

Report From Agency

STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 10-014)

ORDER

An order of the Barbering and Cosmetology Examining Board to repeal BC 7.03 (3), 7.04 (2) to (5), 7.07, 7.08 and 7.09 (3); to renumber BC 7.09 (2); to renumber and amend BC 7.04 (1) and 7.09 (4); to amend BC 7.02 (2), 7.03 (1) (title), (1), (2), and 7.05; and to repeal and recreate BC 7.01, 7.02 (1) and 7.06, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

Explanation of agency authority:

The Barbering and Cosmetology Examining Board is granted the authority under ss. 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), and 454.07, Stats., to conduct examinations as a requirement for licensure.

Plain language analysis:

This rule-making amends ch. BC 7, Examinations, to modify some of the provisions to conform to current practice and to clean up redundant language to make the rules easier to read and use.

SECTION 1 repeals a section that specified detailed requirements for the scheduling and administration of the required examinations. The section is recreated to allow the board to prepare, administer or grade examinations or to approve an examination prepared,

administered and graded by a test service provider. The section also requires the board to ensure there is an appeal process for applicants who fail the examination.

SECTION 2 repeals a provision that simply said examinations shall test for entry level competence. It is recreated to require the board to determine the subject matters that will be tested and to design the test for minimum competence.

SECTION 3 amends the current requirement that the board furnish upon request information describing the competencies that will be tested. The board will now be required to make that information generally available.

SECTION 4 combines into one provision the requirement that an applicant for a barber or cosmetologist, aesthetician, electrologist, or manicurist license is required to take a written and practical examination. This section also amends a provision to make it clear that a manager must only complete a written examination.

SECTION 5 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 4.

SECTION 6 combines into one provision the requirement that a passing score shall be based on the board's determination of what is minimum competence.

SECTION 7 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 6.

SECTION 8 amends a provision to grant the board the authority to deny a license or to withhold an examination score to an applicant who gives or receives unauthorized assistance during the examination.

SECTION 9 repeals a provision that requires two examiners to confer before issuing a failing score in the practical examination and that required the board to provide the examinee with a written description of the reasons for that failure. This section is recreated to require the board to provide an applicant a score report which will include a listing of content areas and corresponding examination scores.

SECTION 10 repeals two provisions, the first of which is the section that contained specific requirements to be followed when an applicant requested a review of a failed examination. The provision provided that applicants could review the examination and write comments, questions or claims of error regarding any question in the examination. Those notes had to remain with the proctor to be used later at a potential hearing. The board was required to review the applicant's claims. The second repealed provision contained the process by which an applicant would appeal and ultimately request a hearing on a claim of error.

The provisions allowing review of examination questions had to be repealed because the questions themselves are proprietary intellectual property under law. 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.

SECTION 11 renumbers a provision to make the order of the rule provisions follow in a logical manner.

SECTION 12 repeals a provision that conflicted with the current s. BC 7.09 (3).

SECTION 13 clarifies that the rule that scores of retake examinations be combined with examination parts previously posted is applicable to all applicants and not just barbers and cosmetologists. This includes the substance of the provision repealed in SECTION 12.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:

Statutes and rules for barbering and cosmetology are found in Illinois Administrative Code Title 168 Part 1175 (see: <http://www.ilga.gov/commission/jcar/admincode/068/0680117sections.html>). The provisions are silent on the issues outlined herein.

Iowa:

Statutes and rules for barbering and cosmetology are found in Iowa Code Chapter 157 Cosmetology and Chapter 158 Barbering:
<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82=#157.3>.

<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82#158.3>

Iowa Administrative Code Chapter 21 Barbering & Chapter 60 Cosmetology:

http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645iac_a645_c60v1.pdf
http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645/iac_a645_c21v1.pdf

There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

Michigan:

Statutes and rules for Barbering and Cosmetology are found in:

Cosmetology Law Book: <http://www.dleg.state.mi.us/bcsc/forms/cos/coslawbk.pdf>

Barbering Law Book: <http://www.dleg.state.mi.us/bcsc/forms/barb/bclawbk.pdf>

There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

Minnesota:

Statutes and rules for Barbering and Cosmetology are found in:

Minnesota Statutes 2007 Chapter 154.003-154.26 Barbers & 154.40-154.54 Cosmetology https://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP&year=current&chapter and

Barber Rules Chapter 2100 & Cosmetology Rules Chapters 2105 and 2110

<https://www.revisor.leg.state.mn.us/data/revisor/rule/current/2100/2100.pdf>

<https://www.revisor.leg.state.mn.us/data/revisor/rule/current/2105/2105.pdf>

There are no provisions in the cosmetology laws on the issues outlined herein.

