1982
Date

Subscribed and sworn to before me this 4th day of November 1982.

Dorothy M Queener

DOROTHY M. QUEENER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DEC. 9, 1984

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Adoption of Rules of the State
Office of Consumer Services,
Department of Commerce, Governing
the Practice of Cosmetology Pursuant
to Minnesota Statutes, Chapter 155A

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4 (1980), that their names be placed on file with and maintained by the State Office of Consumer Services, Department of Commerce, for the purpose of receiving notice of the proposed adoption of rules by this office is accurate and complete as of 10:00 A.M. this 4th day of November, 1982.

Kris Sanda

Kris Sanda, Director
Office of Consumer Services

CONS-83-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Rules Governing the Practice of Cosmetology.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982) which provide in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: January 25, 1983.

DUANE R. HARVES
Chief Hearing Examiner

CONS-83-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Rules Governing the Practice of Cosmetology.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings on November 29, 1982, in St. Paul, Minnesota; on December 1, 1982 in Duluth, Minnesota; and on December 3, 1982 in Mankato, Minnesota. Rodney A. Wilson, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce, Office of Consumers Services (hereinafter "Agency"). Kris Sanda, Director of the Agency, Connie Green, Deputy Director, and Rod Durre, Cosmetology Unit Investigator, appeared and testified in support of the proposed rules on behalf of the Agency. The hearing continued until all interested groups or persons had had an opportunity to testify concerning the adoption of the proposed rules.

The Director of the Office of Consumer Services must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Director of actions which will correct the defects and the Director may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Director may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Director does not elect to adopt the recommendations, she may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982).

If the Director elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Director shall submit the rule to the Attorney General for review of form and legality. If the Director makes changes in the rule other than those recommended by the Hearing Examiner, then she shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Director submits the rule to the Attorney General, she shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On October 11, 1982, the Agency filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On October 25, 1982, a Notice of Hearing and a copy of the proposed rules were published at 7 State Register 17, pp. 625-649.

3. On October 29, 1982, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Agency for the purpose of receiving such notice. Subsequent to this mailing, the Agency discovered another list of persons who requested to receive rules notices which contained thirteen names and address. Notice was mailed to these persons on November 5, 1982 along with a letter requesting that the Agency be contacted if any prejudice would result from the late notice. None of the thirteen individuals responded to the Agency so the hearing went forward as scheduled.

This "late-discovered" list was one which had been compiled by the Office of Consumer Services before it had any jurisdiction over cosmetology matters. Consequently, none of these thirteen persons placed their names on the list because they wanted to receive notices of proposed cosmetology rules. They would have contacted the Board of Cosmetology instead. All of the persons on the Board's list were notified in a timely manner by Consumer Services. The Hearing Examiner thus finds that proper notice was given by the Agency in this matter.

4. On November 4, 1982, the Agency filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 6 State Register 25, p. 1172 (December 21, 1981)

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

5. The record remained open through December 23, 1982 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Statutory authority to adopt rules to carry out the provisions of Minn. Stat. §§ 155A.01 to 155A.18 is contained in Minn. Stat. § 155A.05.

7. At hearing, the Agency made several amendments to the rules as proposed. These amendments were printed and available to the public along with a

supplemental Statement of Need and Reasonableness explaining the purpose of the changes. The amendments were either clerical in nature or further clarify the intent of the rules. No comments, either oral or written, were made by the public or received subsequent to hearing concerning these amendments. Consequently, the rules discussed herein will be dealt with in an "as amended" version. The page of amendments is attached hereto as an appendix to this Report. The Hearing Examiner finds that none of the amendments are substantial changes to the rules as proposed.

Subsequent to the hearing on this matter and after a review of all the testimony taken and written comments submitted, the Agency further amended the proposed rules in response to suggestions from the public. These amendments will be addressed in this Report, and, except as specifically discussed, the Hearing Examiner finds that they are not substantial changes to the rules as proposed. Many written comments and much of the testimony given in this matter was in the nature of questions about the proposed rules or general statements about policy direction. This input will not be discussed herein. The Hearing Examiner has read over 200 "packages" of written comments on the proposed rule and reviewed the entire transcript of the proceedings. This Report must, of necessity, restrict itself to the issues of need, reasonableness and statutory authority raised herein. The entire record will, however, be submitted to the Agency for review before any further action on the proposed rules is taken.

8. The Agency has submitted and made available to the public a 101-page Statement of Need and Reasonableness to support the proposed rules. This Report will not duplicate all of the evidence contained therein. Except as hereinafter specifically discussed, the Hearing Examiner finds that the need for and reasonableness of the proposed rules has been demonstrated by the Agency by an affirmative presentation of facts in the record.

9. Proposed 4 MCAR § 10.100, Definitions, (hereinafter the Findings will refer to the rules by only the last three numbers to avoid repetition) sets forth various terms used in the proposed rules and provides definitions for those terms. In response to comments from the Minnesota Cosmetology Council, the Agency has amended the definitions of "Demonstration" and "Unlicensed Service" as follows:

> AMENDMENT 10.100 M. "Demonstration" means a presentation of less than eight hours duration, conducted by a recognized expert in the field, for the purposes of training cosmetology students or specialization by current licensees. The same demonstration may be repeated successive times which total more than eight hours. Demonstrations pursuant to nonretail sales are ~~not covered~~ exempt ~~by this definitions~~ from these rules.
>
> AMENDMENT 10.100 U. Unlicensed service. "Unlicensed service" means those services not defined as the practice of cosmetology under Minnesota Statutes, chapter 155A.03, subdivision 2 and includes ear piercing, body wrapping, permanent depilatation, tattooing, artifical tanning of the skin; personal services incidental to performance in theatrical or musical productions or media appearances; any personal services performed incidental to mortuary practice; and massage services.

These amendments clarify the intent of the rules.

The Cosmetology Council also commented that the definition of "retail sale" is unnecessary unless it refers specifically to Rule 107 which proscribes certain methods of selling beauty coloring products in retail department

stores. The Agency asserts that the definition is intended to apply only to Rule 107 and suggests that any confusion could be eliminated by changing the title of Rule 107 to "Retail Sales of Beauty Coloring Products". Rule 107 will be discussed below, however.

As amended above, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 100 has been demonstrated by the Agency.

10. Proposed Rule 102, Requirements for Obtaining Individual Licenses, enumerates the qualifications necessary for licensure as a cosmetologist, manicurist, or esthetician. Additionally, the requirements for a salon or school manager's license and an instructor's license are set forth. Requirements for the reactivation of an "inactive" license are also spelled out. The Agency has amended paragraphs C., D.3., and D.4. by eliminating the requirement that a current license be a Minnesota license or that experience be obtained in Minnesota because of the unnecessary burden which may be imposed. In addition, the requirement that training for license reactivation be received in a Minnesota school of cosmetology has also been deleted because of the availability of schools to outstate residents in bordering states. The number "5" has also been added to the last subdivision in paragraph D. to correct a clerical omission.

Many groups and/or persons commented that the number of course hours required for a cosmetologist should be increased to 2,100 from the proposed 1550 to be consistent with bordering states and for the purposes of reciprocity. Several persons felt that the requirement of a physical exam prior to initial licensure is unnecessary. Ms. Vanessa Graves commented that the number of hours of experience required for a manager's license is excessive for a manicurist whose entire training course is only 350 hours.

The Agency has supported the 1,550-hour requirement with a breakdown in school curricula and certification of skills which it argues is entirely adequate. It contends that before initial licensure, it is imperative that all applicants be certified free of communicable diseases and parasites in light of current health hazards concerning lice and herpes. The manager's experience requirement is the same for a cosmetologist, manicurist or esthetician to ensure that any manager, regardless of his/her training, has had significant experience practicing in a licensed salon.

As amended above by the Agency, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 102 has been demonstrated.

11. Proposed Rule 105, License Renewal for Individuals, sets forth the requirements and procedures for renewal of licenses at the end of the three-year licensure period. In response to overwhelming public testimony, the Agency has amended Rule 105 by deleting the requirements that a salon manager and school manager pass a written examination for license renewal and that licensees provide certification from a physician that he/she is free from communicable diseases or parasites. In addition, the experience requirement for renewal has been amended to read:

> AMENDMENT 10.105 B.1. a cosmetologist, manicurist, esthetician, or manager shall provide documentation of having ~~either~~ practiced in a licensed salon, or school for school managers, for at least 1800 hours at any time within the three years prior to the license expiration or 400 hours acquired through approximately

weekly experience within each of the last 3 years, or successfully completed an approved refresher course, of at least 40 hours, within the three years prior to the license expiration.

✓ so amended p. 7

The Agency admitted that the Rule, as proposed, was unreasonably discriminatory against an individual who had worked regularly on a weekly basis but who had perhaps worked only one day per week. This amendment is an alternative which will meet the demands of both the part-time practitioner and the Agency's concern for continued exercise of practice skills.

Many persons commented and testified in favor of a continuing education requirement for license renewal rather than the proposed hours of experience requirement. The Agency stated that this issue was thoroughly discussed and considered during the drafting of the proposed rules. A policy decision was made, however, to not require continuing education but rather to base license renewal on a minimal level of practical experience over the previous three years. The Agency stated that, in its view, mandatory continuing education has a questionable cost/benefit ratio for the profession as a whole besides being very costly to administer.

Mr. Lowell Rasmussen, Director of the Wadena Area Vocational Technical Institute, and other AVTI representatives, commented that public vocational instructors should be exempt from the renewal requirements contained in Rule 105 because those instructors must comply with requirements mandated by the Minnesota Department of Education. The Agency stated that the continuing education renewal requirements for instructors which is now proposed duplicates some of the requirements established by the Education Department. However, there are some areas of continuing education in the proposed rules which are not repetitive of the requirements of the Department of Education. Consequently, the Agency strongly supports the requirements contained in the proposed rules even though a substantial portion of the courses required may be used to satisfy the requirements of both bodies.

As amended by the Agency above, the Hearing Examiner finds that proposed Rule 105 has been shown to be both needed and reasonable.

12. Proposed Rule 106, Lapsed Practitioner License, sets forth license renewal requirements for individuals who have failed to timely renew their licenses and establishes an "inactive license" for individuals who wish to remain licensed but not practice. In addition, the rule requires that salon and school managers pay a $25 penalty for each licensee whose license has expired and is practicing in the salon or school. The Rule provides for a 30-day grace period after license expiration during which time the licensee may renew with payment of a late fee. The Agency has amended paragraph C. of the proposed rule as follows:

AMENDMENT 10.106, C. Penalty. The manager of a salon or school shall pay a penalty of $25 for each unlicensed person or licensee whose license is past the expiration date and who is practicing in the salon or school.

The Agency stated that it overlooked a second category of individuals whom the manager would be responsible for insuring did not practice in the salon. This would be the individual who was completely unlicensed, as compared to the licensee whose license had expired.

Many persons commented that paragraph C., which mandates payment of a penalty by managers for practitioners whose license has expired before renewal, is unreasonable. They argue that the responsibility to renew timely should be placed upon the licensee, not upon the manager in order to avoid paying a $25 penalty.

The Hearing Examiner points out that Rule 106 A.2. requires full compliance with Rule 102 if more than 30 days have elapsed since license expiration before renewal is applied for. However, Rule 102 B. mandates that the education requirement be obtained within three years of the application. The Examiner reads this provision as requiring an individual with a lapsed license who obtains his "school" education more than three years prior to go back for a complete course of training. This could not be the intended result.

The Hearing Examiner finds that the reasonableness of mandating that a salon or school manager shall pay a $25 penalty for each licensee whose license has passed the expiration date has not been demonstrated by the Agency. It is unreasonable to foist the responsibility of license renewal upon anyone other than the licensee himself. In order to correct this defect, the penalty provision should be deleted.

Additionally, the proposed rule is unreasonable and vague because it is not clear what must be done by a licensee whose license has expired more than 30 days prior to renewal. This is a violation of a substantive provision of law. In order to correct this defect, § A.2. of Rule 106 should be amended to read: ". . . In accordance with the provisions of 4 MCAR § 10.102 A. and if applicable, E." Also, because Rule 105 D. has been stricken from the rules, paragraph A. of Rule 106 should be amended to note the deletion.

As amended above to correct the defects noted above, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 106 has been demontrated by the Agency.

13. Proposed Rule 107, Retail Sales, regulates the common practice of department store personnel demonstrating the use and application of retail cosmetic products to potential purchasers. The Agency stated that:

> It has been the long-standing position of the state that this practice constitutes the practice of cosmetology and that the sales personnel should be licensed. Efforts at enforcement of this position have been sporadic and minimal in recent years. On the other hand, the retail community has taken the position that because its employees are paid a salary or commission for the sale of products, to which the demonstration of their use and application is incidental, and because the consumer does not pay directly for the application, the cosmetologist statutes do not apply. In an effort to resolve these two conflicting positions, the office staff, the members of the Minnesota Cosmetology Advisory Council, and representatives of the retail community held several meetings to arrive at a compromise rule which would be satisfactory to all parties. The proposed rule achieves this balance.

The Rule does allow retail personnel to demonstrate the application of a narrow range of products primarily used for color enhancement of the individual purchaser, as opposed to skin care products, which it would prohibit. The Rule requires at least 16 hours of training before any store employee will be permitted to demonstrate color enhancement products. The Rule also spells out specific sanitation procedures which are to be followed. The Agency has amended the last sentence of Rule 107 by changing the word "produce" to "product" in order to correct a typographical error.

Minn. Stat. § 155A.03 defines cosmetology as:

> . . . the practice of personal services, for compensation, for the cosmetic care of the hair, nails, and skin. These services include cleaning, conditioning, shaping, reinforcing, coloring and enhancing the body surface in the areas of the head, scalp, face, arms, hands, legs, and feet, . . .

The application of beauty coloring products, which is the focus of this rule, clearly falls within part of the definition of cosmetology set forth above. The issue raised by retailers is whether the test of compensation is met. The retail consumer does not directly pay the store employee for the application which is part of a sales demonstration. Compensation does occur, indirectly, if the demonstration results in the purchase of products used.

The Agency's rationale for this rule states that this retail practice constitutes the practice of cosmetology and that sales personnel should be licensed. However, Minn. Stat. § 155A.07 only authorizes the licensing of cosmetologists, estheticians, manicurists, managers, or instructors. Minn. Stat. § 155A.08 provides that "Any person who offers cosmetology services for compensation in this state shall be licensed as a salon if not employed by another licensed salon." This proposed rule neither requires one of the licenses authorized by statute nor requires that the "cosmetology practice" be administered in a licensed salon. Consequently, this proposed rule falls far short of what the statutes require if retail demonstrations do constitute the practice of cosmetology. The Hearing Examiner finds, additionally, that retail sales related to cosmetic demonstrations are not "personal services for compensation" which the Legislature intended to regulate. Thus, statutory authority for proposed Rule 107 is lacking which is a violation of a substantive provision of law. This rule must be deleted to correct the defect. deleted p.9

14. Proposed Rule 108, Examination Administration, sets forth the basic requirements for the examination of applicants for practitioner and instructor licenses. Only a written exam is proposed for the practitioner licenses. Licensed cosmetologist schools are required to make space available for the administration of exams for both practitioner and instructor licenses. Applicants are restricted to no more than three attempts to pass the exam in 12 months. The Rule requires that the exams be conducted in English without the assistance of an interpreter or reader.

Many persons, including current cosmetology students, object strongly to the elimination of a practical exam for licensure as a practitioner. They argue that the only way to test how well an applicant can perform cosmetology services is by a practical exam. The Agency contends that with the new skill quota school curricula, and certification by the school that a student has acquired the necessary expertise, a practical exam is not necessary. This is basically a policy decision made by the Agency which the Hearing Examiner finds reasonable.

Several persons commented that the prohibition against readers or interpreters may discriminate against applicants who have reading disabilities. The Agency stated that the reason for this restriction is to require applicants to be able to read and understand English, rather than only a foreign language. The Hearing Examiner finds this provision of the Rule to be reasonable, however, each person's needs will have to be closely evaluated so that disability discrimination does not result.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 108 has been demonstrated by the Agency.

15. Proposed Rule 109, Reinstatement after Denial, Suspension, Revocation of License, has been amended to reflect an earlier amendment to Rule 105 by changing the reference in paragraph A. to 4 MCAR § 10.105 B. - ~~D~~. C.

16. Proposed Rule 111, Requirements for Salon Licensure, enumerates the requirements and procedures whereby a salon can be issued a license. The Agency has amended paragraphs B.1. and 2. of the Rule in response to the comments of the Minnesota Cosmetology Council. The amendments read:

> AMENDMENT 10.111 B.1. The name of the salon, its address, and names and addresses of all owners of sole proprietorships or partnerships and controlling officers of corporations;
>
> AMENDMENT 10.111 B.2. notarized signature, of the owners of sole proprietorhips or partnerships and the controlling officers of corporations;

These amendments clarify the information which is necessary to be submitted in a salon license application. It will eliminate the unnecessary burden of having all stockholders of a corporation licensed to operate a salon be included in the application. As amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 111 has been demonstrated by the Agency.

17. Proposed Rule 113, Physical Requirements, is intended to ensure that each salon has adequate size, facilities and cleanliness to safely and professionally conduct the performance of cosmetologists' services in a manner which will maintain the safety and health both of the practitioner and of his/her customers. Rule 143 specifically exempts salons and booths licensed on or before April 1, 1983 from proposed space requirements, entrance and exit requirements, floor covering requirements, the adjacent area toilet requirement, and ventilation requirements until July 1, 1984.

Several persons objected to the ventilation requirement which prohibits the use of windows to meet the standard. This prohibition will mandate the installation of a mechanical air exchange system for ventilation purposes. The Agency contends that in Minnesota winters, it is unlikely that a window will be left open for adequate ventilation. Salon owners will be given until July 1, 1984, to comply with this requirement. The Hearing Examiner finds that the need for and reasonableness of this provision in proposed Rule 113 has been demonstrated by the Agency.

Several persons commented that the toilet requirement is unreasonable because proposed Rule 117 requires that no residential toilet may be used for salon clients. However, as will be discussed below, the Agency has amended the requirement contained in Rule 117. Currently licensed salons are exempt from the toilet requirement contained in proposed Rule 113 as long as the toilet facilities are used for no other purposes, e.g., as the dispensary.

An additional consideration which was raised in public testimony and in written comments, but not addressed by the Agency in these rules, is the effect of the exemption provision when a salon is sold after the effective date of these rules. Salons which are part of a residential home may have considerably less value if the buyer is forced to comply with all of these proposed rules after a sale occurs. The Agency responded to these concerns as follows:

> . . . At the Mankato hearing, several individuals suggested that the rules with regard to salons should include a provision which would allow any grandfathered requirement to continue to be grandfathered, or exempt through sale to a subsequent owner of the salon. The office has considered this matter and has asked legal counsel to research precedent in other license areas. The conclusion of the office is not to concur with the suggestion to carry forward grandfathering beyond the licensee at the time of enactment of the rules. The reason for this is that the intent of the grandfather is to protect a current licensee from undue hardship in meeting the requirements of new rules. At the time that a salon changes hands, it is the responsibility of the new owner to assure that the salon is in conformity with all current rules and regulations. This situation is certainly not unique to cosmetology, but it is our understanding that it is the general practice with regard to other license types as well.

This issue, what will be required of the buyer of a "non-conforming" salon, is not resolved in the rules. Indeed, from the Agency's posthearing comments above, it seems that their opinion is that full compliance with the rules will be required of a buyer. The basis for this opinion has not been provided, however. At the Mankato hearing, the Director of the Agency stated that this issue should be spelled out in the rules. No clariafication has been added, however.

The Hearing Examiner will not speculate as to what a court might decide if presented with this "grandfathering", "non-conforming use", or constitutional "taking" issue if a salon buyer contests the Agency's interpretation of these rules. Absent that resolution, and any provision in the rules either denying or approving "extended grandfathering", the Hearing Examiner has no basis to find that the need for and reasonableness of the proposed rule have not been shown. Rather, the need for and reasonableness of the "Physical Requirements" rule have been shown based upon the facts in the record herein.

18. Proposed Rule 114, Fixtures, Furniture and Equipment, sets out the minimum equipment requirements for each cosmetology salon. The Agency has amended paragraph F. of this Rule by breaking it into two numbered sections for the purpose of clarity and reference ease.

Several persons objected to the new requirement that "There shall be at least one covered metal container which shall be used exclusively as a receptacle for soiled towels and linen." It is argued that as long as soiled towels are laundered on a daily basis, there is no need to keep them in a closed metal container. However, the Agency contends that because of the nature of the chemicals used in cosmetology services, there is a possibility of spontaneous combustion if soiled towels are not properly stored in a covered metal container. The Hearing Examiner finds that the need for and reasonableness of this provision and proposed Rule 114 as a whole has been demonstrated by the Agency.

19. Proposed Rule 115, Supplies and Materials, sets forth two requirements. First, the use of brush rollers is prohibited, and second, that there shall be at least two dozen clean towels per operator per day. The Agency has amended this rule by eliminating the prohibition against brush rollers in response to overwhelming public comment. Several persons commented that it is unreasonable to require two dozen clean towels per operator per day when the operator may only be working a small portion of the day or have very few customers. Proposed Rule 116 states clearly that clean linen must be used on each

customer. The Hearing Examiner finds that the need for and reasonableness of the towel requirement has not been demonstrated by the Agency. Two dozen is an arbitrary number which does not take into consideration the day-to-day needs of the practitioner. The rules do require that clean linen be used on each customer. Consequently, this towel requirement should be deleted from the proposed rules in order to correct his defect.

20. Proposed Rule 116, Operational Requirements for Salons, sets forth the responsibilities of the practitioner and salon manager concerning the daily operation of a cosmetology salon. The Agency has made the following amendments to Rule 116 in response to public comment and testimony:

> AMENDMENT 10.116 A.2. All combs and brushes and brush rollers shall be cleaned and disinfected after use on each person. Hair shall be removed from all implements before disinfecting;
>
> AMENDMENT 10.116 B.2. Only one person shall be designated as manager for each salon. No manager may be concurrently responsible for more than one salon. When the manager is not on duty, he or she may specify a responsible person in his or her absence. The responsible person shall be a licensed cosmetologist in a cosmetology salon or licensed manicurist in a manicure salon.
>
> AMENDMENT 10.116 B.5. The manager shall maintain, on the salon premises, the work ~~hour~~ time records of each employee, as required by Minnesota Statutes, section 177.30. Time records shall be provided upon written request to the licensee or to the office.

The first amendment above was made to ensure that brush rollers would be cleaned frequently because of the extent to which they hold hair. The second amendment was made to clarify who a "responsible person" is. The third amendment clarifies the type of records which must be kept by the salon manager and requires that these records must be provided to either the licensee or to the Agency upon request. This requirement is necessary to enable the licensee or the Agency to validate experience requirements for original licenses or license renewal.

Many persons commented that paragraph A.18.b. requiring that a copy of the salon's most recent inspection report be posted in the reception area is unreasonable. They argued that because there is no assurance when inspections will occur, the most recent inspection report may be a year or more old. In addition, the report may not truly reflect the day-to-day conditions of the salon. Even if a deficiency is corrected immediately, the report would still have to remain posted until a subsequent inspection.

The Agency argues that the consuming public has a right to know what deficiencies are found in the salon operation. However, the Hearing Examiner finds that the reasonableness of this provision has not been demostrated by the Agency. If conditions in the salon are so bad that the consuming public is endangered, the salon license should be suspended or revoked. To require that deficiencies found during an inspection remain posted for a substantial length of time, even though immediate correction was made, is misleading. This posting may actually prove detrimental to a salon's business regardless of their good faith attempts to comply with all applicable rules. In order to correct this defect, the Agency could require the most recent inspection report to be posted in the dispensary area, or require a notice to be posted informing the public that they could request to see the most recent inspection report.

As amended by the Agency above, and if the defect noted above is corrected, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 116 has been demonstrated.

21. Proposed Rule 117, Additional Requirements for Specific Types of Salon Licenses, addresses specific problems or situations which occur on a more isolated basis. The Agency has amended two sections of the proposed rule as follows:

AMENDMENT 10.117 D.3. If the licensed health care facility chooses to have a licensed salon on the premises, all the requirements for a salon ~~must~~ shall be met. ✓p.21

AMENDMENT 10.117 E.6. the primary residential toilet facilitaies shall not be used for salon clients. ✓p.22

The first amendment above was made for purposes of linguistic consistency. The second amendment is made because of the concerns, some of which expressed in previous findings, that the rules would mandate separate toilet facilities only for use by salon clientele. This amendment provides that secondary residential toilet facilities may be also used for salon clientele as long as it is maintained in compliance with other rule requirements.

Several persons commented in opposition to the provision contained in paragraph D.1. which allows licensed health care facility employees to trim residents' hair. The Agency stated that the intent of the rule is not to have unlicensed people performing style haircuts, but rather to allow for the provision of basic patient maintenance care such as trimming hair to keep it out of the eyes or out of the mouth. The Hearing Examiner finds that this provision of the proposed rule has been shown to be reasonable.

Many persons commented that the requirement that the salon entrance/exit shall not lead through any residential area or through a garage was unreasonable. They argued that many newer homes have an entrance through the garage which leads to the basement stairs where many salons in residential homes are located. The Examiner points out that currently licensed salons are exempt from this requirement pursuant to Rule 143. However, the issue of whether the purchaser of the home will have to construct a new, separate entrance for the salon again arises. The Agency supports this provision of the proposed rule by stating that its purpose is to assure that the residential area will be separate from the professional salon area. However, this statement hardly supports the prohibition for a garage entrance to a salon when that entrance is the most accessible to the work area. The Hearing Examiner finds that the need for and reasonableness of the prohibition contained in paragraph E.3. has not been demonstrated by the Agency. In order to correct this defect, this restriction should be deleted. deleted p.24

As amended above by the Agency, and if the defect noted above is corrected as suggested, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 117 has been demonstrated by the Agency.

