

Burgos, Alexander N

Subject: FW: [External] Barber Board Rules

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Wednesday, April 26, 2023 7:25 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: jeanette.k.doran@gmail.com; Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: [External] Barber Board Rules

Hi Alex, I think this letter needs to be posted on the agenda.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Catherine E. Lee <clee@hedrickgardner.com>
Sent: Wednesday, April 26, 2023 3:00 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Anna Baird Choi <achoi@hedrickgardner.com>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>;
jeanette.k.doran@gmail.com
Subject: RE: [External] Barber Board Rules

You don't often get email from clee@hedrickgardner.com. [Learn why this is important](#)

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Ashley – Thank you for the response, and the opportunity for the Board to seek clarification from the Commission during tomorrow's RRC meeting. To facilitate that discussion, please see the attached correspondence from the Board.

Catherine E. Lee | Partner
Hedrick Gardner Kincheloe & Garofalo LLP.
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612
Phone: 919-341-2639 | Fax: 919-832-9425
clee@hedrickgardner.com | www.hedrickgardner.com



From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Wednesday, April 26, 2023 12:15 PM

To: Anna Baird Choi <achoi@hedrickgardner.com>

Cc: Catherine E. Lee <cleee@hedrickgardner.com>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; jeanette.k.doran@gmail.com

Subject: RE: [External] Barber Board Rules

Anna,

I view my role in this process as ministerial. In response to a return request from an agency, the Codifier removes rules from the Code based upon the scope of RRC's objections. Therefore, I have asked publications staff to hold the returned rules until after the RRC meeting tomorrow. This will give the Barber Board an opportunity to seek clarification from the Commission as to the scope of the return. I will attend the meeting in the event there are any questions for me.

The Commission took two votes during the discussion of these rules, one disagreeing with staff's recommendation on the scope of review and one agreeing with staff's recommendation on the contents of the objections. Staff's comments regarding returns were made in the context of staff's recommendation to which the RRC ultimately disagreed. As a result, I do not think those comments hold any weight in determining the fate of these rules.

Please note I have copied RRC's Chair Jeanette Doran on this email as well as staff counsel Bill Peaslee and Brian Liebman.

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

From: Anna Baird Choi <achoi@hedrickgardner.com>

Sent: Wednesday, April 26, 2023 10:08 AM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Catherine E. Lee <cleee@hedrickgardner.com>

Subject: [External] Barber Board Rules

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Ashley,

Thank you for taking time to talk with me yesterday afternoon regarding the temporary rules that were filed by the NC Board of Barber Examiners and which were reviewed at the April 20th Rules Review Commission meeting. As I mentioned during our call, my firm represents the Board.

After reviewing the statutes you mentioned on our call and after discussing your April 24th email reflecting your intention to remove eight permanent rules from the Code, I took a closer look at the relevant statutes and Dennis Seavers' correspondence to you after the April 20th meeting. My purpose in writing this email is to respectfully ask that you reconsider removing the eight permanent rules from the Code. The reason that I am requesting this reconsideration is as follows: In a letter from Bill Peaslee to Mr. Seavers sent on April 21, 2023, Mr. Peaslee indicated that these eight rules were being returned to the agency pursuant GS 150B-21.1(b2), as a result of Mr. Peaslee's statement of objection under GS 150B-21.1(b1). As you know, GS 150B-21.1 is entitled "Procedure for Adopting a Temporary Rule." This statute acknowledges that a temporary rule that "does not meet the standards in G.S. 150B-21.9" must be returned to the agency, and if the agency does not cure the objection the second time, the RRC shall "return the rule to the agency." Further, paragraph (b2) states that if the agency doesn't provide additional findings [for a temporary rule that has been

objected to by the RRC], "the Commission or its designee must immediately notify the head of the agency and return the rule to the agency." At no time did the Board understand that the text of the permanent rules were at risk for being removed from the Code in their entirety. In fact, the Board believes that the RRC relied upon Mr. Peaslee's assertions during the RRC meeting that, even if the RRC voted to consider the entire text of the rule (and not just the proposed temporary language) and voted to accept staff's objections, the permanent language of the rule would remain in the rule until the Board underwent permanent rulemaking to correct it – as it should, so that the regulated public has the opportunity for a full public comment and public hearing.

