

**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 10-014
BARBERING AND COSMETOLOGY : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The department finds that the proposed rule will have no significant fiscal impact. The department also finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The provisions of ch. BC 7 are outdated and are no longer effective based upon the current manner in which examinations are typically administered. The goal of this rule is to create changes to ch. BC 7 to amend or redact various provisions so as to update the rule provisions so they appropriately and adequately reflect the present examination process and bring the rules into conformity with current national and state practice.

Currently, ch. BC 7 calls for methods and requirements that can no longer be met based upon national and state changes in how, and by whom, examinations are conducted. Specifically, there are provisions that call for examination reviews upon examination failure that cannot be accomplished due to the proprietary interests examination vendors have in the examinations. Similarly, there are provisions that require an immediate conference by two examiners to discuss the suspected failing examinee's performance, as well that a written description for the failure be provided.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 3, 2010.

Marvin Rushing appeared asking about the minimum passing score difference between the licensee and the apprentice. In response to that question, the board indicated that the

rule had been rewritten to allow the board the flexibility to modify the scoring aspect to ensure that someone failing two-thirds of the examination would not receive a license.

There was no other testimony presented and no written comments were received.

Guests at the May 3, 2010 board meeting were:

Barb McCormick, Southwest Technical College; Mary Kardoskee; Mary Kiley; Diane Pandl, Institute of Beauty & Wellness; JoAnn Schneider, Empire Education Group; Tia Lea Spangler and Anthony Norris, Sue Kolve Salon Spa; Sharon Frenz, Fusion Hair & Nail Studio; Penny Nelson, Salon Professional Academy; Vijay T. Gino's; Sandy Brietzman and Haveezah Ahmed, Department of Workforce Development; and Andrew Schumacher, Salon Management, Inc.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5.a. There are multiple interpretations based on the structure of SECTION 1 of the rule. It appears that the intent behind s. BC 7.01 is to allow the board to choose between accepting examinations both conducted in-house and by a test service provider. The way it is written, it is not clear that this is the intent. The following issues are raised:

(1) Section BC 7.01 (1) could be read to mean that if the board chooses to engage in one of the three listed activities (prepare, administer, or grade examinations,) the board must engage in all three, as the word “and” is used. Is it the intent that the board engage in all three activities if it only wants to engage in one?

Response: The word “and” has been changed to the word “or.”

(2) It is unclear what the phrase, “approve, in whole or in part,” means. First, what is the purpose of the board “approving” the examinations? Is the purpose to “approve for licensure” an examination that was taken by a test service provider? Is the purpose to allow the board to administer exams prepared by a test service provider? Second, what does “in whole or in part” mean? Does it mean that the provider can engage in one or two of the three items listed (prepare, administer, or grade exams) if the board does the others? For example, can the provider administer or grade board-approved exams? If the board only approves “part” of the three items a test service provider could do (i.e. prepare, administer, or grade exams), it is unclear what happens to the other items.

Response: This provision is necessary as circumstances may arise where an examination may have been prepared and/or administered/graded by a service provider, yet for some technical or other reason there is error. In those instances the board will have to have the authority not to approve (accept) that examination.

Comment 5.b. The plain language analysis claims that the right to request an appeal was moved from ss. BC 7.07 and 7.08 to s. BC 7.01 (2). However, neither the right to request

an appeal nor the authority of the board to review an examination is listed in s. BC 7.01 (2).

Response: “The right to request an appeal was moved to s. BC 7.01 (2)” has been stricken from the analysis. This provision is not needed because it is the procedural process after examination review and there are no longer examination reviews.

Comment 5.c. The plain language analysis states that review of examination questions needed to be repealed as the questions themselves are proprietary intellectual property. It appears that the board already has the authority to review exam questions under s. BC 7.01. It is unclear why the board claims s. BC 7.07 should be repealed on the grounds of proprietary intellectual property. The board should consider providing more detail as to why the exams can be approved by the board, but may not be reviewed by the board.

Response: Given that the department uses vendors for examinations, there is no way the board could comply with this requirement. These provisions are outdated and were applicable when the department developed and administered its own examinations. That is no longer the case.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.