22. Proposed Rule 118, Requirements for a Booth License, applies to the increasingly prevalent situation in which a licensee who holds a manager's license may wish to lease work space in another licensed salon rather than open his/her own separate salon. The rule requires that a booth lessee be a manager and that the licensed salon from which the space is rented also have a licensed manager on duty.

Rocco Altobelli and Joe Francis, president of the Barbers, Inc., both testified in strong opposition to the booth leasing rule. They argued that booth leasing is only a method to avoid state and federal taxation and will result in the loss of employment state-wide. The Agency has stated that tax obligations are the responsibility of the income earners, and are immaterial to this booth leasing rule. The Agency notes that booth leasing has been permitted since 1963 and that this rule only sets standards for that practice.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 118 has been demonstrated by the Agency. All cosmetologists, whether they employ others to work for them or are self-employed, are obligated to comply with the tax laws of both the federal and state government. This rule does not change that obligation. The Examiner points out that Rule 118 speaks to an "applicant" for a booth license. There is nothing in this rule that requires an application nor is there any reference to any other rule which includes an application process. It appears that an oversight resulted when this rule was finally drafted and published. If this rule were made a part of proposed Rule 117, the confusion would be eliminated.

made part of 117, P.3

23. Proposed Rule 122, Unlicensed Services, is intended to assure that the consumer of cosmetology services and the student attending a cosmetology school will be fully informed as to whether a given service which they may be offered or taught is indeed a part of the licensed practice of cosmetology. The rule requires that all services offered in a salon which are not licensed as the practice of cosmetology shall be clearly identified as "unlicensed services" and listed on a sign posted in the reception area. Cosmetology schools must disclose to students and potential students courses and clinical experiences which do not pertain to services licensed by the state.

Several persons commented that the posting of "unlicensed services" in a salon is demeaning to the profession of cosmetology and casts suspicion upon the service offered. Pat Nacey suggested that the term "other services" be used instead of unlicensed services to avoid the connotation inherent in "unlicensed".

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 122 has been demonstrated by the Agency. However, the comments noted above deserve serious consideration by the Agency before taking any final action on these rules. The Examiner agrees with Mr. Nacey's concerns that "unlicensed services" has a derogatory implication.

"changed to unregulated"

24. Proposed Rule 124, Inspections, sets forth the procedures to be followed for salon and school inspections. The rule requires annual inspections for which no prior notice will be given. The rule states that "salons and schools shall be inspected by the office staff".

Several persons commented that the Rule should specifically require that all inspections be conducted by licensed cosmetologists. The Agency stated that all inspections will be conducted by employees of the Office of Consumer Services who have been trained to do the inspections. At the present time, all staff who do salon inspections are licensed cosmetologists; however, this may not be true in the future. Consequently, the Agency does not want to specifically require in the rule that only licensed cosmetologists may conduct inspections.

The Hearing Examiner finds that the need for and reasonableness of proposed Rule 124 has been demonstrated by the Agency.

25. Proposed Rule 125, General Requirements for Schools, broadly sets forth the standards for licensure as a cosmetology school. The Agency has amended paragraph F. of the rule by striking the word "business" and substituting in place thereof the word "salon". This amendment was made to clarify the intent of the rule. As amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 125 has been demonstrated by the Agency.

26. Proposed Rule 126, Requirements for School Licensure, sets forth more specific standards for licensure as a cosmetology school. All of the information required in the application for licensure is enumerated in the rule. Additionally, evidence of liability insurance coverage, workers' compensation insurance, and a surety bond for the purpose of tuition repayment are required in the rule. The Agency has amended Rule 126 as follows:

AMENDMENT Section A.1. The name of the school, its address, and the names and addresses of all owners of sole proprietorships or partnerships and controlling officers of corporations;

AMENDMENT Section A.2. notarized signature of the owners of sole proprietorships or partnerships, controlling officers of corporations and managers;

AMENDMENT Section A.5. evidence of the school's compliance with local ~~fire, zoning, health, and building codes, or in the absence of local codes with the corresponding state codes;~~ zoning requirements and the regulations of the Minnesota Department of Health, State Building Code and Standards, and the State Fire Marshal.

The first two amendments above were made to clarify that the names of all stockholders of a corporation which owns the school need not be submitted as part of the application. The third amendment to paragraph A.5. was made to clarify which additional standards must be complied with by a school applicant before a license is granted.

Representatives of the AVTIs contend that they should be exempt from the requirements of Rule 126 D., surety bond, because they are publicly tax supported schools. The Minnesota Cosmetology Council argues that the surety bond requirement is beyond the legal authority of the Agency. The Agency argues that the surety bond requirement is necessary for the protection of students who enroll and pay tuition up front. The Agency cites the requirement for private vocational trade schools to have such a bond as evidence for the need for this requirement.

The Hearing Examiner points out that Minn. Stat. § 155A.09, subd. 5, states that no license shall be issued to a cosmetology school unless "the applicant has a sound financial condition with sufficient resources available to meet the school's financial obligations; to refund all tuition and other charges, within a reasonable period of time, in the event of dissolution of the school or in the event of any justifiable claims for refund against the school; to provide adequate service to its students and prospective students; and for the proper use and support of the school to be maintained;". Based upon this authority, the Hearing Examiner finds that the proposed rule is not beyond the statutory authority of the Agency. The Hearing Examiner also finds that the need for and reasonableness of proposed Rule 126 has been demonstrated by the Agency.

27. Proposed Rule 128, Physical Requirements, sets forth the basic space, entrance and exit, electrical, and toilet requirements for cosmetology schools. The Agency has amended paragraphs B., D., and E., as follows:

> AMENDMENT Section B. Entrances and exits. Each school shall have at least two entrance/exit points. ~~which meet state fire code requirements and local building code requirements. A school located in a basement shall not be allowed to use a window as one of the required exits.~~

> AMENDMENT Section D. Each school shall provide adequate toilet facilities on its premises or in an adjacent common area for the use of students, staff, and customers. Separate restroom facilities must be provided for women and men. ~~Each facility shall meet the same requirements designated for those in salons in 4 MCAR Section 10.112 F.3.~~

> AMENDMENT Section E. Additional requirements. In addition, each school shall meet the physical requirements for salons contained in 4 MCAR Section 10.113 C.; D.; E.; ~~F.1 and~~ F.2; and G.

The various amendments were made to delete unnecessary duplication of State Building Code requirements. As amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 128 has been demonstrated by the Agency.

28. Proposed Rule 129, Fixtures, Furniture, Equipment, sets forth minimum requirements for those items in a cosmetology school. Ratios of equipment per student or per work station are mandated. The Agency has amended Rule 129 to provide for an alternative to a time clock as follows:

> AMENDMENT Section H. there shall be at least one time clock or other time records acceptable to the office to be used by the students when checking in and out of school. Each student's hours shall ~~punch his or her own card~~ be recorded at the beginning and end of each day and before and after lunch;

The wording in this amendment, "other time records acceptable to the office", prescribes no standard or criteria for the alternative method of recording time. Rather, it is completely up to the discretion of the Agency as to what might be "acceptable". For this reason, this amendment is in violation of Minn. Stat. § 14.02, subd. 4 (1982), which requires that rules be "specific". In order to correct this defect, the rule could be amended to read, ". . . at least one time clock or other reliable method of recording time to be used by the students . . . ". As so amended, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 129 has been demonstrated by the Agency.

29. Proposed Rule 131, General Operational Requirements for Schools, broadly sets forth the expected procedural and operational requirements applicable to cosmetology schools. This rule requires the appropriate designation of cosmetology schools, the administrative and staff makeup of the school, enrollment contracts and refund policies, the maintenance and certification of student records, required course offerings, and disclosures prior to enrollment. The Agency has amended paragraphs B.1. and C.4. as follows:

> AMENDMENT 10.131 B.1. There shall be a manager responsible for each school at all times. There shall be only one person designated as manager for each school. No manager may concurrently be responsible for more than one school nor for a school and a salon. When the manager is not on duty, he or she shall specify a responsible person on the premises. The responsible person shall be an instructor licensed in accordance with these rules.

AMENDMENT 10.131 C.4. All instructors shall wear identification badges at all times while providing training, stating their full name and "Instructor". These badges shall be at least two inches by one inch and shall be color-coded white or gold.

The first amendment above was made to clarify what was meant by a "responsible person", and the second amendment was made to enable schools who currently use gold badges for instructors to continue that practice.

Representatives of the AVTIs suggested that they should be exempt from certain staffing provisions of Rule 131. However, their suggestions are inadequately documented, and no proposals for rule amendments have been made. Consequently, the Hearing Examiner can only refer these considerations to the Agency for review prior to final rule adoption.

The Minnesota Cosmetology Council argues that the instructor badge requirement contained in paragraph C.4. is beyond the authority of the Agency. However, this requirement is essential for school inspection purposes and is well within the authority of the Agency.

As amended above, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 131 has been demonstrated by the Agency.

30. Proposed Rule 133, School Curricula, sets forth the course content and instructional mode for the cosmetologist, manicurist and esthetician license. Required hours of classroom instruction and clinical skill training are set forth. The Agency has amended paragraphs B.2., C.2., and D.2. by adding the language "and elementary service skills" to the end of each paragraph. This language is added to include beginning clinic work preparation as part of the initial course requirements.

Many persons commented that the overall hour requirements and the breakdown between cosmetologist, manicurist, and esthetician hour requirements are not clear. In response to these comments, the Agency has amended the proposed rule as follows:

AMENDMENT 10.133 B.1. Cosmetologist training consists of a course of training of at least 1,550 hours. This course shall consist of the full manicurist course content, the full esthetician course content and the balance in hairdressing, including the approximate breakdown of hours specified in 4.a.I. and the clinical exercises in provision of cosmetology services specified in 4.a.II.

AMENDMENT 10.133 B.3. There shall be instruction in applied science and skills in shampooing, scalp and hair conditioning, hair design and shaping, chemical hair control, hair coloring, hair styling, facials and makeup, and manicuring and nail care of approximately 1130 hours and instruction in related theory and sciences of approximately 420 hours.

AMENDMENT 10.133 B.4. There shall be planned clinical instruction and experience in the applied sciences.

a. Each student shall be required to complete the following minimum number of clinical exercises in each category Column II. Clinical exercises may be performed upon customers in the school clinic, fellow students, models or manikins in the classroom.

AMENDMENT 10.133 C.4. There shall be planned clinical instruction and experience of approximately 200 hours in the applied sciences.

AMENDMENT 10.133 D.4. There shall be planned clinical instruction and experience of approximately 150 hours in applied sciences and skills.

AMENDMENT 10.133 B.4.a.

	I Hours	II Service Exercises
(1) shampooing	50	300
(2) scalp and hair conditioning	80	150
(3) hair design shaping	150	75
(4) chemical hair control (including 6 chemical relaxing exercises)	200	60
(5) hair coloring	100	50
(6) hair styling	200	300
(7) facials and makeup	200	60
(8) manicures (including 10 applications of artificial nails, of which 3 are sculptured on the nail)	150	50
Skill Hours	1130	
Related Theory and Lecture	420	
Total	1550	

The purpose of these amendments are to clarify the intent of the Agency that the content of the manicurist and esthetician courses, particularly in the theory and lecture aspects, overlaps with the content for hairdressing. As indicated in the minimum clinical exercises for cosmetologists, estheticians and managers, it is now clear that the same number of clinical exercises in manicuring and skin care be completed by the cosmetologist.

In response to questions which were raised concerning the training to be offered a licensed manicurist or esthetician who returns to school for additional licensure, the Agency has added paragrah G.2. of the proposed rule which reads as follows:

> AMENDMENT 10.133 G.2. A licensed esthetician or a licensed manicurist who returns to school for an additional license shall not perform any clinical services in the area for which he or she is already licensed.

This addition will make it clear that the purpose for anyone returning to school is to learn new skills and acquire new knowledge, not to repeat services utilizing previously acquired skills.

As amended above, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 133 has been demonstrated by the Agency.

31. Proposed Rule 142, Intoxicants and Controlled Substances, prohibits licensees or students from performing cosmetology services while consuming or under the influence of an intoxicant or a controlled substance. Additionally, the rule prohibits serving any intoxicating beverage to customers during business hours. The Agency stated that it does not believe that it is appropriate in a professional establishment to serve intoxicants during the business day.

The Minnesota Cosmetology Council argues that it is reasonable and within the authority of the Agency to prohibit the consumption of alcohol beverages by licensed practitioners during business hours, however, there is no authority to prohibit offering alcoholic beverages to customers. The Council states that it is a common practice in some salons to provide wine or other spirits to customers as a marketing device.

Minn. Stat. § 155A.38, subd. 3, provides that the Agency may adopt rules regarding "minimum health and sanitary standards for the operation of a salon". Although the Agency may be of the opinion that offering alcoholic beverages to customers is not a good business practice, it is not an area which falls within the "minimum health and sanitary standards" for a salon. Consequently, the Hearing Examiner finds that there is no statutory authority to prohibit serving alcoholic beverages to customers during the business day. This is a violation of a substantive provision of law. In order to correct this defect, that provision of the rule must be deleted. deleted p. 49

With the deletion noted above, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 142 has been demonstrated by the Agency.

32. Proposed Rule 143, Compliance by Present Licensees and Students, allows for the implementation of this new package of rules without creating undue burdens on current licensees. The rule allows for time to comply with the proposed new requirements and exempts current licensees from some of the requirements. The Agency has amended the rule by adding a new paragraph as follows:

> AMENDMENT Section C. Students enrolled on effective date. Cosmetology and manicure students whose enrollment registration is on file in the office on the effective date of these rules and who graduate after July 1, 1983 shall be exempt from the requirement of 4 MCAR Section 10.102 A.2. and shall be required to complete 1500 hours for a cosmetologist license and 250 hours for a manicurist license. The minimum number of clinical exercises they will be required to complete will be adjusted in relation to their date of graduation, but shall not be less than 75% of the requirements stated in 4 MCAR Section 10.133 B.4.a. or D.4.a. ✓ p. 52

The purpose of this amendment is to exempt currently enrolled students from the more stringent provisions of these proposed rules. Specifically, currently enrolled students, if they are not high school graduates, will not have to comply with that requirement.

The Minnesota Cosmetology Council suggests that paragraph A.2.b., which requires additional training for senior instructors on or before December 31, 1984, is unconstitutional because it is "ex post facto" in nature. The Council's objections are in error, however, because the rule is prospective in nature and not ex post facto as the Counci suggests. Consequently, no constitutional problem exists.

As amended ahove, the Hearing Examiner finds that the need for and reasonableness of proposed Rule 143 has been demonstrated by the Agency.

33. The Agency has added proposed Rules 144 and 145 which read as follows:

> 4 MCAR SECTION 10.144 SEPARABILITY OF RULES.
>
> If any provision of these Rules or the application thereof to any party or circumstances is held invalid, the remainder of the Rules and the application of such provisions to other parties or circumstances shall not be affected thereby.

4 MCAR SECTION 10.145 REPEALER:

4 MCAR Sections 10.001 - 10.090 are repealed.

Proposed Rule 144 is merely a "savings clause" provision, and proposed Rule 145 is the repealer for the current rules which was omitted at the time of publication. The Hearing Examiner finds that these rules are both needed and reasonable and are not substantial changes to the rules as published.

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

CONCLUSIONS

1. That the Office of Consumer Services gave proper notice of the hearing in this matter.

2. That the Office of Consumer Services has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule.

3. That the Office of Consumer Services has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982), except as noted at Findings 13, 28 and 31.

4. That the Office of Consumer Services has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Findings 12, 19, 20 and 21.

5. That the amendments and additions to the proposed rules which were suggested by the Office of Consumer Services after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 12, 13, 19, 20, 21, 28 and 31.

7. That due to Conclusions 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Office of Consumer Services from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 21 day of January, 1983.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

APPENDIX

PROPOSED AMENDMENTS TO THE PROPOSED RULES
OFFICE OF CONSUMER SERVICES

Amendment 1

4 MCAR § 10.103 B. Compliance with state rules. The applicant shall demonstrate compliance with 4 MCAR § 10.102 A. ~~2---6~~ 2, 3, 5, 6 and shall successfully complete a written examination demonstrating knowledge of Minnesota statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

Amendment 2

4 MCAR § 10.107 5. ~~no direct skin contact application of the product is performed on a purchaser or potential purchaser except by the purchaser.~~ the retail employee does not have direct skin contact with the purchaser or potential purchaser. The employee shall touch the customer only with a brush or other applicator.

Amendment 3

4 MCAR § 10.111 D. Evidence of worker~~'~~s s' compensation insurance. If applicable, ~~T~~the applicant shall provide evidence of his or her compliance with Minnesota Statutes, section 176.182.

Amendment 4

4 MCAR § 10.120 D. Worker~~'~~s s' compensation insurance coverage. If applicable, ~~T~~the licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182.

Amendment 5

4 MCAR § 10.126 B. Evidence of liability insurance coverage. The applicant shall provide evidence of the school's coverage by professional liability insurance, of at least $25,000 per incident and an accumulation of ~~$75,000~~ 150,000 for each premium year. ~~for each teaching station in the clinical operation of the school.~~

Amendment 6

4 MCAR § 10.143 A. 4 a. Current salon manager licenses shall remain valid until expiration. Licenses expiring before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses expiring on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A., B.1, B.3., and C.-F.

Amendment 7

4 MCAR § 10.143 B. Interpreter for certain students. Foreign language students whose enrollment registration is on file in the office on the effective date of these rules may use an interpreter at the examinations~~.~~ , provided that they have first demonstrated to the director that they have a sufficient grasp of the English language to read, comprehend and follow chemical product labels and instructions.

Amendment 8

Effective dates. Rules 4 MCAR §§ 10.106, 10.107, 10.110; 10.111; 10.112; 10.113; 10.114; 10.115; 10.116; 10.117; 10.118; 10.119; 10.120; 10.121; 10.124; 10.125; 10.126; 10.127; 10.128; 10.129; 10.130; 10.131; 10.132; 10.134; 10.135; 10.136; 10.137; 10.138; and 10.142, are effective April 1, 1983

Rules 4 MCAR §§ 10.102; 10.103; 10.104; 10.105; 10.108; A.-C.; 10.109; 10.122; [illegible] effective July 1, 1983.

CONS-83-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF CONSUMER SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES RELATING TO MINNESOTA STATUTES CHAPTER 155A (COSMETOLOGY).

SUPPLEMENTAL ORDER OF THE CHIEF HEARING EXAMINER

The above-entitled rules were previously submitted to the Chief Hearing Examiner for review and, on February 28, 1983, an Order of the Chief Hearing Examiner was issued indicating that the defects in the rules had been corrected and that the changes in the rules were not substantial changes.

Subsequent to that time, the agency has determined to further modify the rules in order that the rules might conform with rules of the Department of Education.

Having now reviewed the Supplemental Findings of Fact and Conclusion and Supplemental Order Adopting Rules of the Director of the Office of Consumer Services, the Chief Hearing Examiner finds that the modification to the rule contained in that Supplemental Order, amending proposed rule 4 MCAR § 10.131C.1., does not constitute a substantial change in the rules.

NOW, THEREFORE, UPON RECEIPT OF THIS ORDER the Office of Consumer Services has the responsibility of submitting the complete hearing record and the rules as adopted by the Office of Consumer Services to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: March 22nd, 1983.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

4 MCAR S 10.131 General operational requirements for schools.

It shall be the responsibility of the school owner and manager to ensure compliance with the requirements of A.-M.

A. Identification. Each school shall be identified as either a school of cosmetology, beauty school, beauty academy, beauty training center, or any other designation whereby the public may be able to distinguish it from a salon. Identification shall consist of signs conspicuously placed on the front of the school and in the reception area of the school clinic. Each school shall also have a sign conspicuously posted in its clinic reception area stating, "Beauty School. All work performed by students." in letters at least two and one-half inches in height.

B. Manager.

1. There shall be a manager responsible for each school at all times. There shall be only one person designated as manager for each school. No manager may concurrently be responsible for more than one school nor for a school and a salon. When the manager is not on duty, he or she shall specify a responsible person on the premises. <u>The responsible person shall be an instructor licensed in accordance with these rules.</u>

2. The manager shall ensure that all personnel and students under his or her supervision comply with all provisions of these rules.

3. The manager shall ensure that no unlicensed instructor conducts any class, demonstration, or any other educational experience within the school except as allowed by Minnesota Statutes, chapter 155A and these rules.

4. The manager shall ensure that all equipment required by these rules is clean and maintained in proper working condition, that proper supplies are in stock at all times, and that safety, sanitation, and operational requirements are met by the school. The manager shall be responsible for recruitment and advertising materials.

C. Instructors.

1. There shall be at least two licensed instructors on

during the time students are present; and each school shall have a minimum ratio of one instructor for each 1 to 20 students to be accommodated; and ~~one additional licensed instructor for each additional 1 to 20 students to be accommodated~~. All students shall be under the direct supervision of an instructor at all times when in a classroom, clinic, or other area in which they ~~are~~ are performing cosmetology services.

a. A school may operate for 30 days per year with an unlicensed substitute for one of the licensed instructors, if the school manager is on the school premises and available to supervise the substitute, and if there is at least one licensed instructor, available and responsible for the direct supervision of the unlicensed substitute.

b. The school shall notify the office in writing within three days of each occurence of failure to meet the required instructor quota.

2. If a school is not in compliance with C.l., students will be notified by the office that it will not accept hours accrued during the period of noncompliance.

3. Instructors shall devote the entire time scheduled to training and shall have no additional noninstructional duties or responsibilities.

4. All instructors shall wear identification badges at all times while providing training, stating their full name and "Instructor." These badges shall be at least two inches by one inch and shall be color-coded white or gold.

D. Enrollment contracts.

1. The student or his or her parent or guardian shall receive a fully executed copy of the contract at the time he or she signs the contract.

2. The school and a student who has enrolled for training because he or she failed the state examination and reciprocity applicants shall enter into a contract which specifies the precise nature of theory and clinical experience to be covered during the training course.

E. Refund policy.

1. Each school shall have a definite, written policy relating to the refund of tuition and fees when students terminate training. The policy shall at minimum provide for the following:

CO[redacted]83-001-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Rules
Governing the Practice of Cosmetology.

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 29, 1982 before Peter C. Erickson, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Office of Consumer Services and;

WHEREAS, the Office of Consumer Services has now determined to adopt rules; and

WHEREAS, the Office has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; 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 Office of Consumer Services has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Office has the responsibility of submitting the complete hearing record and the rules as adopted by the Office to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated this 28th day of February, 1983.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules Relating to Minnesota Statutes Chapter 155A (Cosmetology)	SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSION AND SUPPLEMENTAL ORDER ADOPTING RULES

The Director of the Office of Consumer Services ("OCS") A.J. "Tony" Perpich presents herein Supplemental Findings of Fact and Conclusion relating to the adoption of cosmetology rules pursuant to Minnesota Statutes 155A (1982) and a Supplemental Order Adopting Rules.

FINDINGS OF FACT AND CONCLUSIONS

1. On February 17, 1983, OCS Director A.J. "Tony" Perpich issued Findings of Fact and Conclusions with regard to the promulgation of rules under Minnesota Statutes Chapter 155A and an Order adopting said rules.

2. The Findings of Fact and Order were submitted to the Chief Hearing Examiner for his review with regard to whether the rules as adopted were substantially changed from the proposed rules as published in the State Register of Monday, October 25, 1982.

3. On February 28, 1983, Chief Hearing Examiner Duane R. Harves issued an Order of the Chief Hearing Examiner stating that the final proposed rules were "not subtantially different from those proposed at the public hearing and that the Office of Consumer Services has cured the defects in the rules as required". He instructed that the rules as adopted and the hearing record should be submitted to the Attorney General.

4. On March 3, 1983, the rules were submitted to the Office of the Attorney General for his review.

5. Subsequent to the submission to the Attorney General, the Department of Education informed the Office of Consumer Services that proposed rule 10.131 C. 1. conflicts with Department of Education rule 5 MCAR §1.0102.F. and that, additionally, the Legislative Auditor has recently issued a report essentially mandating a minimum number of students per instructor which would be incompatible with OCS proposed rule 10.131C.1..

The Board of Education rule (5 MCAR §1.0102F.) pertaining to the staff/student ratio for vocational/technical schools requires a minimum of ten students for every one instructor. OCS proposed rule 10.131C.1. requires two instructors for the first 1 to 20 students to be accommodated and an additional instructor for each additional 1 to 20 students, or three instructors for 21 students.

6. Representatives of the Office of Consumer Services and the Department of Education have met to discuss the problem and have worked out alternative language which addresses the concerns of the Office of Consumer Services for adequate instructional supervision and at the same time is consistent with the requirements of the Department of Education. (The amendment is appended hereto.)

7. OCS herein proposes to amend 10.131C.1. so as to be compatible with 5 MCAR §1.0102F. The amended rule provides that a school must have one instructor for every 1 to 20 students to be accommodated. For example, a school would not be required to have a third instructor until it had 41 students. This slightly reduced ratio is compensated by the specific requirements that each school have a minimum of two instructors and that students receive direct instructor supervision.

8. In testimony at the St. Paul public hearing and in written comment (dated December 16, 1982) staff of the Austin AVTI testified in favor of a modified student/staff ratio, as noted in the Report of the Hearing Examiner (p. 15). At that time they did not, however, allude to the fact that the proposed ratio would actually conflict with a Department of Education rule.

9. The director concludes that the amended language is consistent with the record in this matter and that it does not constitute a substantial change. It imposes a somewhat less stringent student/staff ratio requirement on the schools, at the same time providing for the minimum instructional coverage discussed by OCS in the Statement of Need and Reasonableness (pp. 66-67).