In summary, if you decline to reconsider removing the eight permanent rules from the Code, the Board respectfully request that you delay your removal of the eight permanent rules listed in your April 24 email until it can determine how best to address the RRC's objections. My law partner Catherine Lee is copied on this email; she will be the point person on this matter through the end of this week and the early part of next week as I will be out of the office with limited access to email. She understands that time is of the essence and will respond promptly to any emails or calls from you.

Thank you for your consideration of the Board's request.

Anna

Anna Baird Choi | Partner
Hedrick Gardner Kincheloe & Garofalo LLP.
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612
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Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, April 21, 2023 1:18 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Objection to Barber Board Temp Rules

Thank you for your email.

The Chair of the RRC is planning on having a special meeting Thursday April 27.

As always if you have any question or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, April 21, 2023 1:46 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; sherodholloway@gmail.com
Subject: RE: Objection to Barber Board Temp Rules

Thank you for your email.

I am happy to advise you that it is my intention to recommend approval of your revised rules.

Have a good weekend.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Friday, April 21, 2023 1:44 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; sherodholloway@gmail.com
Subject: RE: Objection to Barber Board Temp Rules

No problem – please see attached

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, April 21, 2023 1:41 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; sherodholloway@gmail.com
Subject: RE: Objection to Barber Board Temp Rules

Good afternoon

Consider a change in the title to the Rule?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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From: Seavers, Dennis <dennis.seavers@nc.gov>

Sent: Friday, April 21, 2023 1:29 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; sherodholloway@gmail.com

Subject: RE: Objection to Barber Board Temp Rules

Thanks, Bill. I've attached a revised response and a revised version of 21 NCAC 06L .0116 (the previous letter asked for it to be returned).

If you have any questions or concerns, please let me know.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, April 21, 2023 1:18 PM

To: Seavers, Dennis <dennis.seavers@nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Objection to Barber Board Temp Rules

Thank you for your email.

The Chair of the RRC is planning on having a special meeting Thursday April 27.

As always if you have any question or concerns please do not hesitate to contact me.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules
Attachments: 21 NCAC 06L .0116 - RRC b1.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Friday, April 21, 2023 1:44 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; sherodholloway@gmail.com
Subject: RE: Objection to Barber Board Temp Rules

No problem – please see attached

1 21 NCAC 06L .0116 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0116 BARBER SHOP MANAGERS LICENSE VERIFICATION**

4 ~~(a)~~ All barber shop managers ~~(of~~ barber shops and mobile barber shops shall verify that any licensee employed in
5 the barber shop or mobile barber shop is the person whose name appears on the license or permit ~~prior to~~ before
6 allowing the licensee to perform barbering services in the barber shop or mobile barber shop. This verification shall
7 be based on government issued identification.

8 ~~(b)~~ The shop registered barber manager ~~[of the barber shop or mobile barber shop]~~ is responsible for the sanitary
9 condition, as defined in 21 NCAC 06P .0103(10), ~~[21 NCAC 06P .0103(11),]~~ of the entire ~~[barber shop or mobile~~
10 ~~barber]~~ shop.

11 ~~(c)~~ The barber shop manager ~~[of a barber shop or mobile barber shop]~~ is accountable for activities at the ~~[barber shop~~
12 ~~or mobile barber]~~ shop whether present on the premises or not.

13

14 *History Note: Authority G.S. 86A-15; 86A-22; 86B-21; 86B-33;*

15 *Eff. June 1, 2008;*

16 *Amended Eff. April 1, 2010;*

17 *Readopted Eff. July 1, 2016;*

18 *Amended Eff. January 1, 2018- 2018;*

19 *Temporary Amendment Eff. May 10, 2023.*

Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, April 21, 2023 11:01 AM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Objection to Barber Board Temp Rules

Good morning Dennis,

Thank you for your inquiry. I am waiting on a reply from the RRC Chair on that issue.

That does not preclude the Board from withdrawing the revisions until a later time should it choose to so do.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Friday, April 21, 2023 10:52 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Objection to Barber Board Temp Rules

Bill,

Thanks for pointing out that issue of interconnectedness between two rules. Before I respond, were you looking to have the board response delayed so that it could be considered at the May 18 regular RRC meeting?

Also, I've dropped Sherod Holloway off this email thread. He can be added if needed, but he doesn't necessarily need to be involved in this back-and-forth.

