



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

November 17, 2023

Stephanie Kuzdrall, Rule-making Coordinator
N.C. Board of Cosmetic Art Examiners
Sent via email only to: skuzdrall@nccosmeticarts.com

Re: Objection to 21 NCAC 14T .0402, and 21 NCAC 14T .0404

Dear Ms. Kuzdrall:

This letter will serve as the written notice of objection pursuant to G.S. 150B-21.12(a).

At its meeting on November 16, 2023, the Rules Review Commission objected to rules 21 NCAC 14T .0402 and 21 NCAC 14T .0404 finding that the rule did not satisfy G.S. 150B-21.9(a). Specifically, the Commission adopted the written opinions of staff attached hereto.

Please respond to this objection pursuant to G.S. 150B-21.12(a)(1) or (2), and (b).

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

/s/ William W. Peaslee
William W. Peaslee
Commission Counsel

Attachments

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

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www.oah.nc.gov

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Cosmetic Arts

RULE CITATION: 21 NCAC 14T .0402

RECOMMENDATION DATE: November 14, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

The rule requires esthetics schools to "supply" their students with a list of tangible personal property.

In response to an inquiry in the Request for Changes concerning the Board's intentions in the use of the term "supply," the Board replied that "schools may either give, sell, or otherwise make available the student equipment. The school must provide (supply) the equipment in the list for student use, but the Board doesn't establish the method or transaction between the student and the school for permanent ownership of the equipment."

I.

Both the rule and the response are ambiguous as they do not clearly establish what the schools are required to do; give, sell, loan, lease, or provide the property during the course of study while at the school.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(2).

II.

Assuming arguendo that the Commission finds that the Board is requiring the schools to give ownership of the tangible personal property, the Commission should object pursuant to G.S. 150B-21.9(a)(1) for lack of authority.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

§ 88B-4. Powers and duties of the Board.

(a) The Board shall have the following powers and duties:

- (1) To administer and interpret this Chapter.
- (2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To conduct investigations of alleged violations of this Chapter or the Board's rules.
- (6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.
- (7) To approve new cosmetic art schools.
- (7a) To adopt rules for cosmetic art schools.
- (8) To inspect cosmetic art schools and shops.
- (9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.
- (10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.
- (11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.
- (12) To adopt a seal.
- (13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued. (1933, c. 179, ss. 1, 14, 15, 17, 23, 29; 1935, c. 54, ss. 3-5; 1941, c. 234, s. 2; 1943, c. 354, ss. 1, 2; 1957, c. 1184, ss. 1, 2; 1969, c. 844, s. 5; 1971, c. 355, ss. 1-3; c. 616, ss. 1-3; 1973, c. 476, s. 128; c. 1360, ss. 2-4; c. 1481, ss. 1, 2; 1975, c. 7, s. 1; c. 857, ss. 1, 3-5, 9; 1977, cc. 155, 472; 1981, c. 614, s. 1; c. 615, ss. 1, 2, 11, 14; c. 884, s. 7; 1983, c. 913, s. 9; 1983 (Reg. Sess., 1984), c. 990; 1985, c. 125; 1985 (Reg. Sess., 1986), c. 833; 1987 (Reg. Sess., 1988), c. 965; 1989, c. 650, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 1013, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 20; 1993, c. 22, s. 2; c. 54, s. 1; 1995, c. 541, s. 2; 1995 (Reg. Sess., 1996), c. 605, ss. 15, 16; 1998-230, s. 2; 1999-348, s. 1.)

1 **21 NCAC 14T .0402 ESTHETICS STUDENT EQUIPMENT** is amended as published in 37:23 NCR 2174
2 with changes as follows:

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4 **21 NCAC 14T .0402 ESTHETICS STUDENT EQUIPMENT**

5 Each esthetics school shall supply each esthetician student with the following:

- 6 (1) Draping;
- 7 (2) Spatulas;
- 8 (3) Tweezers;
- 9 (4) Make up supplies; and
- 10 (5) One ~~mannequin~~ mannequin with head, neck and shoulders.

11

12 *History Note: Authority G.S. 88B-2; 88B-4; 88B-16; ~~88B-17;~~*

13 *Eff. January 1, 2012;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January*
15 *13, 2015*

16 *Amended Eff. October 1, 2023.*

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AGENCY: North Carolina Board of Cosmetic Arts

RULE CITATION: 21 NCAC 14T .0404

RECOMMENDATION DATE:

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The rule requires hair care schools to "supply" their students with a list of tangible personal property.

In response to an inquiry in the Request for Changes concerning the Board's intentions in the use of the term "supply," the Board replied that "schools may either give, sell, or otherwise make available the student equipment. The school must provide (supply) the equipment in the list for student use, but the Board doesn't establish the method or transaction between the student and the school for permanent ownership of the equipment."

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The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

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- (12) To adopt a seal.
- (13) To carry out any other actions authorized by this Chapter.

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1 **21 NCAC 14T .0404 NATURAL HAIR CARE STYLING STUDENT EQUIPMENT** is amended as
2 published in 37:23 NCR 2174 with changes as follows:

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4 **21 NCAC 14T .0404 NATURAL HAIR CARE STYLING STUDENT EQUIPMENT**

5 Each natural hair care school shall supply each natural hair care student with the following:

6 (1) Six combs;

7 (2) Six brushes;

8 (3) Ten clips;

9 (4) Mannequin with hair;

10 (5) One electric flat iron;

11 ~~(5)~~ (6) One blowdryer; ~~and~~

12 (7) One hard rubber or nonflammable comb for heat protection used in thermal styling; and

13 ~~(6)~~ (8) Two capes.

14

15 *History Note: Authority G.S. 88B-2; 88B-4; 88B-16; **88B-17;***

16 *Eff. January 1, 2012;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January*

18 *13, 2015;*

19 *Amended Eff. October 1, 2023.*