ORDER

NOW THEREFORE, IT IS ORDERED that this amendment to rule 10.131 C.1. of these rules identified as "Cosmetology Operations and Licensing Rules" is adopted this 17th day of March, 1983 pursuant to authority vested in me by Minnesota Statutes section 155A.05.

STATE OF MINNESOTA

Director, Office of Consumer Services
Department of Commerce

Amendment: 4 MCAR § 10.131 C. 1. There shall be at least two licensed instructors on the school premises during the time students are present; and each school shall have a minimum ratio of one instructor for each ~~for the first~~ 1 to 20 students to be accommodated; and ~~one additional licensed instructor for each additional 1 to 20 students to be accommodated~~, all students shall be under the direct supervision of an instructor at all times when in a classroom, clinic, or other area in which they are performing cosmetology services.

(no change to subsections a. and b.)

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules Relating to Minnesota Statutes Chapter 155A (Cosmetology)

FINDINGS OF FACT

The Director of the Office of Consumer Services, A.J. "Tony" Perpich, after affording interested persons the opportunity to present written or oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files, and proceedings, presents herein his Findings of Fact and Conclusions relating to the adoption of cosmetology rules pursuant to Minnesota Statutes 155A (1982).

1. The statutory authority of the Director of the Office of Consumer Services (office) to promulgate rules under Minnesota Statutes Chapter 155A is set forth at Minnesota Statutes Section 155A.05.

2. On October 21, 1981, the office caused to be published at 6 State Register 1172 a Notice of Intent to solicit outside opinions concerning changes in the Cosmetology Rules.

3. On October 25, 1982, the office caused to be published at 7 State Register 625 a Notice of Hearing and Rules as proposed.

4. After proper notice required by Minnesota Statute Section 15.0412 was served upon all persons, associations and other interested groups, registered with the office for that purpose, the above-entitled matter came on for hearing before Hearing Examiner Peter Erickson.

   On November 29, 1982, in the auditorium of the State Office Building at 435 Park Street, St. Paul, Minnesota a public hearing was held on the proposed rules. On December 31, 1982, at the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota, a second hearing was held on the proposed rules. On December 3, 1982, at the Minnesota Valley Regional Library , 100 East Main Street, Mankato, Minnesota, a third public hearing was held concerning the proposed rules.

5. On January 21, 1983, Hearing Examiner Peter C. Erickson issued the Report of the Hearing Examiner concerning the proposed rules as discussed at the public hearings and with regard to subsequent written comment received pertinent to the rules during the comment period which closed on December 23, 1982.

   On January 25, 1983 , Duane R. Harves issued a Report of the Chief Hearing Examiner regarding the proposed rules and the report of the Hearing Examiner.

6. The office has reviewed the Reports of the Hearing Examiner with regard to the proposed rules as published in the State Register, the testimony presented at the public hearings, and subsequent comment received relative to the rules.

a. The office accepts without reservation on all specific amendments, recommendations or deletions contained in the Report of the Hearing Examiner. The rules for adoption reflect all of the specific changes called for in the Report of the Hearing Examiner.

The only point at which the Hearing Examiner suggested language has been modified is at Rule 10.105.B.2.. Since the examiner's ruling on this section is based on the belief that it is unreasonable to require training within the last three years as a prerequisite to re-insurance of a license, the office believes that it would not be reasonable to require a high school education either, if that had not been a requirement at the time the individual was originally licensed. The reference to Rule 10.102A. has therefore been narrowed to exclude subsection A.1-2.

b. In his report the Hearing Examiner made some additional recommendations to the office but did not specify the exact language to be used in adopting the recommendations. Pursuant to these recommendations, the office has made the following changes in the rules for adoption.

1) On pages 5 & 6 of his report under number 12 the Hearing Examiner found that it was not reasonable for the rules to impose a penalty upon a manager in the event that a licensed individual had allowed his or her license to expire, inasmuch as the rules elsewhere provide specific penalties to the individual for failure to renew his or her license in a timely fashion. The Hearing Examiner did not comment upon the amendment proposed to this section by the office which would have allowed for a penalty against the manager in the event that there was an unlicensed person working in the salon as opposed to an individual whose license had expired.

The office has amended Rule 10.106C to eliminate a manager penalty in the case of a licensee who has failed to renew his license in timely fashion, but to

retain the penalty in the event that the manager has allowed an individual to commence working in the salon without a proper license. The office believes it is clearly the manager's responsibility at the time an individual begins to work in a salon to assure that that individual is properly licensed. After that time, it would become the individual licensee's responsibility to renew his or her license in a timely fashion.

2) On page 10 of his report under point 20 the Hearing Examiner found that the office had not established the reasonableness of Rule 116A. 18.b. that a copy of the salon's most recent inspection report be posted in the reception area. The Hearing Examiner did rule, however, that it would be reasonable to post the inspection report in the dispensary area or to require a notice in the reception area informing members of the public that a copy of the report was available for their review upon request.

Although the examiner did not specifically address the application of a similar provision in the school rules, the office assumes that the examiner logically intended for his comments to apply to schools as well.

The office has amended Rule 10.124 dealing with inspections for both salons and schools by adding a section specifying that the actual inspection report is to be posted in the dispensary, where it will be available for review and as a reminder to employees, and that a notice be posted in the reception area for the information of the public informing them that a copy of the inspection report from the state is available for review at their request. The office believes that this rule is consistent with the finding of the Hearing Examiner.

3) On page 12 under point 23 of his report the Hearing Examiner suggested that the office seriously consider the terminology of proposed Rule 10.122 dealing with "unlicensed services". The Hearing Examiner agreed with comment received at the public hearings that the term

"unlicensed" was inherently negative in its connotation. The examiner did, however, find that the need for and reasonableness of the rule with regard to informing the public as to those services not part of the licensed practice of cosmetology was reasonable.

The agency has considered the comments of the Hearing Examiner and has amended the language in 10.122 to refer to "unregulated" services rather than "unlicensed" services. The office believes that the term "unregulated" clearly conveys to the consumer the information that some of the services offered in the salon are not within the pervue of state regulation, without any negative connotation with regard to these services. ✓ p. 24

This change in terminology in Rule 10.122 is reflected in an amendment to the definition section Rule 10.100U and at several other points throughout the rules where there were references to "unlicensed" services. ✓ p. 2

The office believes that these amendments to the rules satisfy both the public's need to be aware of the nature of services being offered and the concern of the Hearing Examiner and witnesses at the public hearings that this distinction not be made in a prejorative manner.

c. The office has made some amendments to the rules as proposed apart from those approved or required by the Hearing Examiner. The majority of these changes are technical amendments to redress drafting errors or renumber sections on the basis of deletions or additions pursuant to the Hearing Examiner's report. Some of these amendments add a word or phrase intended to provide greater clarity and simplicity of understanding on the part of the reader.

Other changes made by the office include the following:

1) Rule 10.103D has been amended to include a requirement that the experience for an instructor seeking a license through reciprocity be obtained within the prior three years. ✓ p 6.

The intent of this section is that an out-of-state instructor have the same training and experience as a Minnesota applicant. The amendment language makes this expectation explicit.

In its Statement of Need and Reasonableness for this rule, the office said " The applicant for an instructor's license will have to meet the 48 hours of training requirement and the 1800 hours of salon experience as would a Minnesota applicant (page 17)."

2) Rule 10.109B. has been amended to clarify the requirements for re-instatement of an individual practictioner, particularly in light of the Hearing Examiner's remarks concerning Rule 10.106A.2 with regard to the unreasonableness of requiring an individual to go back to school because his or her cosmetology education of 1550 hours was obtained over three years ago. The same consideration would apply to this rule. However, because this rule does apply to reinstatement, it is reasonable that the individual should meet the lesser experience or education criteria for license renewal, as noted in the Statement of Need and Reasonableness. ✓ p. 11

The office believes that this change is consistent with the ruling of the Hearing Examiner regarding Rule 10.106.A2. and that it is therefore not a substantive change.

3) Rule 10.111B.4. has been amended to correct erroneous citations. A parallel amendment to Rule 10.126A.5. with regard to cosmetology schools was proposed by the office in its final written comment and was approved by the Hearing Examiner in his report. ✓ p. 12, 13

The salon section was not previously amended by the office because, as noted in the office final comment, it was anticipated that the Hearing Examiner might make substantial changes in the physical requirements for salons.

The office does not believe that this is a substantive change, as the rules as

proposed required compliance with the requirements of various regulatory bodies. This amendment simply enumerates the relevant requirements more specifically.

4) Rule 10.113 section B and F.1. have been amended to eliminate language which is either duplicative of or may be contrary to the requirements of Building Code and the Fire Marshall, which would have to be met by a new salon under the provision of 10.111.B.4. Public testimony at the Mankato hearing indicated confusion as to how these sections would relate to the Building Code, as well as a sense that currently-licensed salons should not have to be retro-fitted to comply with code standards not applicable at the time of original licensure.

As stated in the office's final written testimony, the office would have welcomed, and did anticipate, specific recommendations from the Hearing Examiner in this area, as it was evident at the hearing that these sections were problematic for many licensees.

The office believes the amendments made to these sections, in combination with amendments to Rules 10.111B.4. and 10.113F.3. eliminate potential confusion and make the requirements of the rules more clear, without substantially changing them.

5) Rule 10.113.F.3. regarding the requirements for salon toilet facilities has been amended to require only those items of specific concern to the Office of Consumer Services. Any requirements of the State Building Code would be picked up for new salons under the provisions of 10.111.B.4.. Testimony at the Mankato hearing showed a great deal of concern on the part of current licensees, who appeared to have great difficulty understanding the applicability of the "grandfather" provision regarding toilet facilities in Rule 10.143A5.a. and c.. This amendment removes any undue burden from existing salons to comply with the Building Code or O.S.H.A. standards where

they are not already required to do so. By making this amendment, the necessity to have a "grandfather" clause regarding toilet facilities in Rule 10.143 sections A.5 a. and c. and 6.a. is eliminated. The office believes that this amendment is both a reasonable one and one which will eliminate a great deal of concern and possible hardship for licensees.

The office does not believe this is a substantive change, as new licensees will still be required to meet the code requirements under 10.111 B.4. and currently-licensed salons were allowed under Rule 10.143 A.5.a. as published to meet only the standards which have now been moved to the amended section 10.113F.2.. The amended rules keep the same toilet requirements, but formulate them more simply.

6) Rule 10.116.A.8. has been amended to delete the requirement that extension cords be "heavy duty". As the office noted in its final comment to the Hearing Examiner, it appears that there is in fact no uniform rating system for extension cords and that it might therefore be difficult for licensees to comply with the rule as published or for the office to determine whether in fact the licensee was in compliance.

The office does not believe that this is a substantial change, as the rule still requires that the cords be of limited length and that they be grounded.

7) Rule 10.126.D. has been amended to change the dollar amount of the surety bond required for cosmetology schools. As noted in both the Statement of Need and Reasonableness and the final office comment to the Hearing Examiner, the office was made aware of the fact that the original language would create a very severe and excessive financial burden for schools. In the office's final comment, it suggested to the Hearing Examiner that the $10,000 would be an appropriate figure. The Hearing Examiner upheld the authority of the office to require a surety bond, but made no comment as to the level of bond. $10,000 is a figure

suggested in some of the written comment received from affected parties and it is the level of surety bond required for private vocational trade schools licensed by the Department of Education.

The Office does not believe that this is a substantive change, as the requirement of a surety bond is maintained. Only the amount is changed consistent with recommendations on the record.

8) Rule 10.143A.1. has been amended to include managers in this section. Currently-licensed managers were previously treated separately under subdivision A.4., because of the requirement at 10.105.B.3. that they take an examination before license renewal. The Hearing Examiner in his report ruled that that examination was unreasonable and the requirement should be deleted. The deletion of subdivision 10.143.A.4.a. andl inclusion of managers in subdivision A.1. reflects that recommendations of the Hearing Examiner and reflects the experience requirement for renewal of manager licenses required by rule 10.105.B.1. as published.

p.50

The office has made this amendment in response to the ruling of the Hearing Examiner regarding the manager exam.

9) The office has added a section D. to Rule 10.143 relating to current licensees. This section provides that the director may grant a variance to licensed schools if they can demonstrate undue hardship because of the physical requirements for schools in the rules as published. This amendment was made at the request of the Minnesota Cosmetology Council, which pointed out that whereas currently-licensed salons were given extensive exemptions, less leeway was allowed for schools.

p.52

The office does not believe that this is a substantial change, as it does not provide for any blanket exemptions and it specifies narrowly the grounds upon which

a variance would be allowed.

STATE OF MINNESOTA

DIRECTOR
OFFICE OF CONSUMER SERVICES

Dated: February 17, 1983

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

RECEIVED
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ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules Relating to Minnesota Statutes Chapter 155A (Cosmetology)

STATEMENT OF NEED AND REASONABLENESS

Director of the Office of Consumer Services, Krista L. Sanda ("Director") presents herein her statement of the need for and the reasonableness of the adoption of proposed rules relating to Minnesota Statutes Chapter 155A (1981).

The above captioned rules are new rules and replace in its entirety the previous rules adopted by the former Board of Cosmetology examiners. On October 21, 1981, the Office caused to be published at 6 State Register 1172 a notice of intent to solicit outside opinions concerning changes in the cosmetology rules.

The general statutory authority to promulgate rules under Minnesota Statutes Chapter 155A is set forth at Minnesota Statutes Section 155A.Ø5.

The Director has determined that the proposed adoption of these rules is reasonably necessary to carry out and to make effective the provisions and purposes of Minnesota Statutes Chapter 155A (1981).

The need for and reasonableness of each of the proposed rules and the rationale and process through which they were developed is as follows:

I. BACKGROUND

The 1981 Minnesota Legislature passed a statute, Minnesota Statutes 155A, which transferred all authority for licensing and regulation of the Cosmetology industry from the former Board of Cosmetology Examiners to the Director of the Office of Consumer Services. The effective date of that transfer was July 1, 1981.

The Legislature incorporated into the transfer legislation a specific mandate that the Director of Consumer Services develop and adopt a new set of rules to govern the cosmetology industry in Minnesota: "The Director shall develop and adopt rules to carry out the provisions of Section 31 to 48 by December 31, 1982, pursuant to Chapter 15" (Minnesota Statutes Chapter 155A.Ø5.)

Since the assumption of regulatory authority for the Cosmetology industry, the Director of Consumer Services and the staff of the Cosmetology Unit have been actively involved in developing the content for the proposed rules presented herein. Tremendous input into this process has been received from the Minnesota Cosmetolgy Advisory Council, (MCAC), a nine member citizen body appointed by the Governor, at the direction of Chapter 155A, to advise the Director of Consumer Services on matters relating to cosmetology. The nine members of the MCAC as specified by statute, include 1 representative of public cosmetology schools, 1 representative of private cosmetology schools, 1 representative of Manufacturers of Cosmetology Products, 3 representatives of consumers, and 3 representatives of cosmetologists or shop managers. The members of the Council were appointed by Governor Quie on October 17th, 1981.

The development of the proposed rules has included extensive efforts to obtain input from members of the regulated industry with regard to their concerns and desires in the area of rules. It has included a thorough review of the old rules under

which the previous Board of Costmetology Examiners had operated. It has also involved extensive deliberations with groups and individuals within the industry.

The most extensive suggestions for and comments upon the draft rules, apart from the MCAC, come from an industry group called the Cosmetology Council, which includes individuals in leadership position in the Minnesota Hairdressers and Cosmetologists Association (MHCA), public and private cosmetology school personnel, salon owners, and product manufacturers. This group was involved in passage of the legislation which became Chapter 155A, and it was concerned tht the rules be consistant with and reflect the intent of the statute. Other interested groups of organized individuals have included the MHCA, the Professional Salon Owners Forum, and representatives of the retail community. Many individuals have offered constructive comments as well.

Some of these efforts to involve members of the cosmetology profession in the rule making procedure are as follows:

1. In August, 1981 a mailing was sent to approximately 5000 licensed cosmetology salons in the state of Minnesota. The mailing was a flyer captioned **"Attention All Cosmetologists"** and a request was made that the flyer be posted in the salon. The flyer described a series of widespread informational meetings which the management of the Office of Consumer Services held through-out the state to meet with members of the cosmetology profession in some 12 separate communities. During the period of between September 22, 1981 and October 19, 1981 meetings were held in Brainerd, Mankato, Rochester, Duluth, Virginia, Bemidji, Thief River Falls, Fergus Falls, St. Paul, Marshall, St. Cloud and Minneapolis. Nearly 500 members of the cosmetology profession attended these meetings. At the meetings, the Director and members of the Cosmetology Unit staff summarized the effect of the new legislation and explained in detail the steps of the rule-making process under which new rules would be developed. Heavy emphasis was placed upon the fact that those

present had an opportunity to contribute to the deliberations on the proposed rules, and they were strongly encouraged to communicate their specific concerns and suggestions to the Office of Consumer Services.

2. All individual Cosmetology licenses were due for renewal at the end of December, 1981. In the renewal notices sent to each licensed individual, the Office of Consumer Services inserted an update notice which summarized some of the key provisions of the legislation and outlined the rule- making process. Again, individuals were encouraged to communicate their concerns and suggestions with regard to the rules to the office staff.

3. On October 21, 1981 the office published in the **State Register** a notice of intent to solicit outside opinions with regard to the Cosmetology rule making process.

4. The Minnesota Cosmetology Advisory Council has held 14 meetings, the majority of time at almost all of which was devoted to deliberation and discussion of the rules. In addition to the full council meetings, sub-committees of the Council met on numerous occasions. Both at the sub-committee level and the full Council level there was extensive input from interested members of the profession. Those discussions were not limited just to Council members and frequently involved interchange with the non-members who were in attendance. All of the meetings were open to the public and, indeed, interested members of the public were present at almost all of the meetings.

5. As the proposed rules began to take shape, the Office of Consumer Services management met with a number of groups and individuals who had been active in the rule making process to get feed-back from them with regard to the draft format and content of the rules. As a result of those discussions numerous content or technical changes were made in the rules. The comment from these groups was incorporated into the final proposal as published and to be discussed at the public hearings. Copies of

all changes and each draft ammendment to the draft rules were shared with the Minnesota Cosmetology Advisory Council, and that Council has approved and voted its' support for the proposed rules as they are contained in the Notice of Hearing.

6. The Office of Consumer Services Cosmetology Unit staff has had informational booths at 5 of the industry trade shows held in the Twin Cities in the last year and a half. These have included two of the state meetings of the Minnesota Hairdressers and Cosmetologist Association (MHCA), the largest organized group within the cosmetology profession. Representatives of the office staff have made presentations regarding the rule process and proposed rules at the delegate assembly of both the 1981 and 1982 state conventions of the MHCA. In addition to this, several of the cosmetology supply houses have held trade shows at which the office has been invited to have an informational booth.

All of these efforts have resulted in a great deal of thoughtful, very helpful input and contribution to the rule-making process by the members of the professional cosmetology industry which will be affected by these rules.

II. GENERAL THEMES

There are a number of recurring themes which are woven through the proposed rules:

1. The overriding concern throughout the rules is to assure the health and safety both of the consumer of cosmetology services and of the practioner who provides those services. This concern is consistent with the policy statement which is found at the very beginning of the Cosmetology statute: "The Legislature finds that the health and safety of the people of the state are served by the licensing of the practice of cosmetology because of the use of chemicals, apparatus and other appliances requiring special skills and education."(Minnesota Statutes Chapter 155A.Ø1) Many of the rules contain requirements which relate specifically to this safety, health and welfare concern.

2. A second theme which runs through the rules is an effort to reduce, to the greatest extent possible, any opportunity for arbitrary judgement and to instead set definitive standards which will enable any licensee to know whether or not, at any given time, he/ she is in compliance with the requirements of the rules. One of the frequently-voiced criticisms of past rules is that their interpretation and application in a given situation tended to be arbitrary and that their requirements were stated in such a vague manner that the individual licensee truly could not know whether or not, upon investigation by the state shop inspectors, he/she would be found to be in compliance. Every effort has been made to be specific and clear as to the nature of the requirements made of or placed upon the licensee.

3. A third general theme or assumption found in the rules is that knowledge and skills remain valid for a limited period of time, after which time an individual should obtain some type of refresher training before resuming professional cosmetology activities and performing services upon the public. The

assumption is made that skills and knowledge do in fact become "rusty" if not used. In most cases, for individual practioners who have been licensed and who have practiced, the proposed rules set this time limit at three years. This is consistent with the three year license validity period established by the legislature in Minnesota Statutes Chapter 155A. In addition, the three-year renewal date is administratively the most feasible and efficient point at which to review an individual licensee's credentials.

4. A fourth assumption is that consumers of cosmetology services, including students of cosmetology education services, are entitled to as full and complete information upon which to base their purchase decisions as is reasonably practical. To this end a number of the rules relate to mandatory disclosures or provisions of information.

5. A fifth theme is that the cosmetologist license is an umbrella license covering practice in three distinct service areas: hairdressing, manicuring and skin care. The cosmetologist should be fully competent in all three practice areas and the training and examination procedures for the cosmetologist should reflect this expectation. The manicurist and esthetician licenses enable a practitoner to engage in a sub part of the more encompassing cosmetology practice. The manicurist can engage in those services related to the nails and the esthetician can engage in those services related to skin care.

4 MCAR Section 10.101 Transfer of License Prohibited

The purpose of licensing at all is to assure that any individual or facility which is offering cosmetology services to the public is qualified to do so and is doing so within a framework of required procedures and operational methodologies. It is therefore necessary to restrict the use of a license to the individual or facility to which it was originally granted.

4 MCAR Section 10.102 Requirements For Individual Licenses

Subdivision A of this rule sets out six requirements which would have to be met by any individual seeking cosmetology licensing in the State of Minnesota, regardless of license type.

Paragraph 1. Applications are to be made in writing so that the office will have a permanent record of the applicant's credentials. This document becomes the base document in a file which will be established and into which all documents relating to that individual licensee will be inserted.

Paragraph 2 requires either a high school education or General Educational Development certificate. The intent of this provision is to ensure that the applicant is competent to grasp the complex physiological and technical materials which he/she will have to learn in the cosmetology education and that he/she will be able to read,to comprehend, and to follow complex directions and cautionary information regarding highly caustic chemical materials. This basic educational requirement was strongly recommended by the MCAC and by the industry Cosmetology

Council. The variety and complexity of professional chemical cosmetology products is so great that it is essential that some minimum competency level be established.

Paragraph 3 is intended to assure that the applicant has been given a thorough health check by a physician and that he/she is free from any communicable disease or parasite which might be transmitted to cosmetology consumers or other practitioners in the salon. The Minnesota Department of Health has expressed concern to the Director of Consumer Services that the office should establish a firm health standard. This is particularly important in view of the current prevalence of communicable diseases such as herpes, which can be transmitted through contact with portions of the head and scalp with which the cosmetologist would be quite apt to come in contact. This requirement is clearly consistent with the statutory mandate to protect the health and safety of consumers and indeed of the practitioners themselves.

Paragraph 4 requires that regardless of license type, the applicant must successfully pass a written examination covering the basic content material and applicable laws and rules for the license being sought. While the majority of applicants will have graduated from a licensed Minnesota cosmetology school, this is not the case in all instances. The intent of the rule is to ensure that at the point that an applicant embarks on a professional career, he/she does have a basic grasp of the content area and of the requirements and rules related to that daily practice. The specific examination the applicant will be required to take will vary according to the license for which the applicant is applying.

Paragraph 5 requires a photograph which can be retained in the office records, as a means of identification of the individual to whom a license is issued. There is a parallel requirement, which follows, to the affect that a photograph also

be displayed with the individual's license at his/her place of work. The purpose of this requirement is to assure identification of the individual to whom the license is issued.

Paragraph 6 requires that the applicant pay fees to cover the examination and for the license itself. In addition, for those individuals who will require additional administrative time to verify information contained in their application, there is a processing fee to cover those costs. A more specific discussion of the fee structure may be found under the discussion of rule 4 MCAR Section 10.140 Fee Schedule.

Subdivision B addresses additional requirements, beyond the basic requirements of Subdivision A, which must be met by a cosmetologist, manicurist or esthetician seeking licensure in Minnesota. The individual applicant must provide documentation of one of three forms of professional training or experience which he/she has acquired within three years prior to the application. The three year limit is intended to assure that the skill and knowledge demonstrated by the credentials are current and appropriate to licensure at the time of application.

Paragraph 1 provides for licensure on the basis of completion of training in a licensed cosmetology school in Minnesota. The prescribed course of training is set at 1550 hours for a cosmetologist, 350 hours for a manicurist and 600 hours for an esthetician. A full discussion of the basis for this hour requirement may be found in the discussion of school curricula, 4 MCAR Section 10. 133. The intent of requiring documentation of a certification of skills is to assure that the applicant has not merely attended school for the requisite number of hours, but that he/she has in fact successfully mastered the skills related to the various services he/she will perform as a licensed practitioner.

Paragraph 2 provides for licensure of an individual who has received his/her training or a portion thereof in a school outside the state of Minnesota. In this mobile society it is

desirable to credit an individual for training received under another licensing jurisdiction. The intent of this provision is to recognize out-of-state training but to assure that, regardless of where the training was received, the individual will meet the requirements of licensure in Minnesota through completion of the same number of hours of training and a certification of skill competencies.

Paragraph 3 provides for licensure on the basis, in effect, of reciprocity, or current licensure from another state or other licensing jursidiction. This is in recognition of the fact that there are currently some foreign countries which do not license cosmetologists. In addition, it recognizes the possibility that there may be in the future some states which do not license cosmetologists. In the situation where there is not a licensing jurisdiction, the applicant is still required to provide documentation that he/she does have actual cosmetology experience and that the experience was gained within whatever legal parameters or restrictions were applicable in the jurisdiction.

This section also addresses a problem that has occurred in the past wherein applicants provided documentation from a foreign country which was not in English and which was therefore nearly impossible to verify.