Dennis

Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, April 21, 2023 9:06 AM

To: Seavers, Dennis <dennis.seavers@nc.gov>; sherodholloway@gmail.com

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Objection to Barber Board Temp Rules

Good morning Dennis,

The filing of a response triggers a special meeting of the RRC within five days, was that your intention?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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State of North Carolina
BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
7001 Mail Service Center, Raleigh, North Carolina 27699-7000
Phone (919) 814-0640 • Fax (919) 981-5068
barbers.nc.gov • barbers@nc.gov • ncbee.com • electrolysis@nc.gov

April 20, 2023

Bill Peaslee
Commission Counsel
Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

Sent only by email to bill.peaslee@oah.nc.gov

Dear Mr. Peaslee:

Based on the Rules Review Commission's objection to various temporary rules at the April 20, 2023 meeting, the North Carolina Board of Barber and Electrolysis Examiners provides the following response under G.S. § 150B-21.1(b1).

Revised rules

Enclosed are revised versions of the following seven rules. The revisions should address the Commission's objections.

21 NCAC 06N .0102
21 NCAC 06N .0104
21 NCAC 06N .0116
21 NCAC 06O .0105
21 NCAC 06O .0112
21 NCAC 06O .0114
21 NCAC 06O .0119

Request to return to agency

The Board will not make additional changes to the following rules and requests that the Commission return them.

21 NCAC 06F .0102
21 NCAC 06H .0101
21 NCAC 06I .0105
21 NCAC 06J .0101

21 NCAC 06L .0112
21 NCAC 06L .0116
21 NCAC 06L .0204
21 NCAC 06N .0103
21 NCAC 06O .0122
21 NCAC 06O .0126
21 NCAC 06R .0101

If you have any questions, please feel free to contact me at dennis.seavers@nc.gov or (919) 814-0641.

Sincerely,

Dennis Seavers

Dennis Seavers
Executive Director

c: Sherod Holloway, Chairman, North Carolina Board of Barber and Electrolysis
Examiners

Burgos, Alexander N

Subject: FW: Objection to Barber Board Temp Rules
Attachments: 21 NCAC 06O .0105 - RRC revised b1.docx; 21 NCAC 06O .0112 - RRC revised b1.docx; 21 NCAC 06O .0114 - RRC b1.docx; 21 NCAC 06O .0119 - RRC revised b1.docx; Response to objections.pdf; 21 NCAC 06N .0102 - RRC b1.docx; 21 NCAC 06N .0104 - RRC b1.docx; 21 NCAC 06N .0116 - RRC b1.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Thursday, April 20, 2023 8:28 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; sherodholloway@gmail.com
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Objection to Barber Board Temp Rules

Dear Bill,

Please see the attached response to the Commission objections. There are seven revised rules, and the agency requests that the remaining rules be returned.

Thanks,
Dennis

Dennis Seavers
Executive Director
NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
(919) 814-0641 (Office)
(919) 981-5068 (Fax)
7001 Mail Service Center
Raleigh, NC 27699-7000
www.barbers.nc.gov | www.ncbee.com
barbers@nc.gov | electrolysis@nc.gov

1 21 NCAC 06N .0102 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06N .0102 FORM BAR-1**

4 (a) The Form BAR-1 shall be filed when one applies to open ~~or manage~~ a new barber shop. It ~~requests~~ requires the
5 following:

- 6 (1) the name and address of the barber shop;
- 7 ~~(2) — the name, address, and certificate [license] number of the [licensed barber] manager;~~
- 8 ~~(3)(2)~~ the name and address of the barber shop owner; owner or manager;
- 9 ~~(4)(3)~~ the physical dimensions of the barber shop;
- 10 ~~(5)(4)~~ the barber shop business hours;
- 11 ~~(6)(5)~~ the type of fixtures installed; and
- 12 ~~(7)(6)~~ the date the barber shop will be ready for inspection.

13 (b) The fee required by ~~Rule .0101(a)(19)~~ Rule .0101(a)(21) of this Section shall accompany this form.

14 (c) The Form BAR-1 shall include the applicant's attestation that the information in the form is correct.