Barber Rule 2100.3000 outlines the requirements for examination grading and requires that the grading criteria for the written part be established at the time each examination is written (and as such, may vary), however, there is a minimum passing score of 55. The practical examination requires a minimum passing score of 75 (on a 100 point scale) for the haircut and oral portions of the examination and a minimum of 75 for the remaining portions of the examination. Failure to meet the minimum of any of these three requirements constitutes failure of the whole and requires retesting after completion of two additional months and 300 additional hours of practice.

Barber Rule 2100.0700 addresses examination grading for barber apprentices. The rules and requirements mirror those set for barbers, however, the minimum passing score is 70.

Barber Rule 2100.3200 relates to failed examinations and requires an apprentice who fails to satisfactorily pass an examination for a certificate of registration to practice as a registered barber to practice an additional two months and 300 hours to be eligible to retake the examination.

Summary of factual data and analytical methodologies:

The comparison information with the rules in adjacent states was obtained directly from contact with those states via email or telephone correspondence, as well as a survey and review of their laws and rules. Additionally, information was obtained from examination specialists within the department relative to changes in the industry related to the examination process. Specifically, many states, including Wisconsin, have gone from creating and administering their own examinations “in house,” to the national trend of using examination vendors who create the examination, maintain all proprietary interests in the examination, and then serve as a vendor to administer the examination.

Additional consideration was given to the age of the rules as they presently exist, the shortcomings presented by the rules which no longer accurately reflect current practices, as well as other challenges created by current provisions. The last consideration contributing to the proposed changes relate to examination scoring. Under the rules as

they presently exist, an applicant is able to fail two-thirds (2/3) of the examination and still be eligible to receive an unrestricted license to practice.

The proposed changes here are a result of all of the above information and considerations, and are designed to remedy the identified problems.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The proposed rule changes will have no fiscal effect at all. The changes are remedial in nature and relate only to administrative measure untied to any fiscal expenditure.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department finds that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee and determined that the rules will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at hector.colon@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before May 3, 2010, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. BC 7.01 is repealed and recreated to read:

BC 7.01 Administration. The board may do any of the following:

- (1) Prepare, administer or grade examinations.
- (2) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

SECTION 2. BC 7.02 (1) is repealed and recreated to read:

BC 7.02 Competency tested. (1) The board shall determine the subject matters for each license and design the examinations to test for minimum competence in the subjects tested.

SECTION 3. BC 7.02 (2) is amended to read:

BC 7.02 (2) The board shall ~~furnish to individuals upon request~~ make available general information describing the competencies upon which the examination is based.

SECTION 4. BC 7.03 (1) (title), (1) and (2) are amended to read:

BC 7.03 Form of examination. (1) (title) ~~BARBER AND COSMETOLOGIST PRACTITIONER~~. An applicant for licensure as a barber or cosmetologist, aesthetician, electrologist or manicurist shall complete a written examination and ~~each part of a practical examination which includes the following parts: haircut, chemical waving, chemical relaxing, thermal curling, tint and shampoo (one part), and blow drying.~~

(2) MANAGER. An applicant for licensure as a manager shall complete a written examination.

SECTION 5. BC 7.03 (3) is repealed.

SECTION 6. BC 7.04 (1) is renumbered BC 7.04 and is amended to read:

BC 7.04 Passing scores. ~~(title) BARBER AND COSMETOLOGIST. The applicant's score shall be the average of the written examination and each part of the practical examination.~~ The passing score of the examinations for licensure as a barber and cosmetologist, aesthetician, manicurist, electrologist or manager, shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. ~~The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the~~

~~passing score for the examination at that point which represents minimum acceptable competence in the profession.~~

SECTION 7. BC 7.04 (2) to (5) are repealed.

SECTION 8. BC 7.05 is amended to read:

BC 7.05 Unauthorized assistance. The board may ~~withhold the score of~~ deny a license to an applicant who gives or receives unauthorized assistance during the examination ~~or withhold the applicant's score~~ and may schedule the applicant for reexamination at a future time at the applicant's expense.

SECTION 9. BC 7.06 is repealed and recreated to read:

BC 7.06 Practical examination score reports. The board shall provide to an applicant a report of the reasons for failure of an examination.

SECTION 10. BC 7.07 and 7.08 are repealed.

SECTION 11. BC 7.09 (2) is renumbered BC 7.09 (3).

SECTION 12. BC 7.09 (3) is repealed.

SECTION 13. BC 7.09 (4) is renumbered BC 7.09 (2) and is amended to read:

BC 7.09 (2) Scores of retake examinations ~~for barbering and cosmetology practitioners~~ shall be combined with examination parts previously passed to determine the score for the entire examination.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Barbering and Cosmetology
Examining Board