Concern that individuals coming from a jurisdiction which does not have a licensed cosmetology practice should be ameliorated by the fact that these individuals will be required to take the written test covering the content knowledge of the license sought and applicable statutes and rules in Minnesota.

The proposed rules do not include the requirement of a hands-on practical examination for cosmetologists, manicurists and estheticians. There are a number of fiscal, policy, and reality factors which led to this decision:

a. There is no statuatory requirement that a practical examination be given. Individuals who were active in the passage of Minnesota Statutes 155A have informed the office that this was a purposeful omission in the statute. It was not the lobbyists' or statutory drafters intent that there be a practical examination.

b. The Office of Consumer Services Cosmetology Unit has not been allocated sufficient funding to conduct practical examinations. The financing for Office of Consumer Services regulation of the cosmetology industry, as passed by the Legislature, included a minimal amount for office oversight of practical examinations which were to be conducted in the schools during the transition period. There was no permanent funding for the continuation of state practical examinations. As part of its budget request for the forthcoming biennium, the office submitted to the Governor's Office a "change level" request to finance state administered practical examinations during the next biennium. Because of the state's fiscal priorities, this request was not granted.

c. The cosmetology schools have cooperated with the Office of Consumer Services in providing space for the practical examinations and use of their senior instructors as examiners during the transition/rule formulation period. However, schools have recently informed the office that they no longer are willing to bear the staff, materials, and fiscal costs of this voluntary program. They have also expressed genuine concern as to their liability should any untoward event occur during an examination. In point of fact, within the last month, one of the models used in a practical examination had a heart attack within the school facility. In view of this type of potential situation, the school's position is not an unreasonable one in the view of the office.

d. In meetings and conversations with salon owners over the course of the past approximately year and a half, it has become apparent that no matter what system of practical examinations has been used, the practical examination has not, in the view of the salon owners, been an effective screening device for determining which applicants are in fact ready to practice cosmetology

services at the salon level. It is the position of the office that the level-of-preparation concern expressed by salon owners can be addressed better by the establishment of a minimum quota of services during the school period and a skill certification at the time of school completion than it can through the continued practice of attempting to improve the practical examination.

e. The office has received substantial comment in conversations and meetings with members of the cosmetology profession to the effect that the practical examination is not valid because it does not relate very directly to the conditions of actual salon practice because of the artificiality of the setting. A correlary concern is that the examination is not reliable. The fact that the office, over the course of the last year, has had to rely upon a number of volunteer examiners has also led to criticisms on the basis of reliability. The office does not have at the present time, and does not anticipate receiving, the type of financial resources which it would require to hire a permanent examination staff to ensure uniformity.

g. Over the course of the last year, the practical examination has taken approximately sixty percent (60%) of the combined staff effort of the Cosmetology Unit. This in turn has made it impossible for the unit to perform legislatively mandated duties such as the annual salon inspections. Elimination of the practical examination would free the staff to devote more energy and attention to enforcement efforts and complaint resolution, thereby addressing more promptly and effectively actual problems which most directly affect the consumer public.

In view of all of these considerations, the office strongly supports the absence of a proposed rule requiring a practical examination of applicants for cosmetologist, manicurist and esthetician licenses.

Subdivision C requires that an applicant for a manager license, either of a salon or of a school, have 2700 hours or approximately a year and a half of licensed practice under the supervision of a licensed manager in a licensed salon. This is an increase of half a year over the experience level previously

required of managers. This recommendation is based upon considerable input from experienced practitoners in the field who have indicated to the office and to the Advisory Council that they believe the one-year requirement was not sufficient to provide a new cosmetologist with the kind of experience necessary to professionally and competently handle the responsibility of salon management. The whole scheme of these rules places significant responsiblity upon the manager for the compliance of the salon or school itself and of all licensees practicing therein with Minnesota statute and rules.

The manager is also the person to whom less experienced practitioners will turn in the event of questions or any emergency or problem in the clinical situtation. It is therefore extremely important that the manager have the kind of experiential resources which will enable him/her to deal competently, professionally and quickly with any problem which may arise.

Both salon and school managers will be required to take a written test dealing with operational matters and with state law and rule requirements. School managers will have to take this basic manager exam because of the clinical practice salon within schools. In addition, the school manager applicant will also have to take an examination to assure the office that the individual has a thorough knowledge of those laws and rules which relate specifically to cosmetology schools. There are a number of specific requirements on which it would not be appropriate to examine of the salon manager but which certainly will be critical knowledge for the school manager.

Because of the verification procedures necessary to assure that the 2700 hours of licensed practice have been accurately documented, the applicant for manager license for either salon or school,, is required to pay the processing fee to cover administrative costs.

Subdivision D addresses the requirements for cosmetology instructors. Because of the administrative verification necessary, instructor applicants are required to pay a processing fee to cover those costs. In addition, the instructor applicant will have to complete both a practical examination and a written examination. The practical examination will address not only the technical performance of cosmetology services, but also the applicant's ability to convey instructional material in an organized, comprehensible and professional manner. Under the old rules for instructor licensing, there was no requirement either that the individual have obtained any training in instruction or that the individual have had any experience actually practicing in a salon. The intent of the proposed rule is to require that in addition to whatever excellence he/she may possess as a practioner, the successful applicant for an instructor's license must be able to demonstrate proficiency as an educator.

The requirement of 48 hours of training was reached after extensive deliberation with office staff, members of the Cosmetology Advisory Council and individuals in the area of cosmetology school management. At the present time vocational/technical instructors are required to have a minimum of 30 class hours of instruction before they are able to teach in the cosmetology program of a vocational/technical institute. The basic course which they are required to take is open to any individual and would be available, with some frequency and throughout the state, for individuals wishing to teach in private cosmetology schools. In addition to that 30-hour course, the proposed rule requires an additional 18 hours. This is to assure that the individual learns not only basic concepts of instruction, but specific training in teaching the particular skills necessary to practice cosmetology services. At the present time the office is aware of at least one 48-hour training program for cosmetology instructors, offered under the auspices of the Minnesota Association of Private Postsecondary Schools (MAPPS). An individual wishing to take that course would have the option of taking the 30-hour TVI preparatory course with only an 18-hour mini-session from the MAPPS program. An individual

license applicant might also choose to enroll in a combination of shorter courses available from either the public or private school sector.

The other new proposal in these rules is that the applicant have 1800 hours of actual experience as a practitioner in a salon. Both from members of the profession and from students in cosmetology schools, the Office of Consumer Services has received comment to the effect that the lack of salon experience currently prevalant among cosmetology instructors makes it very difficult for them to successfully teach students the kinds of skills they will be required to have in dealing with the public and in actual salon operations and management. The comment has been made by a number of salon owners that students graduating from cosmetology schools appear to have little "real world" comprehension of the way things actually operate in a salon on a day-to-day basis. In addition, they frequently have unrealistic expectations as to the type of working conditions and salary they can expect to find in the salon. The comment has been made that this may be due in large part to the fact that at the present time an individual who graduates from a cosmetology school can become a junior instructor the next day, without having any experience whatsoever in cosmetology outside of the school in which he/she was trained.

The intent of Subsection 4 is to allow an individual to become an instructor even though he may have experience and training only as a manicurist or an esthetician. In point of fact, it appears that relatively few licensed cosmetologists choose to specialize in the areas of skin or nail care. It is therefore proposed that individuals who have chosen to specialize in those areas should be allowed to become instructors, so long as they do not instruct outside their area of specialty.

Subdivision E provides for reactivation of license for an individual either who has an inactive license or whose most recent active license expired more than three years previously. This section was necessary in view of the fact that rule 4 MCAR Section 10.106 (Lapsed Practitioner License) provides for the

first time for an inactive license. The retraining required by Subdivision E is intended to assure that the practitioner's skills are brought up to date and that the practitioner becomes familiarized with recent developments which may have occurred within the period of his/her inactivity. This is particularly important in the area of new chemical products and services.

4 MCAR Section 10.103 Requirements For Obtaining a License on the Basis of Reciprocity

This short rule compliments the provisions of 4 MCAR Section 10.102 allowing for licensure in Minnesota on the basis of current licensure or practice in another jurisdiction. The reciprocity applicant will be required to meet the same requirements as the Minnesota applicant in terms of education, evidence of good health, successful passage of the written examination, submission of a photograph, and payment of the exam and license fees. In addition, the reciprocity applicant will be required to document at least 1800 hours of experience as a practitioner at the same level for which he/she is seeking a Minnesota license. The applicant for an instructors license will have to meet the 48 hours of training requirement and the 1800 hours of salon experience requirement as would a Minnesota applicant. This requirement of at least the same number of hours of training and experience is particularly important as there are a number of other states which, as Minnesota did in the past, do not require any specific training as an educator or salon experience for their instructor's license.

4 MCAR Section 10.10 Requirements for Maintenance of Individual License

This rule contains the general responsibilities which the licensee will have on an ongoing basis in order to maintain his/her license. Most of these requirements are self-evident:

a. Complying with applicable laws and rules.

b. Remaining free from communicable diseases and parasites.

c. Informing the office of change in name or address.

There is a new provision in this section, which is that the information on change of name or address must be provided to the office within 30 days. Previously the licensee was able to wait to inform the office of such changes until the time of license renewal. This has caused an administrative burden at renewal time, which is already the busiest time of the year for the office staff. Having to input new data into the computer record for the individual slows down significantly the flow of the licensing process. It is therefore very desirable administratively to have information on a more current basis, at times other than during the renewal cycle. There are also occasions on which renewal notices or other mailings to licensees have been misdirected because the licensee has failed to provide the office with an up-to-date name or address. It is intended that providing the office with this information on a more current basis will eliminate many administrative problems which have occurred as a result of the past practice.

d. The license must be renewed.

e. The licensee must display it at his/her place of work in accordance with other sections of these rules.

f. This section imposes specific responsibility on the school or salon manager for ensuring that the facility itself complies with applicable statutes and rules such as those relating to physical requirements, supply standards, and operational procedures; and that the personnel working within that facility also comply with applicable statutes and rules. The situtation has occurred in the past wherein a given salon might have several manager/ operators, no one of which was clearly in

charge and had responsibility for the overall operation of the licensed facility. The intent of these rules as a whole and of this Section in particular is that there be a specific individual, the named salon manager, who will be responsible both for the facility and for the compliance of individuals working therein.

g. This section requires that the school instructor follow a specific curriculum for the school as it has been approved by the office. It has sometimes appeared during school inspections in the past that the students were not receiving a carefully thought- out lesson plan or segment of a specified curriculum. The intent of this provision is to make it incumbent upon the instructor, himself/herself, to assure that there is a clear plan for the teaching going on at the school and that it is followed in accordance with the format as it was submitted to the office for approval.

4 MCAR Section 10.105 License Renewal for Individuals.

This rule as a whole deals with the procedures to be followed at the end of the three year period for renewal of individual cosmetology licenses.

Subdivision A make explicit in rules what has been a matter of policy in the past. This is that it is the responsibility of the licensee himself/herself to renew his/her license on a timely basis. It is apparent that many licensees have believed that they had no responsiblity to renew their license unless they received a written reminder and renewal notice from the office. However, because the licensee frequently failed to notify the office of changes in name or address, very often no renewal notice was received. The intent of this rule is to make it clearly the licensee's own responsibility as a professional individual to assure that his/her license is renewed upon-or prior to-its expiration.

Subdivision B is intended to insure that the licensee has current knowledge and skills before his/her license will be renewed. In the past an individual wishing to renew his/her license had only to pay the license fee and a new license would be issued. Information given to the office from several sources suggests that there may be as many as 8,000 to 10,000 licensees who are not in fact currently practicing cosmetology and who may not have practiced for a number of years, but who continue to renew their license. Technically these individuals would be able to resume practice and the provision of even the most complex chemical procedures without any additional training whatsoever. The intent of this rule is to assure that the individual who is being issued a renewal license has in fact kept up his/her skills or has taken a refresher course to bring those skills up to date.

During the rule-making process numerous comments were received from individuals and organizations to the effect that the office should require some form of continuing education as a condition of license renewal. This rule in effect recognizes on-going practice as a form of continuing education, and requires that if the on-going practice has not occurred, then indeed an educational course of 40 hours must be completed. This proposed rule does not include a mandatory continuing education provision for all cosmetologists, manicurists and estheticians for a number of reasons.

The primary reason is that, in the view of the office, mandatory continuing education has a questionable cost/benefit ratio for the profession as a whole. Proponents of mandatory continuing education say that it is necessary to impose the formal educational requirement on all licensees in order to insure that a minority, who do not keep current on their own, will be forced to do so. In the view of the office, the financial, time, and effort burden which this mandate places on all members of the profession in order to achieve the questionable result of effecting positively the practice of a few is not warranted. In fact, at the present time there do not exist

sufficient schools or courses to conceivably meet the requirements of continuing education for some 28,000 licensees. In reality, the single greatest impact on the profession might be realized in the pockets of those entrepeneurs who jumped into the business of providing continuing education courses. The captive market would be a ripe field for guaranteed profits.

Another real problem with the many supportive comments made regarding continuing education lies in the fact that there was no consistent definition or expectation as to what the parameters of the continuing education should be. Over 650 individuals signed a petition saying they supported continuing education, but the petition itself gave no indication as to what type of requirements there should be. Conversation with supporters of continuing education suggests that many of them believe attendance at trade conventions, product manufacturer trade shows, association meetings, workshops put on by recognized stylists, and, other similar events should qualify for continuing education credits.

In the view of the office, in order for the state to mandate a continuing education requirement, far more stringent requirements would have to be met. Any required course mandated by the state would have to relate directly to the health and safety of consumers or practitioners and would have to have a clear standard for successful completion. Any such course would in fact have to meet the basic criteria required for the refresher course as spelled out at 4 MCAR Section 10.133 Subdivision E, in the School Curriculum rule.

Another problem with continuing education as a mandatory requirement is that attendance itself does not guarantee learning, and even learning does not guarantee implementation of the material or practices learned.

Real Estate and Securities Commissioner Mary Alice Brophy has become so disenchanted with the continuing education requirement for real estate brokers and salespeople that she herself has proposed abolition of the requirement.

Another reality factor is that the Office of Consumer Services does not have the administrative staff which would be necessary to manage the controls and to evaluate and monitor a mandatory program on the scale necessary to accommodate 28,000 licensees.

In his book, **Occupational Licensing: A Public Prospective,** Benjamin Shimberg, who has been called the "guru of occupational licensing" cites many of the problems he has observed with obligatory continuing education programs:

> "Proponents of mandatory continuing education often pressed for the requirement without at the same time seeking the funds needed to implement sound programs. . . perhaps they really thought that the work involved in managing continuing education could be absorbed by existing board staffs without additional funding, or they may have deliberately neglected to point out the administrative costs that mandatory continuing education would entail, because to have done so might have made it harder to get their programs adopted . . . One often finds that those responsible for implementing mandatory continuing education requirements are often lacking in personnel and resources sufficient to do the job. . . While one can be reasonably sure that the requisite number of hours of instruction were provided and that the individual in question was physically present, there is no way of being sure that learning actually occurred. . . There is no way of knowing what efforts, if any, the provider made to evaluate the given course or program. . . The record of anyone who participated-or was physically present-would show the same number of CEU's (continuing education units)...Another weakness of mandatory continuing education is the lack of evidence that continuing education is necessarily related to competence."

While continuing education is not mandated for the practicing cosmetologist, manicurist or esthetician, Subsection 2 does require it for the instructor. The reason for this is that the basic 48 hour-instruction required to obtain an intial instructor's license can not possibly constitute a full program in how to be an effective educator. The intent of the continuing education mandate for instructors is to ensure that they increase their skills as conveyors of educational material and that they keep current with recent developments in chemical products which will be used by the students whom they are instructing. The rule requires that the continuing education include both instruction in education techniques and instruction in the use or nature of professional clinical products. The core curriculum offered throughout the state for vocational education teachers could be used towards the requirement of teaching-related education, and it is very likely that manufacturers or cosmetology schools would be able to develop small up-date mini courses related to new types of chemical products and services. The number of instructors, approximately 300, is such that a continuing education requirement for this group is administratively feasible and can be monitored to assure quality control of the courses themselves.

Subsections 3 and 4 require that managers of both salons and schools pass a written examination prior to renewal of their license, covering applicable Minnesota laws and rules. This is deemed to be essential in view of the rapidity with which state law may change. It is also likely, because these rules as a whole are a completely new package,that there will be found to be some needs for revision in future years. An example of the need to assure currency of familiarity with applicable state laws may be found in the recent passage of the Vulnerable Adults Act (Minnesota Statutes Section 626.557). This act required that cosmetologists identify and report cases of suspected abuse of "vulnerable adults" to responsible authorities. The fact that this law had been passed and that this mandate had been placed upon them was not known to the vast majority of practicing cosmetologists and salon managers. As a matter of fact, about a

year later the law in this area was changed again. A separate area in which there are frequent revisions is that of minimum wage law and workers compensation, both of which the salon manager needs to be very familiar with. In addition, at the present time there is contemplation within the industry of working towards passage of a law related to the distribution of professional cosmetology products. All of these examples indicate why it is reasonable and necessary that managers, who are responsible for the compliance of their facility and the people working therein with applicable laws and rules, should be required to demonstrate current knowledge of existing laws and rules before they are granted a renewal license.

The requirement of Subdivision D that the licensee provide evidence from a physician that he/she is free from communicable diseases and parasites is a new one. In the past the only health certificate any applicant was required to provide was upon enrollment in a school of cosmetology. This appeared to be inconsistent with the statutory mandate to protect the health and safety both of practitioners and of the consumers they serve. For this reason, it is important that the office obtain a report from a qualified medical individual that the applicant is indeed in a healthy state.

Subdivision E, setting the postmark date as the effective date of a renewal request, is in keeping with traditional office policy. This simply encodes that policy into the actual rule, where it will be a clearly-known standard familiar to all affected parties.

Subdivision F is a new provision based upon extensive requests from members of the cosmetology profession and a recommendation from the MCAC. There are many individuals who have been licensed in the past and who continue to renew their license, but who are not actively practicing cosmetology. In some cases their continuing renewal is a matter of professional pride. In other cases, it is because current licensure is a requirement for maintenance of health insurance and life insurance

policies which the individual may have originally purchased many years earlier. This is particularly the case with individuals who have been members of the Minnesota chapter of the National Hairdressers and Cosmetology Association. The maintenance of insurance at reduced rates through the professional association is contingent upon current licensure, whether or not the individual is actively practicing in the profession. For this reason and on the basis of other requests, the office has proposed that an inactive license status be established. Those individuals who, at some time in the future, wish to reactivate their license would have to do so under the provisions of 4 MCAR 10.102 Subdivision E. All inactive licenses would be so identified conspicuously on their face. The inactive license would not authorize the individual licensee to engage in the provision of any cosmetology services whatsoever.

4 MCAR Section 10.106 Lapsed Practitioner License.

This rule deals with the situation of a licensee who has failed to renew his/her license prior to its expiration date in accordance with the provisions of the rule 4 MCAR 10.105. Subdivision A establishes a 30-day grace period during which the applicant may renew his/her license upon payment of the original license fee and an additional late penalty fee. The previous practice of the Board of Cosmetology Examiners was to give individuals a 90-day grace period. The view of the office, of the Advisory Council, and of the industry Cosmetology Council is that 90 days is an excessively long period of time. License renewal notices are sent out approximately 6 weeks prior to expiration date of the license. A thirty-day grace period would thereby give the individual approximately 2 and 1/2 months in which to renew his license. This should provide ample time to deal with any unusual situation which might arise. If more than 30 days had elapsed since expiration of the license, the individual would no longer be able to practice cosmetology, as he/she would not have a valid license. In this instance the

individual would have to apply for a new license in accordance with the application procedures of 4 MCAR 10.102. The office does not believe that a responsible professional person would be unable to comply with renewal procedures before expiration of the 30-day grace period.

Subdivision B recognizes that an individual may choose not to renew his/her license because he/she does not anticipate actively practicing cosmetology. Should that anticipation be incorrect and the individual wish to resume the practice of cosmetology within 3 years, he/she may do so upon payment of the license fee and processing fee. The processing fee is necessary to cover the administrative cost of verifying the statement which the individual would be asked to submit attesting to the fact that he/she has not practiced cosmetology during the intervening period since the expiration date of the license. An individual in this category would have to meet the experience or refresher course requirements generally applicable for any renewal. If more than 3 years have elapsed, the applicant would be put into the same category as an individual wishing to reactivate an inactive license, and would have to meet the reactivation provisions of 4 MCAR 10.102 Subdivision E.

Subdivision C is a new rule requiring that the manager of a salon or school in which a licensee has continued to pactice past the expiration date of his/her license must pay a penalty of $25 for each individual in violation. The basis of this penalty is the fact that it is specifically the managers responsibility to assure that licensees in the facility are in full compliance with Minnesota statutes and rules. It is therefore the manager's responsibility to assure that all individuals practicing in the salon or school do renew their license in a timely fashion. Possession of a current license is probably the single most basic requirement for compliance with Minnesota statute and rules in the cosmetology area.

4 MCAR 10.107 Retail Sales.

This rule deals with the common practice, primarily in department stores, of personnel employed in the sales force of the store demonstrating to potential purchasers the use and application of retail cosmetic products. It has been the long-standing position of the state that his practice constitutes the practice of cosmetology and that the sales personnel should be licensed. Efforts at enforcement of this position have been sporatic and minimal in recent years. On the other hand, the retail community has taken the position that because its employees are paid a salary or commission for the sale of products, to which the demonstration of their use and application is incidental, and because the consumer does not pay directly for the application, the cosmetology statutes do not apply. In an effort to resolve these two conflicting position, the office staff, the members of the Minnesota Cosmetology Advisory Council, and representatives of the retail community held several meetings to arrive at a compromise rule which would be satisfactory to all parties. The proposed rule achieves this balance.

The rule allows retail personnel to demonstrate the application of a narrow range of products primarily used for color enhancement of the individual purchaser, as opposed to skin care products, which it would prohibit. The rule provides that before any clerical personnel can demonstrate the application of these color products, he/she must receive at least 16 hours of training regarding safety, application, and sanitation procedures to be used in such demonstrations. The store is required to maintain documentation of this training. The rule also spells out specific sanitation procedures which are to be followed. These procedures are similar to the kinds of procedures which would be followed in a cosmetology salon for the application of make-up. There is a significant distinguishing feature, however, and that is that the retail personnel may not have any direct skin contact with the purchaser. Should direct application to a

living person be contemplated, it would have to be to a model who is also employed as a part of the sales process, rather than to the customer.

The intent of this rule is to recognize a practice which is a long-standing one in the retail community, particularly in the sale of better-quality cosmetics. The consumers who are prospective purchasers for these products often request assistance from the sales personnel in their proper use and application. To prohibit entirely any efforts by the retail personnel to comply with this request would be a disservice to the consumer. The intent of this rule is to structure the conditions under which such demonstrations may be made so as to assure that the safety of the consumer will be maintained.

4 MCAR 10.108 Examination Adminstration.

This rule addresses the situations under which license examinations will be conducted. As noted in a previous section, the examinations to be adminstered will primarily be of a written nature. It is anticipated that the cosmetology schools will continue to provide examination space for a written exam. Examination dates and locations would be established to minimize, to the greatest extent possible, the necessity for applicants to travel great distances in order to sit for the written examination. It is anticipated that an exam schedule could be made up approximately 6 months in advance, so that schools would have adequate time to make whatever adjustments might be necessary in order to provide the requisite amount of space.

The only situation in which a school would be required to relinquish its clinic floor space for the conduct of examinations would be in the case of the senior instructor examination. These are held only approximately four times a year. The office has

reason to believe that it will be possible to obtain clinic exam space for the instructor examinations on a volunteer basis from the schools.

As has been the practice in the past, the rule makes it the responsibility of the examinee to provide his/her own model for the practical examination for instructors. The models must be at least 16 years of age and they may not be a licensed cosmetologist or cosmetology student. The reason for this, obviously, is to prevent any possibility of coaching on the part of the model. The purpose of the waiver to be signed by the models is to relieve the host school, which has volunteered its facility, from liability in the event of a mishap at the examination.

Subdivision D establishes for the first time a limit on the number of times which an individual applicant may retake the examination in a period of 12 months, and it also limits the validity of any score on a portion of the exam to a 12 month period. As an example of the need for this kind of limitation, at the present time there is a license applicant who has retaken the written exam 10 times. It is not infrequent that an individual may wish to take it three or four times before being able to pass it. There is an individual who passed the state laws section of the test in 1978 and who has still not passed the balance of the written portion. Under present rules, without the proposed change to a limit, the office has no authority to invalidate the four-year-old state laws exam, even though it is no longer current or at all representative of the present situation. A limit to the number of times which an examinee can retake the exam during the course of a year will also eliminate the problem of not having enough space at the exam for current graduates because of people wishing to sit for retakes. It is also intended that in some circumstances the limit will act as an incentive for genuinely unqualified applicants to obtain additional training rather than to simply continue retaking the exam in the hopes that they will eventually pass it.

An additional reason for saying that no passing score shall be valid for more than 12 months is that until a licensee has successfully completed all portions of the exam process, he/she will not be able to practice. Inasmuch as this individual is unlicensed and has never practice outside of the school setting, there becomes a point at which the applicant must either brush-up his skills or actually become licensed and practice on an ongoing professional basis.

Subdivision E, requiring that exams be administered and conducted in English and that the examinee not have an interpreter, is a new rule specifically designed to counter a policy established by the previous Board of Cosmetology Examiners. The rule of the old Board was that if a licensee could not in fact speak English or read English, he/she could have an interpreter at the exam. That exam score was then considered a valid basis for licensing. It is the position of the office that this practice is clearly contrary to the policy and intent of the legislation in Chapter 155A, which is to protect the health, sanitation, and general welfare of the consumer, and, indeed, of the practitioner himself/herself. Practitioners in the field of cosmetology deal on a daily basis with highly complex chemical products. Not only must a licensee be able to read and comprehend clearly the instructions for use of a product, but must be able to understand and comprehend the contra-indications for use of that product as well as the precautions and steps which should be taken in the event that the consumer is not able to tolerate the product. This requirement is clearly inconsistent with granting a license to an individual who cannot read English.