15

16 *History Note: Authority G.S. ~~86A-1; 86A-13; 86A-15; 86A-25; 86B-21; 86B-29; 86B-31; 86B-41;~~*
 17 *Eff. February 1, 1976;*
 18 *Readopted Eff. February 8, 1978;*
 19 *Amended Eff. March 1, 1983;*
 20 *Legislative Objection Lodged Eff. March 7, 1983;*
 21 *Curative Amended Eff. April 6, 1983;*
 22 *Amended Eff. May 1, 1989;*
 23 *Readopted Eff. July 1, 2016;*
 24 *Amended Eff. February 1, 2021; October 1, ~~2020~~ 2020;*
 25 *Temporary Amendment Eff. May 10, 2023.*

1 21 NCAC 06N .0104 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06N .0104 FORM BAR-3**

4 (a) The Form BAR-3 shall be filed for permission to enroll in barber school. It requires the following:

5 (1) the name, address, social security number, and birth date of the applicant;

6 (2) the applicant's prior barber school attendance, if any;

7 (3) the name of the school enrolled; and

8 (4) the date of enrollment; and enrollment.

9 (5) — the school manager's attestation that the information in the form is correct.

10 (b) The fee in ~~21 NCAC 06N .0101(a)(12)~~ Rule .0101(a)(14) of this Section shall accompany this form.

11

12 *History Note: Authority G.S. ~~86A-18; 86A-22; 86A-25; 86B-35; 86B-38; 86B-41; 93B-14;~~*

13 *Eff. February 1, 1976;*

14 *Readopted Eff. February 8, 1978;*

15 *Amended Eff. March 1, 1983;*

16 *Legislative Objection Lodged Eff. March 7, 1983;*

17 *Curative Amended Eff. April 6, 1983;*

18 *Amended Eff. September 1, 2013;*

19 *May 1, 1989;*

20 *Readopted Eff. October 1, 2016;*

21 *Amended Eff. October 1, ~~2020.~~ 2020;*

22 *Temporary Amendment Eff. May 10, 2023.*

1 21 NCAC 06N .0116 is adopted under temporary procedures with changes as follows:

2

3 **21 NCAC 06N .0116 FORM BAR-13**

4 (a) The Form BAR-13 shall be filed when one applies to open or manage a new mobile barber shop. It requires the
5 following:

6 (1) the name of the shop;

7 (2) the permanent business address required by ~~G.S. 86B-20(g)~~; G.S. 86B-30(g);

8 ~~(3) the name, address, and license number of the licensed barber manager;~~

9 ~~(4)~~(3) the name and address of the mobile barber shop ~~owner~~; owner or manager;

10 ~~(5)~~(4) if available, the email address, website, or social media handle of the mobile barber shop;

11 ~~(6)~~(5) the physical dimensions of the mobile barber shop;

12 ~~(7)~~(6) the vehicle identification number, license plate number, and vehicle make and model of the mobile
13 barber shop;

14 ~~(8)~~(7) the mobile barber shop business hours;

15 ~~(9)~~(8) an explanation of how the mobile barber shop will dispose of sewage and wastewater;

16 ~~(10)~~(9) the type of fixtures installed; and

17 ~~(11)~~(10) the date the mobile barber shop will be ready for inspection.

18 (b) The fee required by Rule .0101(a)(22) of this Section shall accompany this form.

19 (c) The Form BAR-13 shall include the applicant's attestation that the information in the form is correct.

20

21 *History Note: Authority G.S. 86B-30;*

22 *Temporary Adoption Eff. May 10, 2023.*

1 21 NCAC 06O .0105 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06O .0105 UNLICENSED BARBER OR APPRENTICE**

4 (a) The presumptive civil penalty for a barber shop or mobile barber shop ~~manager~~ allowing a barber or apprentice to
5 practice without a ~~license;~~ license, in violation of G.S. 86B-21:

6 (1) 1st offense \$300.00

7 (2) 2nd offense \$500.00

8 (b) The presumptive civil penalty for an individual engaging in barbering without a ~~license;~~ license, in violation of
9 G.S. 86B-21:

10 (1) 1st offense \$250.00

11 (2) 2nd offense \$450.00

12 (3) 3rd offense \$500.00

13

14 *History Note: Authority G.S. ~~86A-1; 86A-5(a)(6); 86A-27;~~ 86B-10; 86B-21;*

15 *Eff. April 1, 2005;*

16 *Readopted Eff. July 1, ~~2016;~~ 2016;*

17 *Temporary Amendment Eff. May 10, 2023.*

1 21 NCAC 06O .0112 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06O .0112 IDENTIFICATION**