It is also true that there are so many different kinds of products which a cosmetologist might use that familiarity with a particular brand, for example, of permanent or hair relaxer, does not mean that the same rote memorized procedures would be applicable to a different brand or type of permanent or hair relaxer. Nor can it be assumed that the non-English speaking individual would always have the instructions read to him/her by a co-worker in the salon. Even if he/she were to have them read

it would have to done on a step-by-step basis, as it is not likely that a complex sequence of events could be read once with any certainty that the listener would be able to follow the procedure correctly. It is the firm position of the office that the applicant must be able to read and comprehend product materials himself/herself.

The office has discussed with a distributor of cosmetology products the availability of chemical products with instructions in any language other than English. The office has been informed that in the Minnesota area the availability of such products is zero. Even if it were possible that products might be available in a specific foreign language, certainly they would not be available in all of the languages which a potential licensee might speak or read.

Apart from these considerations, the office has a difficult time understanding how it could be possible for an examination applicant who could not read and understand English sufficiently to take the written exam in English, to successfully complete a cosmetology education. That education is supposed to include theoretical knowledge gleaned from reading in the subjects of chemistry, physiology, physics and related fields. It is difficult to conceive that any student could successfully have mastered the information contained in a cosmetology curriculum without having a sufficient grasp of the English language to pass the examination in that language.

4 MCAR 1Ø.1Ø9 Reinstatement After Denial, Suspension, Revocation of License.

The intent of this section is to provide a means by which an individual who has been denied a license or whose license has been suspended or revoked as a result of a disciplinary action may be reinstated to lawful practice of cosmetology. The intent is that the individual document, to the extent possible, that

whatever the grounds were for denial, suspension or revocation, they have been eliminated or corrected so that the applicant is currently qualified. In addition to that, the applicant would then have to meet the requirements of any other licensee, including, in the event that his/her license had expired during the disciplinary period, the requirements for license renewal, or, in some cases, for a new license.

4 MCAR 10.110 General Salon Requirements.

Subdivision A, B and C generally reiterate the statutory mandate that the practice of cosmetology is to be performed by licensed individuals in licensed facilities. Subsection D states that the license for a salon will terminate upon a change in ownership or location. This is because a license is granted to a specific individual or individuals for a facility at a specific location, which has met certain physical requirements. Should either of these factors change, the terms upon which the original license was conditioned are no longer in effect and it is therefore necessary for a new license to be issued. Subdivision E requires that the office be notified within 30 days of a change of name for the salon. This would not require an entire new license, but reissuance of the license in the new name. The processing fee is required in order to absorb the administrative costs of changing all of the records related to the salon.

4 MCAR 10.111 Requirements for Salon Licensure.

Subdivision A enumerates all of the specific rules which will apply before a salon can be issued a license. It provides for issuance of a provisional license until such time as one of the state shop inspectors is able to complete an on-site inspection. Under the previous Board rules, a salon was required to wait six weeks before it could open for business. During

these six weeks, one of the shop inspectors would conduct an inspection. In the event that an inspection was not completed within six weeks, the shop was able to open for business anyway. The previous Board of Cosmetology had seven salon inspectors. As part of a staff reduction pursuant to the legislation transferring authority from the old Board to the Office of Consumer Services, three shop inspector positions were eliminated. As a practical matter, it is impossible for the office to inspect new salons within a six-week period. However, the application materials which the salon is required to submit include a detailed floor plan and listing of all required furniture and equipment. It is, therefore, possible to do a paper "inspection" to assure that all of these physical requirements have been met, almost as efficiently as could be done by an on-sight inspection prior to the salon's opening for operation. It is the position of the office, therefore, that the granting of a provisional license will not in any way reduce the standards which must be met before the salon can open for business. At the point at which office staff is able to in fact make an on-sight inspection, it will be more valuable and useful in that the inspector will be able to assess operational and procedural matters as well as the physical factors which would be the only ones possible to check prior to actual operation. Issuance of a provisional license makes more efficient use of limited manpower and enables the remaining shop inspectors to plot their inspection routes on a logical continuous route, rather than having to move from one part of the state to another and to backtrack just to cover a new salon.

Subdivision B enumerates the items of information to be included in the written salon application. This document becomes the basis of the permanent salon record and provides documentation that the salon has all of the requirements and credentials necessary for issuance of a provisional license and for on-going operation. Items 1, 2, 3, 4 and 6 are consistent with requirements previously in effect.

Item 5 requires that the name of the licensed manager who will be employed to manage the salon be included in application materials. It should be noted that no salon license will be granted unless there is a licensed manager who has been employed. At the present time, there are numerous instances in which an individual who is not licensed will apply for a salon license and say that once the salon has a license, space will be rented to licensed individuals who hold a manager-operator license. The argument is thus made that it is not necessary to have a salon manager per se prior to the issuance of the salon license. It is the position of the office that this does not provide for the role which is intended in the requirement that there be a licensed manager for the salon. There must be an individual who is responsbile specifically for the physical condition of the salon, for the maintenance of proper supplies and inventory and for the compliance of all persons working in the salon with the state rules and statutes. The fact that a pool of people who may be licensed as managers rent space in a salon is not the same thing as having a specified individual who is responsible for all of the activity and for the physical facility of the salon itself.

Subidivision C sets the limit of the liability insurance which is required by Minnesota Statute Chapter 155A.Ø8 (2)(d). The dollar limit established was arrived at after consultation with a number of insurance companies. It represents the basic minimum coverage which is generally available for professional liability insurance coverage of a cosmetology salon.

Subdivision D requiring evidence of compliance with Minnesota Statute 176.182 is pursuant to the mandate of that statute.

Subdivision E requires the payment of a license and processing fee for administrative review of the license application.

4 MCAR 10.112 Applicability of Requirements for Salon License.

The intent of this brief rule is to identify those rules which do not apply to manicure salons. The vast majority of salon rules would be applicable either to a cosmetology or to a manicure salon. However, there are some requirements which relate specifically to hairdressing or to esthetician services and the purpose of this rule is to identify those sections and to exempt manicure salons from their coverage.

4 MCAR 10.113 Physical Requirements.

The intent of this rule as a whole is to insure that each salon has adequate size, facilities and cleanliness within which to safely and professionally conduct the performance of cosmetology services in a manner which will maintain the safety and health both of the practitioner and of his/her customers.

Subdivision A relates to the minimum space requirement for a salon. The old Board rules had a minimum square footage of 120 feet per residential salon. They did not, however, have any provision which related to non-residential salons. This has been the source of some confusion in the past and of inequitable demands placed upon the residential vis-a-vis the commercial salons. The mandated square footage is reduced for each additional licensee, on the assumption that an additional person will not necessarily require additional spacetaking appliances such as floor hair dryers or shampoo bowls. The specific square footage recommendations were arrived at by the Minnesota Cosmetology Advisory Council and they have been reviewed by the industry Cosmetology Council as well.

The provision that the supply area not be accessible to the public is based upon the fact that that area will frequently contain chemical products which might be injurious to a consumer not knowledgable in their appropriate use and handling.

Subdivisions B,C and D are all intended to assure that the salon will be safe and that it will be maintained in a clean and sanitary condition.

The requirement of Subdivision E that there be at least one electrical outlet in each work station is intended to eliminate the necessity of running extension cords across the salon work area. This is the current situation in a number of salons and presents an obvious safety hazard as customers and practitioners traverse the work area. It also significantly increases the likelihood of a fire hazard due to overloading the circuitry. The requirement of one electrical outlet is minimal, inasmuch as the modern practice of cosmetology seems to very often involve a number of different electrical appliances at each work station.

Subdivision F is intended to assure that plumbing is properly installed and does not involve such things as garden hoses used for drain pipe, as was found in a recent shop inspection. Subsection 3 in the plumbing section specifically requires that the toilet facilities of the salon not be used for any other purpose. Shop inspectors have frequently found that toilet facilities are used for the storage of professional products, including, in many instances, chemical products. A professional salon should have adequate storage and work space outside of the toilet facility.

Subdivision G states that window ventilation will not be acceptable as a means of meeting the requirements of the state building code for adequate ventilation. It seems obvious that in Minnesota winters it is highly unlikely that a window will be open in order to assure adequate ventilation.

The provisions of this rule set out minimum equipment standards and ratios for the professional cosmetology salon. The recommended standards are based upon the recommendations of the Minnesota Cosmetology Council, the industry Advisory Council and individual salon owners who were asked to comment on particular segments. The intent of the rule is to ensure that there will be adequate equipment to carry out the work of the salon in a professional, sanitary and safe manner. Most of the items included in this rule are consistant with the old rules promulgated under the Board of Cosmetology Examiners.

Subdivision D requiring that the wet disinfector be non-porous is a new requirement. In the past, shop inspectors have found that plastic utensils or serving bowls were being used for chemical disinfection. Because these materials were porous, they became stained and possibly could hold germs or other undesirable matter embedded in their surface. Any disinfector used should be large enough and filled to a level sufficient to completely immerse items which are placed in it for disinfection.

Subdivision F has a new requirement in that it mandates a covered metal container to be used for soiled towels and linen. This is contrary of the current practice prevelant in many cosmetology salons, wherein used towels are thrown into an open container, or sometimes an open cloth bag in which they are held until collection by a linen service. The basis of this new requirement is a safety alert received by this office and other segments of the cosmetology profession from the insurance industry. Because of the nature of the chemicals used in cosmetology services, there is a possibility of spontaneous combustion of these towels if they are not properly stored in a covered metal container.

The same concern is the basis for the requirement that garbage and other refuse be kept in a closed metal container.

The requirements of Subdivision I, J, and K for readily accessible first aid kits, fire extinquisher and posting of emergency numbers are also new rules proposed at the suggestion of the Cosmetology Advisory Council, to increase the probability that emergency situations can be dealt with as expediently and effectively as possible.

4 MCAR 10.115 Supplies and Materials.

This brief rule incorporates two recommendations made to the office by the Minnesota Cosmetology Advisory Council. The prohibition of brush rollers is based on the fact that they are extremely difficult to clean adequately and to remove hair from. The requirement of two dozen clean towels per day per operator is based upon the estimate of the number of towels minimally necessary to assure that clean towels will be available as required in procedural section of the rules. The need to establish some base minimum is demonstrated by a recent shop inspection in which the salon being inspected had run out of clean towels before noon on the day of inspection.

4 MCAR 10.116 Operational Requirements for Salons.

Subdivision A deals with general operational requirements and imposes upon the manager of the salon and upon each individual operator the responsibility to assure compliance with the requirements of these rules. In general, these requirements are essentially unchanged from previous sanitation and safety requirements established in the past through the Board of Cosmetology Examiners. The goal of all the subsections in the "Operational Requirements" section is to assure the safe and sanitary provision of services to consumers and the protection of the cosmetologist himself/herself. In most cases the difference

from previous Board policy or rules is that there is greater specificity in the proposed rules, so that the licensee will have a clearer understanding of the expectations placed upon him/her. A second difference is that matters which previously were unwritten policy have now been made concrete, again for the purpose of providing the licensee with a clear standard against which to measure his/her own performance and compliance. These subsections will be addressed in summary fashion by number.

1. The requirement of an adequate supply of clean combs and brushes is not new, However, in order to give some definition to the term" adequate", a minimum standard of 12 combs and 12 brushes has been established.

2. Unchanged.

3. Current rule would suggest that all materials included in 3 should be cleaned and disinfected after each use. In point of fact, this is an unenforceable rule and a more reasonable enforceable standard would be once per week.

4. Unchanged. Perhaps more explicit.

5. Unchanged.

6. New Rule specifically requiring labeling of all contents. Previous practice was consistent with this.

7. Unchanged.

8. New Rule allowing for use of just one heavy-duty extension cord, when necessary for an appliance actually in use. The intent is that extension cords not be used on an ongoing basis, and that they be used only when necessary and under the condition that they not extend beyond the immediate work area of the practioner using the implement. The 6-foot limit on the length of the extension cord is intended to ensure that the cord will not extend beyond the area of the work station.

9. Unchanged.

1Ø. Basic policy is unchanged. Greater specificity is incorporated in the standard of the water temperature of at least 16Ø degrees Farenheit to insure proper laundering of linens and similar materials. The requirement that soiled towels be

contained in a covered metal receptacle is new, as previously discussed in relation to the potential for spontaneous combustion because of chemicals absorbed by the towels.

11. The disinfection procedures have been significantly enlarged upon in the proposed rules. Specific standards for disinfectant concentration have been established. The previous Board rules provided either for dry or wet sanitation. The primary vehicle for dry sanitation has traditionally been formeldahyde tablets. The Office of Consumer Services received comment from union representatives of cosmetologists and from the Minnesota Department of Health with regard to the danger of formaldehyde fumes, particularly for the practitioner exposed to them all day on a repetitive basis. The Health Department also advised the office that the tablets were not in fact an effective method of sanitization. For this reason, the office has advised all cosmetology salons to discontinue the use of formaldehyde tablets as a disinfection procedure.

The procedures outlined in Number 11 provide for wet disinfection and provide an option of three different disinfection solutions at the discretion of the salon. Salon inspectors will be supplied with test kits to ensure adequate strength of the solutions used. Metal implements and tools can be disinfected in either of two different alcohol based solutions. The procedures for storage of disinfected materials are unchanged.

12. Relates to proper handling of wigs and is a new element in these proposed rules. It is based upon a recommendation of the salon subcommittee of the Minnesota Cosmetology Advisory Council.

13. Is intended to assure that each licensee on duty has a specific area in which to perform his/her duties and in which to maintain his/her own supplies.

14. Unchanged.

15. Is consistent with previous Board policy related to safety and sanitation procedures to be used by the individual licensee.

16. Is intended to ensure that the licensee is himself/herself clean and sanitary during the performance of cosmetology services so as to reduce the possibilities of transmitting any communicable disease to the consumer upon whom services are being performed.

17. Acknowledges that a licensee may not be aware of the fact that he/she has some communicable condition or disease, but is intended to assure that he/she will not perform services if he/she is aware of any such condition.

18. Enlarges upon the past rule requiring that salon personnel post their licenses in the salon where they will be readily observable by the consumer. The proposed rule specifically states that the license is to be posted at approximately eye level either in the reception area, where all personnel might have their licenses displayed as a group, or individually in the work station. The rule provides that the individual licensee's street address may be obliterated, because of a concern expressed by some young women that they felt uncomfortable having their home address displayed to individuals who might wish to note it down. This appeared to be a reasonable request.

The photograph specified by the rule must be taken alone and must be current. Frequently present photographs appear to include pets, loved ones, and other miscellany, making it difficult to recognize the licensee himself/herself. The intent of the proposed rule is to assure that a clear, unobstructed, identifiable photograph will be attached to the license.

Even if personnel licenses themselves are grouped at the reception area, the individual licensee's name and the type of license which he/she holds must be made known, through posting, to the consumer at the work station.

In addition to current personnel licenses, the shop license itself and a copy of the salon's most recent inspection report must be posted at the reception area. The rationale for requiring a copy of the salon's most recent inspection report to be posted is largely one of enforcement. The expectation of the office is that knowledge that violations will be conspiciously posted where consumers will be able to observe them will provide an incentive

to the salon to maintain compliance with statute and these rules at all times. The salon would, of course, also, if it so desired, be allowed to post documentation that any unsatisfactory items in the inspection report had been corrected.

19. Is a new rule prohibiting the presence of animals and wild life in the salon with the exception of guide dogs. The reason for this is that such animals might be carriers of disease or infection and they might, in some situations, also present a safety hazard if wandering unchecked through the facility.

20. Is a new proposed rule intended to address a problem which occurs most frequently in residential salons, where the practitioner provides baby-sitting services in addition to cosmetology services. The intent of the rule is to assure that the licensee will give exclusive attention either to child care or to the provision of cosmetology services and will not attempt to do both at the same time. If the cosmetology practitioner or salon has a regular baby-sitting or child-care service, this service should take place outside the area of the salon proper. Any individual who is hired to attend to children should do so exclusively. It is the position of the office that the combination of small children and the types of chemical and electrical materials present in a cosmetology salon do not make a good combination, and that for the safety of the children and the good mangement of the salon they should be kept separate.

Subdivision B discusses the salon supervision which is the responsibility of the designated salon manager. It should be noted that there is not a requirement, as is presently the case under the old rules, that the manager be on duty at all times. He/she is, however, responsible at all times for what transpires in the licensed salon. When he/she is not physically present, it is possible that another individual be specified as the responsible party in his/her absence. The prohibition on a manager being responsible for more than one salon is based upon the premise that salon management is essentially a full-time position, even though the individual is not required to be present on the premises at all times. It is recognized that the

manager may have duties which will take him/her out of the salon, such as lease negotiations, banking, trips to the supply house, etc.

In addition to assuring compliance of the facility and individuals therein with the specific cosmetology statute and rules, it is also the responsibility of the manager to assure compliance with the minimum wage and workers compensation laws and to maintain the employee records necessary to document such compliance. It is also the manager's responsbility to assure that the equipment required by the rules is not only present but is operational and clean and that sufficient supplies are available at all times.

4 MCAR 10.117 Additional Requirements for Specific Types of Salon Licenses.

The salon rules previously addressed have general applicability. This rule is designed to address specific problems or situations which occur on a more limited basis. Subdivision A addresses the situation of a beauty salon operated in conjunction with a barber shop and is consistent with old rule relating to such operations. The beauty salon operation should be in a physcially separate area so that it can be assured that it is operated in compliance with the requirements for a beauty salon. The consumer should be aware of whether he/she is receiving services from the beauty salon or the barber shop portion of the facility.

Subdivision B relates to esthetician services and is consistent with the fact that Chapter 155A does not provide any basis upon which esthetician services can be provided outside of a licensed cosmetology salon.

Subdivision C prohibits mobile salons, for the reason that a salon license is granted to a specific facility in a specific location. If the salon moves from place to place, there is no way the office can assure that at its various locations it will be at all times in compliance with the requirements of these rules, particularly as they relate to plumbing facilities. In addition, it would be impossible to inspect a mobile salon on any regular basis if the office didn't know where it was because it had moved.

Subdivision D addresses licensed health care facilities. It is intended to deal with a situation that occurs most frequently in nursing homes, but also to some extent in hospitals. A current problem which arises is that a nursing home has, in the past, applied for and obtained a salon license for a salon on its premises. However, the nursing home does not hire, and has no intention of hiring, a manager to run that salon. The salon facilities are there and are used by licensed practitioners operating with a manager/operator's license or an operator's license. Because the nursing home facility is a licensed salon, no unlicensed individual such as volunteer workers or staff of the nursing home can use its facilities.

The proposed rule suggests that a better way to deal with the situation is for the licensed health care facility either to have a full-fledged licensed salon, in which case it would be required to have a full-time manager for that salon, or to operate without a formal salon and instead to depend for professional cosmetology services upon licensed individuals operating with a certificate of identification. Because of the unique situation of health care facilities, the rule as proposed does allow volunteers or employees of the facility to wash, set or trim residents' hair. However, such unlicensed personnel would not, under the proposed rules, be allowed to perform any type of chemical services. The facility would be required to bring in a licensed cosmetologist with a certificate of identification to perform any chemical service or other service beyond the basics involved with a wash, set, or trim. It is the position of this

office that the proposed rule is a rational way of meeting the needs of the health care facility and of providing a uniform application of these rules.

Subdivision E relates to salons in private residences. Such salons will continue to be allowed and new licenses will be granted for them, under the conditions cited herein. Essentially these conditions are the same as previously existed under the old rules. It appears, however, that in some instances the rules have been honored more in the breach than in the practice. This is particularly true with regard to the old rule requiring that the residential salon be separate from the living quarters. In many cases there has been only a rudimentary partition, certainly not one going from floor to ceiling. In order to accomplish the separation which the office believes is desirable between residential and professional facilities, a permanent solid partition is required in the proposed rule. There may, for purposes of conveniece and access, however, be a door in that partition. The other aspects of this subdivision are further designed to assure that the residential area will be separate from the professional salon area.

4 MCAR 1Ø. 118 Requirements for Booth License.

This rule applies to the increasingly prevelant situation in which a licensee who holds a manager license may wish to lease work space in another licensed salon, rather than to open his/her own separate salon. For reasons of economics, this appears to be an increasingly popular option in cosmetology in Minnesota. The practice has, however, raised certain recurrent questions in the Cosmetology Unit. Because the individual is essentially operating his own area within another salon, he/she is required to be a manager in order to obtain a booth license. However, the licensed salon from which the space is rented must also have a licensed manager on duty before renting that space. It is the position of the office that there must be a licensed salon

manager in the salon prior to the execution of any arrangements for leased space. This is to assure that there will be a licensed manager responsible for the entire physical facility and for the compliance of that facility and any licensees operating therein.

The proposed rule requires that the lease arrangement between the parties address specifically questions such as record keeping, number of hours to be worked, maintenance responsibilities of the booth licensee vis-a-vis the common areas of the salon, use of salon equipment, purchase of supplies, professional liability insurance, and other agreements which may be reached between the parties. The intent is to provide a clear agreement between the parties so that disputes will not arise over these issues at some point down the road after the lease arrangement has been going on for some time. It will be to the benefit of both parties to have clear expectations and assignment of responsibility and liabilities. The office is not so concerned about the precise nature of the agreement reached, but rather that the agreement itself be made and that the two parties share mutual understandings and expectations.

4 MCAR 1Ø. 119 Requirements for Maintaining a Salon or Booth License.

This rule summarizes ongoing maintenance responsibilities which are not new. The only new requirement is a specific one that the manager advise the office of any change of the name of the salon, in writing, within 3Ø days of such a change. This is so that the office will be able to inform the inspector whose job it is to inspect that salon and also to have accurate records in the office with regard to licensees. It will also facilitate mailing of renewal notices.

4 MCAR 10.120 Salon License Renewal.

This rule spells out the procedures to be followed in requirements for renewal of a salon license. As is the case with individual licenses, it places responsibility for renewal upon the licensee, regardless of whether or not a renewal notice is received from the Office of Consumer Services. It is the position of the office that a professional facility, managed by a professional licensee, should be responsible for assuring that its license is current at all times.

The licensee must also maintain proper insurance coverage and must comply with other applicable statutes such as workers compensation.

At the time of any renewal the name and license number of the salon manager must be provided, so that the office can be assured that there is indeed a licensed manager responsible for the salon.

4 MCAR 10.121 Delinquent Salon Licenses.

This rule provides a 30-day grace period within which the salon license may be renewed upon payment of a late penalty. Should the salon license not be renewed within 30 days, the facility will be considered to be operating without a valid license. In this instance a salon will have to apply for a new salon license and may not provide cosmetology services until a provisional license has been issued. It is the position of the office that there is no valid reason why a professional facility, with a licensed manager whose clear responsibility it is to assure compliance with these rules, cannot properly renew its license within the 30-day grace period. Until such time as the salon is able to fully comply with these rules, it should not be providing services to the public.

4 MCAR 10.122 Unlicensed Services.

The intent of this rule is to assure that the consumer of cosmetology services and the student attending a cosmetology school will be fully informed as to whether a given service which they may be offered or taught is indeed a part of the licensed practice of cosmetology. There has been some concern, particularly around the addition to the cosmetology statute of the esthetician license,(Minnesota Statutes Section 155A.07 (1)), that somehow the field of cosmetology has been expanded to cover such hitherto excluded services as massage parlors, tanning booths, body wraps, ear piercing, and related services of that nature. Additional confusion in this area has been generated by the fact that a number of licensed cosmetology salons have in fact begun to offer some of these ancillary services.

In view of this concern, the office communicated with Representative Arlene Lehto, chief House author of Minnesota Statute Chapter 155A. In a letter signed by herself and four other House authors, Representative Lehto replied that: "It was not the intent of this legislation to include anything new in the esthetician's practice that is not now being done by a licensed cosmetologist as part of the practice of cosmetology. Since the legislation provided for the transfer of all rules and regulations to the department in an on-going manner, it was understood that there would be no expansion of any license authority to practice beyond the limits that are currently part of the rules and regulations." (letter dated March 8, 1982).

Subdivision A relates to disclosure that services are unlicensed at the point where they would be offered within a salon or school clinic. It requires that they be identified as unlicensed services and listed on a sign visible to the consumer. The reason for this requirement, and the problem it is intended to avoid, is the situation where a consumer would go to a

cosmetology salon and would make an assumption, because the salon is licensed by the state of Minnesota, that all of the activities taking place therein were also licensed activities. The same concern would apply to the clinic portion of a school, where the consumer would be able to obtain services. The intent of this provision is to assure that the consumer is adequately informed as to the fact that certain services which may be offered within a licensed facility are not themselves licensed services, and, therefore, that the state has not in any manner endorsed the practitioners' qualifications or skill level in performance of those services. It is felt that this is a necesssary disclosure because of the fact that the majority of consumers are aware that salons and schools are licensed by the state, and, indeed, the state license is required to be posted in the reception area of the salon or school clinic.

Subdivision D relates to identification of courses covering unlicensed services in the cosmetology school setting. Because there are a number of these services which are tangentially related to the traditional practice of cosmetology, a number of the cosmetology schools have begun instructing their students in the proper techniques for performance of the services. However, because those services are not part of the licensed practice of cosmetology, the hours which a student spends in learning or practicing those services will not count toward the minimum number of hours of training which the student is required to obtain. It is therefore important to the student that he/she be aware of which courses, offered by the school, do not relate specifically to the license which he/she is there to obtain. Because the minimum number of hours required for the different license types has been based upon a careful assessment of the necessary time to cover those services on a theoretical and practical experiential basis, it is not possible to fit courses relating to unlicensed services into the minimum number of hours of schooling required without slighting mandatory services which in fact are licensed activities in which the student is required to acquire competency.

4 MCAR 1Ø.123 Advertising

The advertising rule was developed because advertising in fact can play an important role both in the recruitment of students to a particular school of cosmetology and in the solicitation of customers for cosmetology salons and for the clinic portion of cosmetology schools. It was therefore deemed desirable to assure that any advertising pursuant to these goals be clear, straight-forward, and not misleading with regard to its content and nature.

Subdivision A requires that all advertising comply with the general Consumer Fraud Statutes for the state of Minnesota (Minnesota Statutes Section 325F.68-.7Ø), which prohibit advertising which is false, deceptive, or misleading. It also refers to related rules which have been developed by the Office of Consumer Services and which deal specifically with the advertising areas of availability of advertised merchandise or services, use of the word "free" in advertising, and price-comparison advertising. The purpose of this section is to assure that advertising is in fact non-deceptive in nature and to promote consumer protection. A deceptive ad of the type intended to be prohibited stated that students of a particular school had won "First Place in National Competition". The clear inference was that the student had won a nationwide conpetition. In fact, the student had won a Minnesota contest sponsored by National Beauty Supply.

Subdivision B prohibits the statement or implication that the Office of Consumer Services looks favorably upon any particular advertiser beyond the fact that it has granted a license to the advertiser. An example of the type of advertising which this rule is intended to address is an advertisement run by a particular cosmetology school which states that the Office of Consumer Services has selected that school as an examination site. This statement is both misleading and a false implication

of special recognition by the Office of Consumer Services, inasmuch as virtually every cosmetology school in the state has been used as an examination site at one time or another. The selection of schools as exam sites is based primarily upon their location and capacity, not on any other particularly favorable qualities.

Subdivision C requires that if a salon or school chooses to advertise that it is licensed by the state of Minnesota, it shall also indicate what type of license is held and the license number. This is intended to give the reader of the advertisement some clearer understanding of the nature of the qualifications of the advertiser.

Subdivision D prohibits reference to an unlicensed service in any advertisement which makes a point of stating that the facility is licensed by the state of Minnesota. An example of the kind of advertising this is intended to prohibit is an advertisement recently run by a cosmetology salon in Minneapolis, which advertises prominently a hair restoration service. To the unwary reader it would appear that hair restoration is a service which this salon has been licensed to perform. That is not the case.

Subdivision E requires that school advertisements for their clinical services to the public should state clearly and in bold-face type that all services will be performed by students. The intent of this provision to make it clear to the reader that any reduction in prices is because of the fact that unlicensed students will be providing the services. The requirement that this disclosure be made in bold-faced type of the most-used type size in the ad is intended to assure that it will be conspicuous to the reader. The disclosure of student work is also specifically mandated by Chapter 155A.

Subdivision F is intended to prevent misleading advertising as to the type of income which a student might earn while attending a cosmetology school. An example of the type of

advertisement intended to be prohibited by the rule is one run by a cosmetology school which states:"Earn while you learn". The inference might reasonably be made that the student would earn some kind of remuneration for the provision of cosmetology services while a student. In fact, because the student is unlicensed, the student cannot receive remuneration for cosmetology services. The earnings in fact available to students at the school in question were for the provision of janitorial services.

4 MCAR 1Ø.124 Inspections

The intent of this rule is to codify the procedures which the Office of Consumer Services has developed for salon and school inspections over the course of the last year and a half. Inspections will be made by employees of the office. Advance notice of inspection shall not be given. The purpose of this prohibition is that the goal of an inspection is to observe the facility in its everyday working procedures and condition. To provide advance warning of an inspection would obviate this possibility.

Subdivision B relates to the system which will be used in grading the salon and/or school at the time of inspection. It was the previous practice under the Board of Cosmetology Examiners to give the facility a letter grade for each of a number of specified items which were checked during the inspection. The inspector also gave the facility an over-all letter grade reflective of the summation or general character of the items checked during the inspection. This procedure is changed in the proposed rule in several regards.

First of all, individual items to be inspected will be given one of two scores'. An " S" indicative of compliance and a " U" indicative of noncompliance with statutes or rules. This will

reduce, it is hoped, the opportunity for arbitrary judgment which was involved in the assignment of a letter grade of A, B, C, D, or F. As indicated in the discussion of general themes throughout the rules, every effort has been made in these rules to provide clear standards so that both the inspector and the licensee himself/herself will have a clear understanding of the nature of the assessment to be made and the requirement with which a particular item is or is not in compliance.

The inspectors will no longer give an overall grade to the facility. The problem with an overall grade is that very few facilities are, in fact, satisfactory on every single item to be checked. It then becomes an extremely arbitrary matter to decide how many "U" grades would justify an overall "U" grade for the salon. There would also be a problem in determining whether certain items to be graded should be given greater weight than other items. The intent of the inspection is to give this office and the licensee a clear understanding of how well the licensee is doing in meeting the varied requirements of statutes and rules. What the licensee and the office needs to know is that there is compliance or non-compliance with specific individual items. An overall grade is not particularly useful either to the office or to the individual licensee in acheiving this goal. A single overall grade might also be misleading.

The rule further provides that the licensee will be given 10 days in which to correct items graded "U" for non-compliance with a particular statutory provision or rule. The licensee is to notify the office of the nature of the correction which has been made within the 10-day period. To the extent possible, the licensee should document the correction with purchase orders, repair orders, cancelled checks, copies of letters, etc.; any material which might be useful in establishing that the problem noted has been corrected.

Should the licensee fail to correct an area of non-compliance, the Office of Consumer Services will evaluate the problem and notify the licensee if there is a reasonable basis

upon which to begin proceedings for suspension or revocation of license. In the case of persistant non-compliance, the licensed facility itself, the manager, or the individual licensee in whose area of responsibility the problem lies, might be the subject of disciplinary action.

The requirements of Subdivision C are intended to enhance the liklihood that the salon inspector will find the salon open for business when he/she appears to conduct an inspection. It is frequently a problem with rural residential salons that they are open by appointment only, perhaps to a few hours per week. Even though licensees may be at home, there have been occasions when they have refused to answer the door to allow for an inspection. Sometimes the shop inspectors have reported that clearly there was someone present in the home, but that they refused to answer the door. The intent of this rule is that the salon owner must designate a specific half day at least, on a monthly basis, when he/she will be available for a salon inspection. The rule does not require necessarily that a salon inspection would in fact be conducted on that designated half day of the month, but at least it could be guaranteed that there would be someone there at the specified time. There would be some remaining element of surprise, if the inspection were conducted during the specified period, as the licensee would not have any way of predicting during which month the inspection would be made.

Another problem which frequently occurs for the shop inspectors is difficulty in locating residential rural salons. The intent of requiring a detailed map is to provide clear direction for the inspector in locating the salating the salision D relates to the statutory provision of Minnesota Statutes Chapter 155A.Ø8 and .Ø9 that salons and schools be inspected annually.

Subdivision 7 gives the Director specific authority to assess the cost of inspection to schools. The office is proposing in the rule that the basic license fee include the cost of one inspection per year, but any reinspections necessary to

confirm that unsatisfactory items have been corrected should be assessed to the school.

Subdivision E provides that, at the conclusion of an inspection, the inspector is to discuss with the salon or school owner/manager, or a responsible person designated by the manager, the results of the inspection. In addition, a written report shall either be given at the time of the concluding discussion or sent to the manager of the facility. This is to provide the facility with a clear record of the inspection results and to provide management of the facility with an opportunity to ask any questions they may have with regard to the desired procedures they might undertake in order to correct any items of non-compliance.

4 MCAR 1Ø.125 General Requirements for Schools

This rule is a broad one which encompasses and makes somewhat more specific several provisions of Minnesota Statute Chapter 155A.

Subdivisions A and B relate to Chapter 155A.Ø9 Subdivision 1, which requires that any person establishing or conducting a cosmetology school in Minnesota must be licensed.

Subdivision C relates to 155A.Ø9 Subdivision 3F.

Subdivision D states that change of ownership or location will cause termination of a school license. The reason for this is that a license is issued to specific individuals for a school located at a particular location where it is known that all of the physical space and equipment standards of the rules have been met.

Subdivision E requires that the school owner or manager inform the office of any change of name of the school 3Ø days

before the effective date of the change. The office maintains records on each individual student enrolled in a school. It is important that those records accurately reflect the name of the school in which the student is being educated. It is also important that other office records related to the school be accurate and up-to-date at all times.

Subdivision F makes more specific the requirement for separation of school and professional departments which is found in Chapter 155A.09 Subdivision 9.

During discussions of the proposed rules at meetings of the Minnesota Cosmetology Advisory Council and with the industry Cosmetology Council, there was a considerable amount of discussion related to the fact that it is common practice for schools with related salons to pull practitioners, not licensed as instructors, in from the salon to work on the school clinic floor or in its classrooms. In addition, complaints have been received to the effect that school instructors are themselves performing salon services on clients in the school clinics. The thrust both of the statute and of these rules is to clearly prohibit such interchange activities.

Subdivision G prohibits use of school facilities for residential purposes. Such a practice would not be consistent with the educational nature of a school.

4 MCAR 10.126 Requirements for School Licensure

Subdivision A specifies those items of information which are to be contained in the school application. A number of these items are specifically required by Minnesota Statues Section 155A.09: 1, 7, 9, 10, 12, 16, 17. Notarized signatures of owners, controlling officers and managers are required because those individuals are themselves required to provide documentation that certain educational requirements for students

have been met. The office needs to have a notarized copy of their signatures on hand in order to verify the authenticity of statements regarding student progress.

The days of the week and the hours the school will be open, and the daily and weekly class schedule are requested so that the office can compare this information as necessary against student records of hours submitted to the office. In addition, this will facilitate evaluation of the school curricula and will give the office staff a clear expectation of what they might expect to find on the occasion of a school inspection.

Because there are local fire, zoning, health and building codes or corresponding state codes, it seems redundant to develop a separate set of requirements in these areas for the schools. Therefore the requirement is simply that the schools comply with those codes as they exist under the jurisdiction and authority of other agencies.

Because the school manager will be responsible for all activities in the school and for compliance of the school and its employees with Chapter 155A and these rules, the application should include the name and license number of the manager.

The school diagram is to be provided so that the office can readily evaluate the square footage which has been dedicated to the several mandatory space allocations and so that it can check that the required equipment has been obtained and properly located within the facility.

The detailed outline of the courses of training is necessary in order to be assured that the school curriculum will provide the required education to the students enrolled. One of the complaints which has been received about schools is that sometimes they lack a definitive course structure and lesson plan. It is the position of the office that a licensed educational facility should have a clear educational plan which it will follow to assure that complete coverage of required subjects

is given to students and that the requisite material is provided in an organized and a professional manner.

Copies of financial aid and refund policies, student rules, disciplinary policies and enrollment contracts are required so that the office can evaluate these documents from a consumer protection standpoint. A number of complaints have been received from students with regard to failure on the part of the school to provide them with clear information regarding some of these policies. In other cases students have filed complaints concerning what they regard as unfair provisions of the policies.

Subdivision B sets the professional liability insurance levels for school coverage, as required by Minnesota Statues Section 155A.Ø9 (5)(f). The level of insurance required was determined after consultation with members of the insurance industry.

Subdivision C requires evidence of workers compensation insurance, as mandated by Minnesota statutes.

Subdivision D requires that the applicant file a continuious corporate surety bond with the Office of Consumer Services. The basis for this requirement is the statutory mandate in Chapter 155A.Ø9, Subdivision 5(2), that the Director not issue a license without first determining that the applicant. . .

> "has a sound financial condition with sufficient resources available to meet the schools financial obligations; to refund all tuition and other charges, within a reasonable period of time, in the event of dissolution of the school or in the event of any justifiable claims for refund against the school; to provide adequate service to its students and prospective students; and for the proper use and support of the school to be maintained;".

The requirement of the rules that this assurance be guaranteed by a surety bond is consistent with the mandatory provision of such a bond for other private vocational trade

schools.(Minnesota Chapter 141.25 Subdivision 5 **Bond**). An example of the necessity for such a requirement is the situation within the past several months in which a private medical technology school went bankrupt, suddenly closed its doors and left its students with no recourse for refund of their tuition.

It is customary practice among the private cosmetology schools to require either the full tuition in advance or a substantial portion of it in advance. It is therefore the position of the office that there must be a guarantee, in the event of dissolution of the school, that the students will be able to obtain a refund for whatever portion of their training remains incomplete. By requiring that the bond be set at the level of the aggregate tuition of all students, it is anticipated that there would be sufficient funds for full student refunds plus some additional balance to meet the other financial obligations listed in the statutory requirement.

Subdivision E requires that the applicant pay the school license fee and the school application fee to cover the verification of information provided in the application.

4 MCAR 1Ø.127 Facilities Requirement for Licensure

This brief rule simply enumerates all of the rules the conditions of which apply and must be met prior to issuing of a school license. Listing the rules in this fashion provides the school license applicant with a checklist against which to evaluate his/her preparedness for licensure.

4 MCAR 1Ø.128 Physical Requirements

Subdivision A stipulates the minimum square footage per enrollee to be accommodated in the school. The standard of 25

square feet per enrollee to be accommmodated on the school premises at any one time in combined clinic and classroom size is consistent with past policy under the Board of Cosmetology Examiners.

This subdivision also requires that supplies and materials be stored in a space inaccessible to the public, as a matter of public protection inasmuch as many of those materials are caustic or chemical products which could present substantial danger to the public. The same is true of the dispensary area where chemical disinfection is apt to be taking place and where various supplies may also be stored.

The requirement of a student lounge is new in these rules. One of the complaints voiced by students in cosmetology schools is that they frequently have no space which is "their own" to which they can repair for privacy apart from the school staff. It is the position of the office that is a reasonable expectation of students that they be provided with an area of their own in which they can spend free time between classes, over lunch hours, etc. In addition, it is likewise reasonable to expect that the instructors themselves will have some separate staff facilities where they can rest and recuperate apart from the student population.

Subdivision B requires that there be at least 2 entrance/exit points consistent with code requirements. It also prohibits use of a window as an exit point. In view of the fact that schools may have a number of individuals on the premise at any one time, it is not reasonable to suppose that orderly exit through a window could be expected in the event of an emergency.

Subdivision C requires that classrooms be clearly lit and have at least 2 electrical outlets. This is consistent with the current practice in cosmetology of utilization of a number of electrical appliances. Because of the fact that a number of individuals may be in the classroom space, it would not be appropriate to allow the use of extension cords which might

present a safety hazard or tripping hazard in the classrooms.

Subdivision D requires toilet facilities which are separate for men and women and which meet essentially the same requirements as those for toilet facilities in salons. This is a continution of past Board policy and rule.

Subdivision E requires that the school meet a number of the physical specifications required for salons, and is an abbreviated method of avoiding unnecessary duplication in enumeration of requirements.

4 MCAR 10.129 Fixtures, Furniture and Equipment

The provisions of this rule spell out the minimum types and numbers of furniture and fixtures which a school should have in place prior to opening. The specific ratio of equipment to students was based upon recommendations of the chairman of the Minnesota Cosmetology Advisory Council, who is himself a school owner, deliberations within the council, and comments from other school owners and the industry Cosmetology Council.

Subdivision A requires that there be a complete work station for each student who is assigned to the clinic floor. This is so that each student will have all of the necessary equipment and adequate work space in which to properly learn professional services.

Subdivision B requires at least one hairdryer, clean and in good repair, for each 6 work stations. It should be noted that this requirement does not specifiy that the dryer must be a floor model; it could be a hand-held hairdryer.

Subdivision C requires that there be at least 1 facial chair per each 6 enrollees. It is not necessary that this be a chair specifically designed for use in the provision of facials.

It may be a regular work station chair, so long as it has a reclining back and some kind of a head rest for the consumer receiving the service. Because it allows for a dual purpose work station chair, the requirement should not place any significant additional burden on the school. It is particularly necessary that there be sufficient facial chairs in-as-much as the school curricula section does require that each esthetician and cosmetologist student perform a specified number of facial exercises.

Subdivision D requires a manicure table for each 10 enrollees. This manicure table could also double as a classroom table.

Subdivision E requires at least 1 heat cap so the student can be instructed in its use for hair and scaop conditioning treatments.

Subdivision F requires either that there be actual skin care machines or that there be models and diagrams which have sufficient detail for an instructor to be able to demonstrate or teach to students how such a machine would be used. The reason that there is not a specific requirement that each school actually have skin care machines is that these machines are primarily used in advanced skin care services. A school which did not intend to specialize particularly in preparation of students for the esthetician license might not find it necessary to have such a machine in order to provide the basic knowledge which a cosmetologist would have to have.

Subdivision G requires that the classroom area contain an adult-sized desk or table and chair for each enrollee to be accommodated. Inspectors from this office, within the last year, visited one school which appeared to have obtained its classroom desks and chairs from a grade school.

Subdivision H requires a time clock for use by the students when they check in and out of school at the beginning and end of

the day and before and after lunch. The reason for this is to provide a clear, consistent record of the students' hours.

Subdivision I incorporates for schools some of the furniture, fixture and supply requirements applicable to salon, inasmuch as the school clinic is in most cases very similar to a salon.

Subdivision J requires that there be locker space for students requesting it. THe office has received complaints from students who have lost or had stolen some of their supplies or personal property. The student is required to maintain all supplies and equipment on the school premises. Therefore, it appears reasonable that each student should have some area in which to secure his/her personal possessions and the professional equipment which he/she is required to purchase.

4 MCAR 10.130 Supplies and Materials

Subdivision A deals with basic supplies which the school must provide to the student or make available for the use of the student.

Number 1 deals with the professional kit which contains the basic professional supplies and equipment which the student will need to have in order to facilitate his/her learning experience in the school. The position of the office is that the cost of that kit should specifically be made known to the student whether or not it is included in the basic tuition fee. Some schools have a basic tuition which includes it; others charge for it separately. Whatever the situation, the student should be informed of the price he/she is paying for the kit.

Subdivision 2 requires that the school have adequate supplies and materials necessary for the performance of clinical services and classroom exercises. It is the position of the

office that it is the responsibility of the school to provide those supplies. In some instances the office has been informed, for instance, that students have to buy their own nail polish for practicing manicures. The tuition charged students is sufficient that it should be expected to cover basic supplies such as shampoo, cotton balls, clean towels and other items of this nature.

Subdivision 3 requires that each cosmetology student be provided with a mannequin which has hair on it and that the esthetician enrollees be given a mannequin without hair. Each student should have his/her own mannequin on which to practice cosmetology services in the classroom situtation. This is particularly important in light of the rule requiring that each student perform a minimum number of specified services. It may very well be that the school will not have sufficient public customers coming in and requesting those services to accommodate the minimum quota for all enrollees. It is therefore exceedingly important that the student have a mannequin on which he/she can perform those services.

Subdivision B provides a minimum number of towels per enrollee which should be availabe to students. In some cases of school inspections during the last year it has appeared that the towels in use by students were essentially rags. They were sometimes found to be very badly stained and torn. The school clinic situation is supposed to emulate the salon conditions under which a professional cosmetologist would be employed. It is therefore the position of the office that the school has a responsibility to provide decent professional-appearing supplies for the students to work with.

Subdivision C covers instructional materials. It specifically requires that any workbooks associated with the text should become the property of the student. The office has received complaints from some students that the school they attend gives them a workbook to look at, but that they are not allowed to write in it. It is a generally-recognized under-

standing that the purpose of a workbook is to provide an actual opportunity for the student to work out problems and exercises. Therefore such a workbook should become the student's property so that he/she can perform the exercises included in it. Any separate fee for instructional materials should be clearly indicated to the students.

Subdivision D requires certain basic instructional aids, including a bulletin board located in the student lounge for posting of communications to students from the office. It is also required that the bulletin board be used for posting copies of any student rules and disciplinary policies. There is a requirement that each classroom have a blackboard which can be used for diagraming or other instructional purposes. Such equipment is standard in most educational facilities.

Subdivision E lists certain basic reference books which should be available to students in a school library. This is to provide the student with access to materials in greater depth or to supplement the basic texts. The students would have access to the resource materials rather than having to make additional purchases themselves.

4 MCAR 10.131 General Operational Requirements for Schools

This broad rule specifies the expected procedural and operational requirements generally applicable to the cosmetology schools.

Subdivision A requires a continuation of the previous Board rule that schools clearly identify themselves as schools so that the public will be able to distinguish them from professional cosmetology salons.

Subdivision B identifies the responsibilities of the school manager. As with the case in salons, the manager is responsible

for the school at all times, whether or not he/she is physically on the premises during all hours of operation. The manager may not be concurrently responsible for more than one school or for a school and a salon. The reason for this is that management of a cosmetology school is a heavy responsibility which the office believes can only be accomplished with essentially the full-time responsibility and attention of the individual. When the manager is not on duty at the school, another responsible person should be specified in his/her absence. It is the manager's responsibility to assure that personnel and students comply with the requirements of statute and these rules and to ensure that all of the equipment required by the rules is maintained, cleaned, and in proper operating condition; that proper supplies for the carrying out of educational purposes and clinic services are in readily available stock; and that in general all of the safety, sanitation, operational and health requirements of the rules are met by the school, its personnel, and its physical premises.

Subdivision C relates to the requirements placed upon the school regarding professional instructors. The requirement that there be a minimum of 2 licensed instructors per school is a new one. This is based upon several factors. First, this will more readily assure that there will always be at least one licensed instructor on the premises, for example when the other is on vacation, out sick, or absent for purposes of attending continuing education or other related professional functions. Second, most schools have both pre-clinical and clinical students in attendance at the same time. It is the position of the office that an instructor must be present with the pre-clinical students at all times in order to assure that they receive the proper required training. In addition, it is also the position of the office that work of students on the clinic floor should be at all times under the very close scrutiny and supervision of an instructor. The instructor needs to be in constant motion through the clinic floor, checking the procedures which each student on the floor is using as he/she practices his/her clinical skills with the public. It clearly is not possible for a

single instructor to maintain the kind of constant supervision which is necessary in the classroom and on the clinic floor at the same time.

Recognizing that there are legitimate reasons why a school may have only one licensed instructor present under certain limited circumstances, the rules do provide that the school may operate for 30 days per year with an unlicensed substitute for one of the two licensed instructors minimally required. The previous Board rules had limited the time which a school could operate without the full instructional quota to 12 days. This period has been extended in recoginition of the fact that it may be difficult for a school outside of the metropolitan area to recruit a second instructor in less than a 30 day period, should one of its instructors resign or have to leave practice with short notice.

A school is required to notify the office within 3 days of each occasion on which it falls below the required minimum of 2 instructors for the first 1 to 20 students and an additional licensed instructor for each 1 to 20 students to be accommodated. If a school is not in compliance with the quota required for instructors, students in the school will be notified by the Office of Consumer Services that any hours they attend at the school during that period will not be accepted as valid hours towards their minimum requirements for licensure.

The rule provides also that instructors must devote their time to training and instructional duties and that they should not be given additional non-instructional duties or responsibilities during the hours when they are scheduled as instructors. Non-instructional duties would be considered to include such things as making trips to a supply house, rearranging the stock room, doing the laundry, interviewing janitorial applicants, or other such duties which would fall more properly under the responsibility of the manager or school owner.

The rules provide that all instructors must wear identification badges of a specified color and size. This is to inform customers of the school clinic as to the status of school personnel and also to provide for instant identification of instructors in the event of school inspections. One of the problems which has arisen on past inspections is that when the school is first entered, it is frequently impossible to tell whether or not the individuals present, particularly in the clinic, are students or instructors. There is a parallel requirement that students wear colored identification badges.

Subdivision D relates to the enrollment contracts between student and school. As a consumer protection measure, the school is required to provide a fully executed copy to the student or his/her parent or guardian at the time the contract is signed. The rules also provide that students who have not enrolled for the full course of training, but have enrolled because they want additional or refresher training upon failure of the state examination, or reciprocity applicants who may wish to take some kind of a brush-up course, should be enrolled under the terms of a specific contract. The office has in the past received complaints from individuals who signed up for a refresher course at a school and later complained to the office that the refresher period during which they attended the school was not spent in the manner which the student had anticipated. For instance, a student may have expected private tutoring or specific coaching in some content area and may instead have been placed in a general classroom situation or simply placed on the clinic floor to perform a variety of services. The intent of this provision is to assure that whatever the nature of the agreement between the school and the student, it should be clearly specified in a written agreement so that there are no possibilities for differing expectations as to what will transpire during the enrollment period.

Subdivision E requires that each school have a specific written refund policy which is made known to the student. There are minimum provisions which the policy must contain.

Subsection 2 requires as a matter of consumer protection that students must be given a full refund if they are rejected by the school or if the potential student decides not to enroll and cancels the contract in writing within 3 business days of the date upon which it was signed, so long as that period is prior to the time the student would have entered classes. The Office of Consumer Services has received a number of complaints from students who enrolled in a school as long as a month or six weeks prior to the beginning of classes and then for one reason or another had to cancel their enrollment and were denied a full refund. It is the position of the office that students who provide written notice of cancellation promptly after entering a contract, before classes have begun, should be entitled to a full refund. This is consistent with the provisions of a number of consumer protection statutes which provide for a full refund if a contract is cancelled before the consumer has derived any of the benefits of the contact.

If a student waits more than three days after signing a contract and then has occasion to change his/her mind, but it is still within the period before classes have begun, the office believes it would be a reasonable practice to allow the school to keep up to a 15% registration or enrollment processing fee, vis-a-vis the total contract price.

Once classes have actually begun, the likelihood that the school will be able to recruit an additional student to replace a student who chooses to drop out is significantly diminished. For this reason the office recognizes as reasonable a provision that the school may keep a certain percentage of the tuition for the entire course.