4 (a) The presumptive civil penalty for a barber shop or mobile barber shop ~~owner or manager~~ failing to positively
5 identify a ~~registered~~ licensed barber, apprentice, or holder of a temporary ~~permit~~; permit, as set forth in 21 NCAC 06L
6 .0116(a):

- 7 (1) 1st offense \$100.00
- 8 (2) 2nd offense \$150.00
- 9 (3) 3rd offense \$250.00

10 (b) The presumptive civil penalty for a ~~registered~~ licensed barber, apprentice, or holder of a temporary permit failing
11 to maintain and produce a license or permit as defined in 21 NCAC 06P .0103(7):

- 12 (1) 1st offense \$100.00
- 13 (2) 2nd offense \$150.00
- 14 (3) 3rd offense \$250.00

15 (c) The presumptive civil penalty for a barber student failing to wear identification as set forth in 21 NCAC 06F
16 .0122:

- 17 (1) 1st offense \$100.00
- 18 (2) 2nd offense \$150.00
- 19 (3) 3rd offense \$250.00

20

21 *History Note: Authority G.S. ~~86A-1; 86A-10; 86A-11; 86A-27; 86B-10; 86B-21; 86B-26; 86B-27;~~*
 22 *Eff. June 1, 2008;*
 23 *Amended Eff. September 1, 2009;*
 24 *Readopted Eff. July 1, ~~2016;~~ 2016;*
 25 *Temporary Amendment Eff. May 10, 2023.*

1 21 NCAC 06O .0114 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06O .0114 ANIMALS IN BARBER SHOPS**

4 The presumptive civil penalty for a barber manager [of a] barber shop or mobile barber shop allowing an animal in a
5 the barber shop or mobile barber shop in violation of 21 NCAC 06L .0114:

- 6 (1) 1st offense \$100.00
- 7 (2) 2nd offense \$150.00
- 8 (3) 3rd offense \$250.00

9

10 *History Note: Authority G.S. ~~86A-15; 85A-27; 86B-10; 86B-31;~~*

11 *Eff. June 1, 2008;*

12 *Readopted Eff. July 1, ~~2016.~~ 2016;*

13 *Temporary Amendment Eff. May 10, 2023.*

1 21 NCAC 06O .0119 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06O .0119 FAILURE TO NOTIFY BOARD OF CHANGE OF ADDRESS**

4 ~~(a) The presumptive civil penalty for the failure of a barber shop or barber school to fail to notify the Board of a~~
5 ~~change of address:~~

6 (1) ~~1st offense \$50.00~~

7 (2) ~~2nd offense \$100.00~~

8 (3) ~~3rd offense \$200.00~~

9 ~~(b) The presumptive civil penalty for an individual [the owner or licensed barber manager of] a barber shop or mobile~~
10 ~~barber shop [shop, or the owner or school] manager [of a barber school,] for the failure failing to notify the Board of~~
11 ~~a change of address for a the barber shop [shop,] or mobile barber [shop,] shop as set forth in 21 NCAC 06L .0120:~~
12 ~~or barber school:~~

13 (1) 1st offense \$50.00

14 (2) 2nd offense \$100.00

15 (3) 3rd offense \$200.00

16

17 *History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-27; 86B-2; 86B-10; 86B-30;*

18 *Eff. July 1, 2016. 2016;*

19 *Temporary Amendment Eff. May 10, 2023.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, April 20, 2023 1:52 PM
To: sherodholloway@gmail.com
Cc: Seavers, Dennis; Burgos, Alexander N
Subject: Objection to Barber Board Temp Rules
Attachments: 04.23 - Barber Board Staff Opinion.pdf; 04.2023 Barber Temp Rule 21 NCAC 06.docx

Good afternoon:

The attached will serve as the written notice of objection pursuant to G.S. 150B-21.1(b1) for the temporary rules captioned in the letter. These rules were reviewed by the Rules Review Commission this morning.

As always if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Seavers, Dennis
Sent: Wednesday, April 19, 2023 11:13 AM
To: rrc.comments; Peaslee, William W
Cc: Burgos, Alexander N
Subject: Agency response
Attachments: Response to staff opinions.pdf

Please see the attached response by the North Carolina Board of Barber and Electrolysis Examiners to the staff opinions filed for our adopted temporary rules. I would respectfully request that the response be posted on the RRC website as quickly as possible. While the Commission Counsel had only a limited time to review our rules and was working until late yesterday on them, we want to make sure Commissioners have as much time as possible to review our response.