Subsection C identifies the percentages of tuition which the school could retain, based upon the percentage of course hours which the student has attended. These percentages are the same as those recommended by the National Accrediting Commission of Cosmetology Arts and Sciences.

If the school tuition includes fees for a student kit, textbook and/or workbook which have been identified in advance,and if these items become the property of the student at the time he/she leaves the school, it would appear reasonable that the cost of these items should be deducted from the tuition figure before application of the percentages of refund.

Subdivision F requires that there be written student regulations which are known to the students and which are posted on the bulletin board in the student lounge, as well as given to each individual student. The office does not find it unreasonable for the school to have a dress code. The rule requires that before any change in the student rules takes effect, however, the student body must be given at least 10 days prior notice and each student should be given a copy of any proposed changes. The reason for this is to give the students a reasonable opportunity to comply with the provisions of whatever the new policy might be.

Subdivision G deals with a variety of student records which the school must compile and maintain. Subsection 1 says that all records must be maintained in an up-to-date fashion and that they must be kept on the school premises. A problem which has arisen in the past is that at the time of inspections, when there were particular factors which the inspectors wished to check, it has sometimes developed that all student records were kept somewhere other than on the premises of the school itself. If the owner of the school wishes to keep records at some other location, there must be a duplicate copy which is thoroughly legible and up-to-date available on the school premises itself. These records on the school premises must be made available to inspectors from the office during normal business hours of the school and they should be made available upon written request by mail.

Subsection 2 requires that the school maintain complete detailed records of all financial transactions with the student.

This is particularly necessary in view of questions which may arise about the amount of refund due if the student leaves school. In addition, many students are attending school on the basis of some kind of scholarship and it is important that fiscal records related to that scholarship be maintained.

Subsection 3 requires that the school maintain daily and monthly records of all student hours, work progress, examination assessments, and daily clinical experience records for each student enrolled. It has been the past practice for the school to submit all clinical experience records for each student to the office on a monthly basis. This requirement is not continued. Instead, the school is required to provide only summary data to the office unless some particular question arises, at which time it would be possible for the office to request verification of the daily clinical experience records. This provision should cut down on the paperwork requirements placed upon the schools and should eliminate the necessity for them to make a duplicate set of all the daily records so that one can be provided to the office.

Subsection 4 requires that all student records be maintained by the school for at least 5 years following termination of the student from the school. In lieu of the full student record a transcript may be kept. It is important that the school maintain these educational records for several reasons. It is not uncommon for a student to drop out of school and then, 3 or 4 years later, decide to return and to complete his or her cosmetology education. It is therefore important that good records of the first educational experience be maintained. Second, very often when Minnesota licensees move to another state, that other state will require specific details about their educational experience. Another section of these rules provides that a student who has received a manicurist or an esthetician license may receive credit for the educational experience he/she received in regard to the first license should he/she at a later date wish to return to school for a second license. Therefore it is important that the educational records be kept.

Subsection 5 enumerates those educational reports which the school must submit to the office. The first of these is the student registration form, which becomes the basis of the student's record in the Office of Consumer Services. This should be accompanied by the processing fee to cover the office expense of keeping track of the progress of the student through his/her education to the point of licensing.

The second document is a physical examination report from a physician stating that at the time the student enters a school of cosmetology, he/she is free from communicable diseases or parasites.

The third document is the first in a series of "report cards" on the student. This document is to be submitted at the time the student completes the pre-clinical requirement, before beginning work on the clinic floor. Until this document has been received, no student may be permitted to perform clinical services in the school. The purpose of this is to assure that no student performs services on any member of the public until such time as he/she has received a thorough training in the theory and preparatory practice precedant to actual experience. It should be noted that the rule requires not just that the minimum pre-clinical hours have been spent in the classroom, but also that these hours have successfully been completed. This assumes that the school has examined the student on his/her knowledge and has made a positive asessment of his/her progress towards completion of the full course of study.

The fourth document is also a new requirement. It is that the school, at the time a student has completed 1/2 of the total hours required towards the license which the student seeks, must provide the student and this office with a written progress report as to how the student is moving forward towards fullfilment of all licensing requirements. If the student is substandard in any way, or there is any reason to suppose that the student will be unable to successfully complete the education

and licensing requirements, the office and the student should both be informed of this fact no later than at this mid-point report. In the view of the office it is an unconscionable trade practice for any school to continue to maintain a student in attendance who is not making satisfactory progress and who does not have a clear likelihood of succesful completion of the license requirements. In the case of foreign language students, this would certainly be the last point at which it would be appropriate to note that the student had insufficient language skills to successfully complete the licensing requirements.

The fifth report is a certification from the school that the student has successfully completed the number of hours required preparatory to taking the written examination for licensing. Emphasis should be placed on interpretation of this section in the words" successfully completed". This means that the student should have passed whatever competence or written examinations are interjected into the training program by the school and that the student has demonstrated appropriate levels of clinical skill and theoretical knowledge for an individual at this level. This certification must be received before the student will be scheduled to take the written examination.

The sixth report is documentation that the student has successfully completed the full course of training for which he/she was enrolled. Very importantly, this documentation is to include, on a standard form, documentation that the student has successfully mastered the competencies and skills necessary forlicensing. The document would include evidence both that the student had completed all of the minimum exercises required under the school curricula section for the license sought, and that the student had in fact mastered the competencies involved in performance of those clinical service exercises. The intent of this section is that the school, in providing documentation at this point, is saying to the professional salon owner that this student is ready for employment in a licensed cosmetology salon and has full capability to perform the variety of services expected of a licensee in that salon.

The final document required by the office from the school is a statement which is to be sent if for any reason the student withdraws, is suspended, or expelled from the school. This document should indicate the total number of hours which the student has successfully completed and an explanation of the training received during those hours, as well as an explanation of the reason of termination from the school. This should be provided within 10 days. The school is required to provide information as to the number of hours the student has completed to the office. This information will be used should the student at some future date wish to re-enroll in a cosmetology training program. Should he/she do so within the permissable time limit, he/she will receive credit for hours of training successfully completed in the first school.

Subdivision H deals with certification of school hours. The intent of this rule as a whole is to assure that the recording of the student's hours of training towards the required number for issuance of a license be accurately and fully completed. Items 1 through 4 are all intended to safeguard the veracity of the hour reports. Since the Office of Consumer Services assumed responsibility for regulation of the cosmetology industry in July of 1981, allegations have been made that school records are not always truthfully reflective of the actual training experience of the student. The first four points are an attempt to develop safeguards and checks and balances so that no individual will be able to tamper with or to create a dishonest assessment of the student's training experience. For this reason most of the records are required to be signed by more than one individual. The requirement that time cards be used is also an attempt to assure veracity of the hours reported. It is critical not only that the actual hours themselves be accurately reported, but that the record of clinical experiences also be accurate, because of the minimum requirements for experience in the full scope of professional services.

Subsection 5 again addresses the concern that students

receive credit only for hours in which they are learning the theory related to or performance of services which are actually licensed as a part of the practice of cosmetology. As discussed previously, it is not the intent of the office to allow a student to gain credit towards his degree for learning experiences related to unlicensed practices such as body wrapping, ear piercing, or tanning booths.

The 8-hour limit on training per calendar day specified in item 6 is intended to prevent a situation in which a student would try to rush through school and cram in more hours than those in which he/she can reasonably be expected to remain alert and receptive to new information. Eight hours is a traditional workday, and it appears appropriate that no individual should be expected to spend more time in the acquisition of new information or the practice of new skills than an employee familiar with his job would spend during a workday.

Item 7 is designed to assure that students will be given some breaks during the day and at the noon hour. The reason for this is that the office has received a number of complaints from students, particularly when they reach the advance period of their training, that they are directed immediately to the clinic floor in the morning and might be solidly booked with clients until as late as two in the afternoon. The office believes that it is a generally recognized principle that individuals can't sustain, or should not be expected to sustain, a full level of activity for that length of time without some relief breaks intermittent in the period.

Item 8 is intended to address complaints the office has received to the effect that students were not informed at the time that they enrolled in a school of cosmetology that they would be penalized if they failed to appear for Saturday or evening training. It is traditional, apparently, among cosmetology schools to be open on Saturday to service clients, as well as infrequently on Thursday or Friday evenings. This may be an acceptable practice, and one consistent with the avail-

ability of clients on whom the students can practice their clinical services; however, if it is the case, the student certainly is entitled to have this information prior to the time he/she has signed up for a program or finds himself/herself penalized in some fashion without having been informed that this was a basic requirement of the school.

It should be noted in this discussion of students' hours that it is the intent of the office that at no time should a student be penalized by means of having legitimate hours which he/she has attended and successfully completed removed or deducted from his/her attendance record. Complaints received by the offfice have alleged that various schools have used the reduction of earned hours as a sanction for failure to work on Saturday or for infractions of other student rules. It is the position of the office that this is not an appropriate form of discipline or enforcement of school standards.

The office has also been in involved in complaints in which the withholding of reports of earned hours has been used as a tool by the school to enforce its contract provisions regarding financial obligations on the part of the student. The position of the office is and has been that a school has many recourses through which it can enforce its contractual rights, and that to withhold information or certification that a student has been in attendance and has successfully completed specified hours of training is not an appropriate enforcement tool in the case of contractual disputes. This has been a particularly thorny problem in instances where a student may have withdrawn from a school on the basis of complaints regarding its training program or application of school rules and has enrolled in another school to complete his/her training. The first school has in some instances refused to acknowledge the hours earned by the student and to report them to the office. It is the position of the office that the appropriate arena for settlement of contractual disputes rests with mediation or legal action, not with modifying the hours of training completed by the student.

Subdivision I establishes a maximum period of 5 years during which the student must complete his/her education and successfully pass the examination for licensing. This requirement is based upon the theme discussed previously which holds that knowledge and experience do become out-dated or are lost when they are not exercised on a continuing basis. This is particularly the case with students, who clearly have no opportunity to practice their skills on even a limited basis, because they are not properly licensed. The office receives periodic requests from individuals who enrolled in a school of cosmetology as long, in one instance, as even 30 years ago, and who dropped out before completion of their education and at this later date wish to resume it on the basis of receiving full credit for hours previously spent in school. The office cannot condone this practice and does not believe that it is appropriate to recognize school hours as valid after a period of more than 5 years have elapsed. While the 30-year example is extreme, frequent requests are received from periods of approximately 6, 7 or 8 years ago.

Subdivision J provides that the office will provide a second school to which a student transfers with a certified copy of the students hours and records from his/her attendance at a previous first school. In order to assure that credit from another school is valid, a student who transfers into a new school should not be credited with any hours by that school except on the basis of a certification from the Office of Consumer Services. In the event that the student is transferring from a school outside of Minnesota over which the office would have no licensing authority, the school into which the student transfers must receive a certification of hours from the licensing authority in that other state.

Subdivision K is intended to prevent, except under limited, expressly stated situations, the enrollment of an individual in a school of cosmetology for less than the full course of training. The reason for this is essentially the theory, long held, that "a little bit of knowledge can be dangerous". Because of the

chemical nature of the products used and the complex techniques which must be learned in order to become a professional cosmetologist, the office and the Minnesota Cosmetology Advisory Council have very serious concerns that individuals attempting to take just a short course "for their own benefit" would very likely gain no benefit, but rather in fact be a detriment to themselves and certainly to any other individual upon which they might attempt to practice their incomplete skills.

Subdivison L requires that licenses both for the instructional personnel of the school and for the school itself be conspiciously posted in the reception area. This is consistent with the requirements for salons and their personnel and is intended to assure that only licensed individuals are practicing in the salons. It serves to identify the licensees to the public as well as to inspectors from the Office of Consumer Services.

Subdivision M is essentially a consumer protection requirement intended to benefit the consumers of cosmetology educational services. This requirement is based largely upon complaints received in the Office of Consumer Services and the office's more general concern that no matter what the product or service, the consumer is entitled to full and complete information upon which to base his/her purchase decision. For this reason it is required that, at the time solicitation materials are given to a potential enrollee in a school of cosmetology those materials must include a statement regarding the minimum requirements for licensing in the field in which the student is interested and information regarding tuition, fees, the enrollment contract itself, refund policies, and student regulations.

The requirement that the minimum requirements for licensing be disclosed is of particular concern to the office. One major reason for this is the presence in some schools of foreign-born individuals who appear to lack even rudimentary communications skills in the English language. When asked questions by school inspectors in the course of an inspection, these individuals are

unable to grasp the content of the question being asked and are unable to respond in a coherent manner. In the view of the office, it is an absolutely unconscionable practice for such individuals to be enrolled in a school of cosmetology in the first place. In addition to the language requirement, the office also believes it important that all enrollees clearly understand the license requirement that they have a high school education or a GED certificate. It is unfortunately true that in the past cosmetology has been used by vocational counselors and others as a kind of "last resort" field for school drop-outs who have been unable to make it in any other endeavor. It is the belief of the office that this is no longer an accurate portrayal of the role for modern cosmetology. The procedures and the products used in this field are so sophisticated that it cannot any longer be a last resort field for the otherwise inadequately prepared person.

To enroll students in a school program without an honestly reasonable expectation that they will be successful in completing the program and in obtaining licensure at its completion, is, in the view of the office, to perpetrate a consumer fraud upon the individual enrolled. To prevent uninformed potential students from becoming the victims of such a practice, the office believes that it is essential to require this pre-enrollment disclosure as well as to perform periodic reviews of a substantive nature during the educational program to verify progress towards successful completion of licensing requirements.

4 MCAR 10.132 Operational Requirements for School Clinics

Because the school clinic is essentially a practice salon, many of the operational requirements applicable to salons, of course, do also apply to the school clinic. In addition to this, there are some further requirements unique to the school setting.

Subdivision A prohibits a new school from offering clinical services until its students, or at least some of them, have

completed the minimum number of hours required before the student can practice in a clinic. Obviously there is little point in a school offering clinical services if it does not have students minimally qualified by training to perform them.

Subdivision B prohibits a school from operating a student clinic at any location apart from the school proper. During the informational meetings which the office conducted around the state when it first assumed responsibility in the area of cosmetology, there was some discussion and concern that the new statute and the rules, as individuals believed they might be drawn, would allow a school to set up free-standing clinics which might have minimal supervision and which would be in direct competition with professional salons. In fact, since that time the office has received a written request from an individual for permission and licensing of a substantial number of free-standing student clinics. As the office indicated at the public meetings, it has never been its position that the statute allowed for, or that these rules would provide for, such an occurence. The office was sufficiently concerned about this potential problem to contact Representative Lehto chief House author of the cosmetology statute, Chapter 155A. In response to a question regarding this matter, Representative Lehto sent a letter also signed by four of the other House authors. In this letter she states:

> "It was not the intent of the Legislature nor of the author of the amendment pertaining to schools that they be able to establish any free standing clinics. There is now obviously some confusion about the possibility that schools would be able to establish free standing clinics allowing students to be in direct competition with licensed salons. The Legislature did not intend for that to occur and in fact would again refer to the rules and regulations as establishing clear limits on the licensing of any such facility."

Subdivision C is an informational disclosure reminding patrons that all services in a school clinic are performed by students.

Subdivision D prohibits the instructors in a school from performing cosmetology services on any client in a school clinic except to the extent necessary to actually demonstrate or to instruct in the practice of a service to observing students. As noted earlier, the office has received complaints that in some cases school instructors have actually performed services themselves upon patrons in the school clinic. The purpose of the school clinic is to provide an opportunity for the students to perform the services under supervision by their instructors. It may, of course, be reasonable and necessary for the instructor to insert himself/herself into the provision of service in order to teach some specific point or to correct a possible or potential error on the part of the student. However, the clear intent is that it be the student who is performing the services in the clinic, not the instructor.

Subdivision E again reiterates that students may not perform in the school clinic until they have completed the required number of pre-clinical hours of training. This is to assure that those students who are practicing on the school clinic floor will have received complete preparatory training prior to their practicing of any service upon members of the public.

Subdivision F recognizes that the reason for having a school clinic at all is to provide a learning opportunity for the students. To this end, all work should be closely supervised by an instructor, who should be in contact with the student before, during, and at the conclusion of the performance of any service. It is important that the student and the instructor be agreed upon what is to be done and how, that the instructor check to make certain that satisfactory progress is being made during the performance of the service, and that the instructor check the service at its completion so as to provide the student with evaluation and feedback regarding how well the service was performed and whether there are areas which might need improvement.

Subdivision G requires that students wear identification badges which include their name, the license type for which they are preparing, and which indicate whether the student has or has not completed the pre-clinical training required before performance of cosmetology services on the clinic floor. The office is aware of allegations that students are sometimes asked to perform clinic services before they have completed the required number of hours of pre-clinical classroom training. At the time an inspection of the school is made, it is important for the inspector to be able to recognize immediately whether the individuals on the clinic floor are instructors, senior students, or pre-clinical trainees who should be performing exercises only in the classroom. In addition, requiring that the student status be indicated on the name tag will inform the consumer as to the role of any individual who may be performing or observing services.

Subdivisions H, I, J, and K all relate to matters of sanitation, safety, and health as they apply particularly in the school situation. Again, the intent is to assure the protection both of the practitioner personnel and of the consumers receiving services in the school clinic. The requirement is explicitly made that not only the student who is performing clinical services, but also the instructor who may have contact with the patron in the process of checking or instructing, should be careful to have properly cleansed his/her hands before any physical contact with the consumer.

Subdivision L allows the school, as is currently the case, to charge clients for the services performed by students in the clinic to the extent necessary to cover the cost of supplies and materials used and the general operational expenses of the school. The intent is that, because the school clinic is a necessary service in order to generate the patrons upon whom the students may practice their clinical skills, it is reasonable for the school to be able to cover the costs of providing this experiential opportunity to the students. The office also recognizes the fact that, because some income is generated by the

school clinic, there may be a slight offset to the tuition which would otherwise be charged to the student. As a consumer protection measure, whatever the prices for the school clinic are, they should be posted in the reception area where they will be clearly visible to the clinic patrons.

4 MCAR 10.133 School Curricula

This rule sets out the course content and instructional mode for each of the license types - cosmetologist, manicurist, esthetician. For each of these license types the rule specifies the minimum hours of training which is necessary. It identifies the minimum number of those hours which are to be devoted to pre-clinical instruction prior to the performance of any services by the student in the school clinic. It specifies what areas of instruction are to be covered and outlines the minimum number of different services which are to be performed as a part of the clinical exercises. The office does recognize that in some instances there may not be sufficient consumer patrons coming to the school and requesting a particular service to meet the minimum service quotas for all of the students enrolled. For this reason, the office will accept some of those services, particularly in areas such as hair coloring or chemical relaxing where there is not a large consumer demand, on the basis of clinical classroom experience performed on a model, another student, or, in some cases , a mannequin.

An additional required area for instruction in each of the license categories is that of business practices in general and the particular Minnesota laws and rules regulating the operation of the cosmetology industry, includingsome areas of labor relations such as minimum wage law and workers' compensation law. A frequent criticism made by salon owners is that new graduates of cosmetology schools tend to have a very limited understanding of the actual working conditions and business practices which they will encounter in the salon arena when they begin their

actual professional careers. Because a significant percentage of cosmetology graduates will either become salon owners on their own, or will become managers of booth rental space, the office believes that it is very important that all cosmetology students be exposed in their school curriculum to information related to business management and the laws in accordance with which a licensed facility will be expected to perform its services.

The specific recommendations for training in each of the license areas were based upon recommendations made to the office by members of the Minnesota Cosmetology Advisory Council. The Council established a school subcommittee to particularly address the curriculum issue. This subcommittee met many times and included representatives of the private cosmetology schools, the public vocational technical institutes, consumers, and salon owners. The recommendations which came from this subcommittee to the Council as a whole were discussed and revised over several Council meetings. They are indeed a consensus of those basic skills and knowledge areas necessary for satisfactory professional performance. In addition to the input from the Council, these curriculum requirements have been reviewed by the cosmetology school owners and by members of the industry Cosmetology Council. They have also been discussed by the Professional Salon Owners Forum and officers of the Minnesota Hairdressers and Cosmetologists Association.

Because of its importance, two summary pages from the report of the school subcommittee are included here verbatim. The two pages are the Curriculum Breakdown and the Curriculum Course Content pages. These two documents illustrate the inter-relationship between the skills necessary and the different levels of license types. They also reiterate and make clear the Council and the office's position that the esthetician and manicurist curriculum and license types are specific sub-parts of the cosmetologist's curriculum and license, and that the cosmetologist should have the full level of training required both for the esthetician and the manicurist. It is the strong position of the office that as long as the statute is structured

as it presently exists and the cosmetologist is licensed to perform services in the area of skin care and nail care, the cosmetologist should receive no less training in those areas than should the individual who chooses to restrict his/her professional practice only to skin care or nail care.

CURRICULUM BREAKDOWN

(Total Hours of Training, Pre-clinic, Percentage of Hours per Unit and Skill Quotas)

The state is charged with the duty to guarantee to consumers the minimum standards in competency for the protection of the public's health, safety and sanitation.

Total and Pre-Clinical Hours of Training

A) Cosmetologist - 1550 hours, of which 240 are pre-clinical

B) Esthetician - 600 hours, of which 120 are pre-clinical

C) Manicurist - 350 hours, of which 50 are pre-clinical

Applied Science and Practice
The A-B-C's of Cosmetology

	Average Time to Teach Minimum Requirements		
	Skill Hours	% of Course	Quotas
A. Hair care specialist is called a Cosmetologist, which encompasses A-B-C			
1. Shampoo	50	3.22%	300
2. Scalp and Hair Conditioning	80	5.16%	150
3. Hair design shaping (Cutting)	150	9.6%	75
4. Chemical hair control	200	12.9 %	60
5. Hair coloring	100	6.4 %	50
6. Hair styling	200	12.9 %	300
B. Skin Care Specialist is called an Esthetician (No A or C required)	200	12.93%	60
C. Nail Care Specialist is called a Manicurist (No A or B required)	150	9.6 %	50
Applied Science and Practice Total	1130	72.0 %	
Related Sciences Total	420	28.0 %	
Grand Total	1550	100.0 %	

CURRICULUM BREAKDOWN (Continued)

Esthetician (B)	Skills	200	60
	Related Science	400	
	Total	600	
Manicurist (C)	Skills	150	
	Related Science	200	
	Total	350	

Esthetician (B) to become Cosmetologist (A)

Review Related Science (Emphasis on hair and nail care)	70	
Hair Care Skills	780	
Manicure Skills	150	
Total	1000,	in addition to Esthetician's beginning course
Grand Total	1600	hours

Manicurist (C) to become Cosmetologist (A)

Related Science (Emphasis on hair and skin care)	270	
Hair Care Skills	780	
Skin Care Skills	200	
Total	1250,	in addition to Manicurist Beginning Course
Grand Total	1600	hours

Esthetician (B) to become Manicurist (C)

Related Science	200	(Emphasis on nail care
Manicuring Skills	150	
Total	350	

Manicurist (C) to become Esthetician (B)

Related Science	200	(Emphasis on skin care
Facial and Make-Up Skills	200	
Total	400	

CURRICULUM COURSE CONTENT

A. COSMETOLOGIST (Care of Hair, Skin and Nails)

1. Knowledge (Related Sciences)

Cosmetology (history, laws, practices)
Electricity (nature, conduct, effects)
Chemistry (compositions, transformations, systhesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary, conversation, communication)

2. Skills

Shampoo and Rinses
Scalp and Hair Treatments
Hairshaping
Chemical Hair Control
Hair Color
Hair Styling
Facials and Make-up
Manicuring

B. ESTHETICIAN (Care of Skin)

1. Knowledge (Related Sciences)

Cosmetology (history, law and practices)
Electricity (nature, conduct and effect)
Chemistry (compositions, transformations and synthesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary

2. Skills (Facials and Make-up)

Clean
Condition
Shape
Reinforce
Color
Enhance

CURRICULUM COURSE CONTENT (continued)

C. MANICURIST (Care of Nails)

1. Knowledge (Related Sciences)

Cosmetology (history, laws, practices)
Electricity (nature, conduct, effects)
Chemistry (compositions, transformations, systhesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary, conversation, communication)

2. Skills (Manicuring)

Clean
Condition
Shape
Reinforce
Color
Enhance

In addition to the preparatory course for the cosmetologist, manicurist, and esthetician's licenses, this rule provides for the refresher course which would be required of any individual wishing to renew a license under the provisions of rule 10.105B who has not practiced the minimum 1800 hours during the preceding 3 years. The rule provides that the refresher course must be taught by a licensed instructor, but it could be sponsored by a school, a salon, or a professional association. The rule requires that the course content be focused upon chemical services, which are those areas of professional practice most apt to involve the health and safety of the consumer or the practitioner and which are the areas in which significant change in product type or use will be the most critical for safe continued practice. The rule requires that the refresher course include actual hands-on experience by the student, so as to assure that the student's learning experience incorporates the actual procedures which must be followed for safe performance of the service. The refresher course must conclude with a final examination which will provide the student with an opportunity to demonstrate that the material has in fact been learned.

So that the Office of Consumer Services may be assured that any refresher course meets these criteria, potential sponsors will have to apply to the office at least 45 days prior to the date on which they intend to conduct the course. They will have to provide the office with the name of the licensed instructor who will conduct the course and to describe the specific skills and information to be imparted, along with the teaching method they intend to use. The sponsor will be required to pay the processing fee to cover the cost of office evaluation and approval of the course. At the conclusion of the course, the sponsor will have to provide the office with information concerning the name and license number of all of the individuals who successfully passed the final course examination. This information will then be used to verify information obtained from the individual licensee on his/her renewal application.

Finally, Subdivision F of the curriculum rule provides that an individual who has received training either as an esthetician or as a manicurist may build upon that beginning professional degree to obtain either the other sub-license type or the full cosmetology license. Because the licensee has completed an approved course and has been duly licensed on that basis by the State of Minnesota, it is the position of the office that the education received in preparation for the first license should be at least in part credited towards the number of hours necessary for the second license. The curriculum breakdown, previously included, specifies further information regarding the transfer of knowledge and hours from one license type to another.

4 MCAR 10.134 Requirements for Maintaining a School License

Subdivision A requires that specified documents be conspicuously displayed in the school reception area. These documents are to be displayed as a matter of consumer information to potential customers with regard to the licenses of the school and its personnel and also as a source of information for the office upon the event of a school inspection. Both the school license and the personnel licenses are to be displayed and the individual's photographs are to be included on the personnel licenses.

Subdivision B provides that the school must notify the office upon specified changes in the information currently on file in the office. Of particular importance is informing the office in the event of any change in the managerial or instructional staff roster of the school. As noted in the section regarding instructors, the school must notify the office of such changes within 3 business days of the effective day of the change.

Because of the consumer protection and information implications of materials used to solicit prospective students,

any changes in this material must also be submitted to the office.

Should the school change its educational curriculum or the nature of the courses of training offered, information regarding these changes must be submitted to the office. These rules require that the office approve school curriculum and it is therefore important that the office be informed of any changes in that curriculum, including the clinical experience portion thereof.

Because the rules specify minimum physical requirements for the schools, any remodeling or alteration in the physical plant of the school itself should also be the subject of notification to the office, so that it may be assured that minimal requirements will still be met.

In order that the Director may be assured of the continuing sound financial condition of the school, a current balance sheet, income statement, or evidence of financial worth must be submitted to the office on January 1 of each year. A copy of the bond required by rule 4 MCAR 10.126D will suffice for this purpose.

Subdivision C requires that the school maintain copies of all advertisements for clinic services for a period of 3 years. There are occasionally complaints made to the office concerning such advertisements. The office does not require that copies of all ads be approved in advance or sent to the office on a routine basis; however, it does request that the school maintain copies of those ads so that they will be available for review in the event of any complaints concerning their content.

4 MCAR 10.135 School License Renewal

As is the case with individual and salon licenses,

responsibility is placed upon the licensee for timely and proper renewal of the school license. Assuring that this renewal is made in the proper fashion will be the responsibility of the school manager or owner. At the time the school license is renewed, specified information must be updated to assure conformity withthe requirements of Chapter155A and these rules. This updated information includes evidence of the required professional liability insurance and coverage for workers' compensation. No school license will be renewed until all items graded"unsatisfactory" on inspection reports have been corrected. The school shall provide current and complete information regarding all instructors and their schedules and the manager's license number and its expiration date as well. These licensees are key individuals in enabling the school to meet its educational responsibilities. It is therefore essential that the office have current information regarding their identification and assurance of their qualifications. The surety bond required by 4 MCAR 10.126 D must be current and in place at the time of school renewal. The school shall also, at the time of renewal, pay the license fee. As is the case with individual and salon licenses, the postmark date on the transmittal envelope will be considered determinative in ascertaining whether or not the application was received by the deadline.

4 MCAR 10.136 Delinquent School License

This rule provides the school with a 30-day grace period after expiration in which to renew its license upon payment of the license fee and a late penalty. Should the school fail to renew its license within 30 days, it must reapply for a new school license and no training provided to students during the period while the school does not have a valid license will be recognized. The students will be so notified by the office. Because the role of the school is so critical in preparing the individual for cosmetology licensing, there is no basis upon which any school should be recognized if it is not in full

conformance with the requirements of statute and these rules.

4 MCAR 10.137 Advanced Training and Demonstrations

This brief rule provides two instances in which instruction in the content area of cosmetology may take place outside of a licensed school. The first situation is that of an advanced training class or demonstration for individuals who are already licensed, provided that the class or demonstration does not include provision of services to the public. The reason for this exception is that all of the individuals attending the class would be licensed individuals. They would therefore have the necessary professional skills and expertise to properly evaluate and incorporate the information being imparted. It is not infrequently the case that manufacturers of cosmetology products will wish to conduct informational classes for licensed individuals in order to acquaint them with new products or lines. The office does not believe that it would be reasonable to require all individuals conducting such classes or demonstrations to be licensed or that the class or demonstration be conducted within a school setting.

The second exception to the requirement that cosmetology instruction must be offered in a licensed school is in the event of community education classes which would impart cosmetic information to individuals on a very limited short-term basis for their own personal enhancement. A provision for such classes is specificially made at Minnesota Statutes Chapter 155A.03 Subdivision 8.

4 MCAR 10.138 Certificate of Identification

This rule is a continuation of past practices. It is based upon the recognition that there may be individuals who desire

cosmetology services but who are themselves unable to reach a cosmetology salon in order to obtain those services. In recognition of this fact, the rule provides that, under limited circumstances, a licensed individual operating out of a licensed cosmetology salon may travel to the patron to perform those services. The rule limits such out-of-the-salon practice to the provision of care in a licensed health care facility or in the residence of home-bound individuals. It is not the intention of this rule to provide for the routine practice of mobile coslmetology. The office believes that the health and safety interests of the public can best be assured by limiting practice to a licensed facility under the conditions specified by these rules wherever possible. It is only when the needs of the individual patron cannot be met within the confines of the licensed salon that practice should be allowed elsewhere. It is the responsibility of the salon manager to assure that licensees operating from the salon perform such services in conformance with these rules. Insofar as is at all practicable, the licensee operating out of the salon in a licensed health care facility or a residence should make every effort to observe the sanitary and safety procedures otherwise provided for in these rules.

4 MCAR 1Ø.139 Fee Adjustments

This rule recognizes certain limited situations in which equity suggests that it would be reasonable to make a refund to license applicants. It sometimes occurs that an individual will inadvertently pay either too much or more than one time for his/her license fee. In this situation the office will make a refund of the overpayment. Another situation which, tragically, sometimes occurs, is that an individual who has applied for a license renewal may either die or become incapacitated before the effective date of the renewal. In this instance the office believes it would be reasonable to refund the license fee, inasmuch as the individual will never utilize the license.

A third situtation in which the office deems it reasonable to provide a refund occurs when an individual has paid the full fee and/or processing fee for a license and then is found to be ineligible for the license. Where there are separate license and processing fees, the processing fee will be retained and the license fee will be refunded. In the event that only a license fee has been paid, and it is then found that the individual is ineligible for the license, the license fee minus the amount of the processing fee will be refunded. This is to cover the office cost in determining that the individual was ineligibile.

In a number of instances an individual who has one type of license wishes to acquire a license in a different category and requests that part of the license fee for the first license be credited towards the second license. This is most often the case concerning a cosmetologist who wishes to obtain a manager's license. The proposed rule does not provide for a refund or credit in this situtation. The reason for this is that the acquisition of another license is entirely a discretionary matter on the part of the licensee. In addition, there are office administrative costs involved in checking license issuance dates and calculating and actually make refund arrangements. In the view of the office, it is not unreasonable to require that an individual pay the full cost of any license which he/she seeks.

4 MCAR 10.140 Fee Schedule

This rule sets out the specific fees which will be charged for licenses, for penalties, and for administrative fees to cover the cost of administering these rules. Every effort has been made insofar as possible to relate the specific dollar fee to the cost of the service or item which it is intended to cover, with the exception of the penalty fees, which are determined on the basis of an enforcement incentive, as well as to some extent the covering of specific related costs.

In particular, an effort has been made to keep the license fees themselves at a minimal level. It will be noted that the license cost on an annualized basis for the cosmetologist, manicurist, and esthetician has not been increased.

It is possible that these proposed fees, taken together, will generate to the state treasury an excess over the appropriation to the Office of Consumer Services for administration of the cosmetology licensing and regulatory program. It is therefore very possible that in the future some of these fees may be reduced. At the present time, there is no valid basis for predicting with any surety the revenue which will be generated by this fee schedule. The reason for this is that it is generally acknowledged that there are a significant number of currently-licensed individuals who are not actually practicing cosmetology. There is no way of predicting how these individuals will react to the various provisions of these proposed new rules. It may be that a considerable portion of them will decide not to continue renewing their license, in which case all of the fees associated therewith would be lost to the state. On the other hand, it is possible that they may choose to renew their license on an inactive basis, in which case their fees would continue. It is the position of the office at this time that the fees should be based on the assumption that there will be some attrition in the number of licensees. The state is mandated to recover all costs of the regulatory and licensing program through the fee schedule. For this reason the office believes that the most reasonable policy is to keep the proposed fee schedule in effect for several years, at which time a thorough evaluation can be made to ascertain whether or not adjustments are necessary to keep revenues approximately in line with appropriations.

There is one significant difference in the format of the proposed fee schedule as opposed to the old schedule. The old fee schedule had a different fee for initial licensure vis-a-vis renewal licensure. The reason for this was to incorporate the costs of original licensing, processing, evaluation, and administration into the therefore higher fee for the initial

license. The position which has been taken in the proposed fee schedule is that the license fee itself should always be the same, whether it is for an initial or a renewal license. Where there are additional costs related to evaluation of credentials, etc., for the initial license, or for the renewal license, those costs are picked up under the processing fee or other applicable administrative fees.

There has been a significant increase in the fees for school name change and school original application, based upon the fact that there are extensive administrative costs related to these two operations.

4 MCAR 10.141 Duplicate License

This rule provides for the event that an individual licensee has lost or for some reason has had his/her license destroyed. In this event a duplicate license will be issued. However, the requesting individual must provide the office with an affidavit indicating why the duplicate license is required. The purpose of this is to control the number of licenses issued and to prevent, to the greatest extent possible, the likelihood that licenses will fall into the hands of individuals other than those for whom they are intended.

4 MCAR 10.142 Intoxicants and Controlled Substances

It is the position of the office that the professional practice of cosmetology, particularly in view of the potentially dangerous chemical materials used, is inconsistent with the ingestion of intoxicants of any type, either by the individual performing the service or by the patron during the provision of the service. The office is aware of situations in which alcoholic beverages may be offered to customers of a cosmetology

salon. While this may be a gracious social offer, the office does not believe that it is appropriate in a professional business establishment. Should the salon wish to provide such amenities to its patrons, it is suggested that this be done on another occasion other than during the business hours of the salon.

4 MCAR 10.143 Compliance by Present Licensees and Students

The provisions of this rule are to allow for implementation of the whole package of proposed new rules without creating undue hardship on current licensees.

The various provisions of Subdivision A deal with each of the license types and the effect of the new proposals upon these licensees. In Subsection 1, cosmetologists', manicurists', and estheticians' licenses are addressed. All of these licenses will be valid until such time as they expire. After July 1, 1984, the individual wishing to renew one of these licenses will for the first time have to comply with the renewal provision requiring either 1800 hours of experience in the last 3 years or the 40-hour refresher course. Prior to that time, individuals will be able to renew these licenses on essentially the same basis as is currently the case.

Subdivision 2 deals with senior instructor licenses and has two separate provisions. The proposed rules, in accordance with Chapter 155A itself, do not distinguish between junior and senior instructors. The rules provide for just one single instructor license class. Those individuals currently licensed as senior instructors will be given until December 31, 1984, to meet the education requirement of 48 hours for initial licensure as an instructor. They will not be required to pick up the required hours of actual salon experience. Instructors who fail to obtain the 48 hours of training by December 31, 1984, will have their licenses revoked. This provides current instructors with a

two-year period in which to obtain the required training. The office is confident that such training will be available on a frequency and location distribution basis which will not create undue hardship for any currently licensed instructor.

The provisions relating to the renewal of the instructor license will not take effect until January 1, 1988. The reason for this is that during the initial period, the instructors will have to obtain the first 48 hours of training. They will then have until January of 1988 before they will have to have completed additional continuing education.

Subdivision 3 addresses those individuals currently licensed as junior instructors. These individuals will be given until December 31, 1983, approximately a full year, in which to complete the present old requirements for senior instructor. If they fail to do so, they will no longer be able to function as instructors of any kind in cosmetology schools. Once they have met the requirements of the old rules to become senior instructors, they will then be given the same length of time as the current senior instructors to comply with the full requirements for instructor license under the new rules.

Subsection 4 deals with salon managers and school managers. Current salon manager licenses will remain valid until they expire. Manager licenses expiring after July 1, 1984, cannot be renewed until the individual has taken the examination relating to Minnesota statutes and rules required for renewal. This gives all currently-licensed salon managers a minimum of a year and a half in which to familiarize themselves with the new rules and statute before the renewal examination requirement would become effective.

The situation is somewhat different for managers of schools, because of the important role the schools play in familiarizing students with the requirements of rules and statute and because the provisions relating to schools will take effect in July, 1983. It is therefore necessary that the school

managers rapidly familiarize themselves with the new requirements. For this reason all school managers will be required to pass a written examination relating to laws and rules governing cosmetology schools and related matters by December 31, 1983.

The provisions of Subsection 5 essentially alleviate salons and booths from undue hardship because of new physical requirements for licensure. The provisions of the subsection exempt existing salons entirely from a number of the requirements and give them an extensive lead time before other less-costly or physically-demanding requirements would take effect.

Subsection 6 deals with schools and again exempts currently licensed facilities from some of the physcial requirements and provides them with a lead-in period before they will be required to meet other new requirements.

Subdivision B allows that foreign language students who are enrolled in schools of cosmetology at the time of the effective date of the rules may proceed with their education as is currently the case, which would allow them to use an interpreter at state examinations. However, these individuals will additionally be required to demonstrate to the office that they are able to read and to understand the directions and precautions on selected examples of cosmetology products.

IV ADDITIONAL CONSIDERATIONS

The Office of Consumer Services is aware of 2 proposals which will be presented at the public hearings and which the office wishes to commend to the attention of the Hearing Examiner and other participants at the hearings.

It is our understanding that a proposal will be made by one or more cosmetology instructors to the effect that the school should be given some discretion in specifying the ultimate numbers of hours a student is required to study prior to licensure. The rules as proposed provide that the student may take the written examination after completion of school hours somewhat less than the total maximum hours of required curriculum. The new proposal which we understand will be introduced is that if the school believes and certifies on the certification-of-skills form that the student has indeed successfully mastered all of the practical/clinical skills and the knowledge necessary for licensure at the same time that he/she has completed the hours necessary to take the written examination, the student should be granted a license upon passage of the written examination.

The office believes that this is a recommendation which merits consideration. The office does not see any likely basis upon which a school would be motivated to prematurely certify a student as ready for licensure. The last several months of a student's education are, in most cases, devoted almost entirely to work in the school clinic to sharpen the actual service skills. Indeed, the allegation has been made that an unscrupulous school might be motivated to withhold the certification of skills in order to keep an accomplished student in the school longer and thereby to garner additional revenues from the student's practice on the clinic floor.

If the school is in fact willing to certify in notarized form that the student has learned all of the required skills, and if the student has successfully passed the written examination,

the office sees no reason why that individual should not be licensed and be able to enter the productive world of employment. This would be to the benefit of the student, certainly. Such a practice would also, possibly, promote greater attention to full preparation and earlier preparation of students among the various schools. It would no doubt enhance the reputation of an individual school if its students were licensed on the basis of successfull skills and passage of the examination at a level earlier than the basic proposal.

On the other hand, it would be of no benefit to a school to falsely assert that the student had mastered skills. The inaccuracy of any such certification would be readily apparent once the student entered salon employment, and would inevitably lead to filing of complaints against the school with the Office of Consumer Services. Such a practice would also certainly be contrary to the school's best interest in terms of its reputation among the salons which are potential employers of its graduates.

For these reasons, the Office of Consumer Services believes that the proposal is a reasonable one and does commend it to the attention of the Hearing Examiner as a positive amendment to the rules as proposed.

The second proposal for amendment which the Office of Consumer Services believes will be presented in public testimony is one which comes from the retail community with regard to the rule governing demonstrations of cosmetology coloring products in retail establishments. The proposed effective date in the rules for this particular rule is April 1, 1983. The retail community has expressed concern to the office that it would like to begin operating under the rule at an earlier date and is willing to cooperate with the office in disseminating information concerning the new rule to all applicable parties within the retail community. It is the understanding of the office that the recommendation will be made that the effective date for the retail sales rule be changed to 4 weeks after final approval of the rules. The office is pleased to concur with this suggestion and believes that it would be of benefit both to the retail

community and to the consuming public.

There is a very broad area of concern which is not addressed at all in the rules as proposed. This concern deals with the distribution of professional chemical cosmetology products. It was the strong desire of the Minnesota Cosmetology Advisory Council, of the office, of the Professional Salon Owners' Forum, as well as a number of other individuals that a rule be written which would prohibit the sale of such products to anyone other than a licensed cosmetologist or, in another version, a licensed cosmetology salon.

The impetus behind such proposals is at least two-fold. First, because of the nature of the these professional chemical products, there is a very strong element of consumer protection and safety involved with their use. It is the position of the office that these products cannot assuredly be used with any safety by individuals who are not licensed, and indeed, their use should be restricted to licensed facilities with all of the proper equipment and under the supervision of a professional manager who will ensure that the products are properly applied. The second element is one of enforcement. So long as these professional products are available to individuals who are operating outside of a licensed salon, there is a significant enforcement problem in locating and establishing evidence that the individuals are operating illegally through their failure to obtain a license. Problems in enforcement activities against unlicensed facilities and operators create a great inequity for those conscientious professional individuals who have made an effort and have in fact incurred expenses in order to comply with the requirements of Minnesota statutes and rules.

Both for consumer protection and for reasons of equity and enforcement, it appears desirable that unlicensed individuals and facilities be restricted from purchasing professional chemical products. Their inability to purchase and perform services using these products would, it is believed, reduce the incentive for any individual to perform services outside of the proper licensed

arena.

Unfortunately, after careful review, it is the advice of legal counsel to the Office of Consumer Services that the present provisions of Minnesota Statutes Chapter 155A do not provide legal authority upon which the office can write such a rule prohibiting distribution of chemical products to unlicensed individuals or facilities. It is the belief of the office that individuals in the industry, acting either on their own or in a concerted group effort, will attempt to have statutory authority given to the Office of Consumer Services in this area during the next legislative session. Such a position would be supported by the Minnesota Cosmetology Advisory Council and by the office. However, until such time as statutory authority is established, the office cannot write rules governing the distribution of these products.

Document # P.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Amendments to the Rules Proposed for Adoption Relating to Minnesota Statutes Chapter 155A (Cosmetology)

STATEMENT OF NEED AND REASONABLENESS

Director of the Office of Consumer Services, Krista L. Sanda, ("Director"), presents herein her statement of the need for and the reasonableness of proposed amendments to the rules proposed for adoption relating to Minnesota Statutes Chapter 155A (1981).

The above-captioned rules are new rules and replace in its entirety the previous rules adopted by the former Board of Cosmetology examiners. On October 21, 1981, the Office caused to be published at 6 State Register 1172 a notice of intent to solicit outside opinions concerning changes in the cosmetology rules.

The general statutory authority to promulgate rules under Minnesota Statutes Chapter 155A is set forth at Minnesota Statutes Section 155A.05.

The Director has determined that the proposed adoption of these rules is reasonably necessary to carry out and to make effective the provisions and purposes of Minnesota Statutes Chapter 155A (1981).

On October 25, 1982 proposed rules were published at 7 State Register 625. The proposed amendments addressed herein are technical or housekeeping amendments to those proposed rules as published.

The need for and reasonableness of each of the proposed amendments to the proposed rules and the rationale and process through which they were developed is as follows:

Amendment 1: 4 MCAR § 10.103B. This amendment corrects an erroneous reference in the rule outlining licensing requirements

for reciprocity applicants. In the proposed rules as published in the State Register, Paragraph B erroneously includes a requirement (4 MCAR § 10.102 A.4) that the reciprocity applicant must take the written examination covering cosmetology skills and knowledge. The intent was to allow reciprocity applicants, who have demonstrated their skill and knowledge through licensing in another jurisdiction, to become licensed in Minnesota on the basis of an examination limited to knowledge of applicable Minnesota statutes and rules pertinent to the license which they are seeking.

Amendment 2: 4 MCAR § 10.107 5. Comment received by the Office of Consumer Services indicates that the language in the rule as published is not sufficiently clear and specific as to what is or is not allowed in connection with the demonstrated application of a beauty coloring product by a retail employee. The proposed amendment makes the prohibition on direct skin contact and the affirmative requirement that a brush or applicator be used more explicitely clear.

Amendments 3-4: 4 MCAR § 10.111 D. and 4 MCAR § 10.120 D. Comments received by the Office of Consumer Services indicate confusion on the part of licensees as to the possibility that all salons must have workers' compensation insurance coverage. Addition of the language "if applicable" should eliminate this erroneous interpretation.

Amendment 5: 4 MCAR 10.126 B. The proposed rule as published linked the level of liability insurance coverage for schools to the number of teaching stations in the school clinic. The Office of Consumer Services has received comment that this is not the basis upon which liability insurance coverage is sold for schools and that the proposed language might have been interpreted to waive a need for liability coverage on any portion of the school other than the clinic floor.

Amendment 6: 4 MCAR § 10.143 A. 4 a. In formulating the language of this "grandfather" section relating to salon managers, the drafters erroneously omitted reference to the requirement of 4 MCAR § 10.105 B. 1, that the applicant for renewal as a manager must have 1800 hours of experience in the last three years or a 40 hour refresher course.

Amendment 7: 4 MCAR § 10.143 B. The proposed rule with the proposed amendment reflects the current practice of the Office of Consumer Services in conformity with a temporary rule previously adopted. In drafting the examinations clause for foreign language students, the condition that they demonstrate knowledge of English as applicable to use of professional cosmetology products was erroneously omitted. The amendment conforms to the temporary rule and to the intent of the proposed rule, 4 MCAR § 10.108 E.

Amendment 8: Effective Dates. The effective date for rule 4 MCAR § 10.124 dealing with inspections was erroneously listed as July 1, 1983 rather than April 1, 1983, as intended.

PROPOSED AMENDMENTS TO THE PROPOSED RULES
OFFICE OF CONSUMER SERVICES

Amendment 1

4 MCAR § 10.103 B. Compliance with state rules. The applicant shall demonstrate compliance with 4 MCAR § 10.102 A. ~~2---6~~ 2, 3, 5, 6 and shall successfully complete a written examination demonstrating knowledge of Minnesota statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

Amendment 2

4 MCAR § 10.107 5. ~~no direct skin contact application of the product is performed on a purchaser or potential purchaser except by the purchaser.~~ the retail employee does not have direct skin contact with the purchaser or potential purchaser. The employee shall touch the customer only with a brush or other applicator.

Amendment 3

4 MCAR § 10.111 D. Evidence of worker~~'s~~ s' compensation insurance. If applicable, ~~T~~the applicant shall provide evidence of his or her compliance with Minnesota Statutes, section 176.182.

Amendment 4

4 MCAR § 10.120 D. Worker~~'s~~ s' compensation insurance coverage. If applicable, ~~T~~the licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182.

Amendment 5

4 MCAR § 10.126 B. Evidence of liability insurance coverage. The applicant shall provide evidence of the school's coverage by professional liability insurance, of at least $25,000 per incident and an accumulation of ~~$75,000~~ 150,000 for each premium year. ~~for each teaching station in the clinical operation of the school.~~

Amendment 6

4 MCAR § 10.143 A. 4 a. Current salon manager licenses shall remain valid until expiration. Licenses expiring before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses expiring on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A., B.1, B.3., and C.-F.

Amendment 7

4 MCAR § 10.143 B. Interpreter for certain students. Foreign language students whose enrollment registration is on file in the office on the effective date of these rules may use an interpreter at the examinations~~.~~ , provided that they have first demonstrated to the director that they have a sufficient grasp of the English language to read, comprehend and follow chemical product labels and instructions.

Amendment 8

Effective dates. Rules 4 MCAR §§ 10.106, 10.107, 10.110; 10.111; 10.112; 10.113; 10.114; 10.115; 10.116; 10.117; 10.118; 10.119; 10.120; 10.121; 10.124; 10.125; 10.126; 10.127; 10.128; 10.129; 10.130; 10.131; 10.132; 10.134; 10.135; 10.136; 10.137; 10.138; and 10.142, are effective April 1, 1983

Rules 4 MCAR §§ 10.102; 10.103; 10.104; 10.105; 10.108; A.-C.; 10.109; 10.122; 10.123; ~~10.124;~~ and 10.133, are effective July 1, 1983.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing the Practice of Cosmetology

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Rodney A. Wilson, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the Rules of the Office of Administrative Hearings, and the Rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: March /_, 1983.

Rodney A. Wilson

RODNEY A. WILSON
Special Assistant
Attorney General

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing the Practice of Cosmetology

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Mark A. Abbott, being first duly sworn deposes and says:

That on the 3rd day of March, 1983, in the City of Saint Paul, County of Ramsey, State of Minnesota he served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of Saint Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Mark A. Abbott
Investigator

Subscribed and sworn to before me
this 3rd day of March, 1983.

Notary Public

MORENE M. CARR
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed Adoption of Rules of the State Office of Consumer Services, Department of Commerce, Governing the Practice of Cosmetology

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, March 3, 1983, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 20 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes were made in the proposed rules after the hearing and before submission to the Attorney General, you may obtain a copy of the rules as submitted for approval from:

State Documents Center
117 University Avenue
Saint Paul, Minnesota 55155
297-3000 (Metro area phone)
1-800-652-9747 (outstate phone - specify that you wish to speak to the State Documents Center)

The charge for copies is as follows:

53 pages @ $.15	$7.95	
6% tax	.48	
	$8.43	if obtained in person at the State Documents Center

Mail orders must also include $1.00 for postage and handling for a total of $9.43 which must be paid in advance. Checks should be made payable to "State of Minnesota."

The rules have not yet been approved in final form. Individuals whose interest is in obtaining a copy of the rules as finally approved may wish to wait to obtain a copy of the rules as adopted.

A. J. Perpich, Director