Thank you!
Dennis

Dennis Seavers
Executive Director
NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
(919) 814-0641 (Office)
(919) 981-5068 (Fax)
7001 Mail Service Center
Raleigh, NC 27699-7000
www.barbers.nc.gov | www.ncbee.com
barbers@nc.gov | electrolysis@nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, April 19, 2023 4:47 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: Barber rules

Good afternoon Dennis,

Can you explain how the following changes are required by SL 2022-72?

- In 06O .0121, the increase in the penalties.
- In 06L .0109, the additions of the specifications as to the pathogens
- In 06K .0111, the change from 60 days to 30 days
- In 06O .0119, the change to include the owner whereas previously it was just the manager.
- In 06O .0122, the addition of penalties for failure to notify the Board of a change in the school manager.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 6:06 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06N .0102 .0103 .0104 .0116
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06N .0102 .0103 .0104 .0116 .doc

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rules. The rules will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 6:07 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: Finished

Dennis,

I believe I have completed all of my recommendations.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 5:33 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06O .0119 (Temp) Staff opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06O .0119.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 5:19 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: Final rules

Good afternoon Dennis,

If you recall, you were sending me the revision of the rules as they became available and were going send them all together once you were done.

Please don't forget to send the final versions and by final versions, I mean those that you have already sent to me. Please don't make any further corrections or deletions. Thanks!

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 5:08 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06O .0105, .0112, .0114, .0112 (Temp) Staff opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06O .0105, .0112, .0114, .0122.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rules. The rules will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: rrc.commissioners-bounces@lists.ncmail.net on behalf of Peaslee, William W
<bill.peaslee@oah.nc.gov>
Sent: Tuesday, April 18, 2023 4:40 PM
To: OAH.RRC.Commissioners
Subject: [RRC.Commissioners] Barber rule opinions
Attachments: ATT00001.txt

Good afternoon:

I have received a call from a Commissioner concerning the temporary rule submitted by the Barber Board. Some have already been posted on the OAH website; however I am still working on them and there will be more to come. I will send a follow-up email as soon as I am finished. Thank you for your patience.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 4:31 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06R .0101 (Temp) Staff Opinion
Attachments: 04.23 Barber and Electroysis Examiners Temp Rule 21 NCAC 06R .0101.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 4:17 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06O .0126 (Temp) Staff Opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06O .0126.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Seavers, Dennis
Sent: Tuesday, April 18, 2023 12:29 PM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: Revision to 21 NCAC 06L .0120
Attachments: 21 NCAC 06L .0120 - RRC.docx

Bill,

Please see the attached revised version of 21 NCAC 06L .0120

Thanks,
Dennis

Dennis Seavers
Executive Director
NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
(919) 814-0641 (Office)
(919) 981-5068 (Fax)
7001 Mail Service Center
Raleigh, NC 27699-7000
www.barbers.nc.gov | www.ncbee.com
barbers@nc.gov | electrolysis@nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 2:04 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06L .0204 (Temp) Staff Opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06L .0204.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Seavers, Dennis
Sent: Tuesday, April 18, 2023 12:28 PM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: FW: Revision to 21 NCAC 06L .0113
Attachments: 21 NCAC 06L .0113 - RRC revised.docx

I'm sorry – I left Alex off accidentally

From: Seavers, Dennis
Sent: Tuesday, April 18, 2023 12:21 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: Revision to 21 NCAC 06L .0113

Hi, Bill,

Last week, I shared my plan to discuss 21 NCAC 06L .0113 and see whether we could repeal Paragraph (c) of the rule. As I mentioned at that time, to my knowledge (and certainly during my tenure), we've never enforced this Paragraph. The board agreed to repeal the paragraph. I believe this will address the issues raised in your staff opinion.

Please let me know whether you plan to withdraw the staff opinion, or whether the commission will proceed with the objection and our response will be the submission of this revised rule. If possible, the former seems like a more efficient approach.

Dennis

Dennis Seavers
Executive Director
NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
(919) 814-0641 (Office)
(919) 981-5068 (Fax)
7001 Mail Service Center
Raleigh, NC 27699-7000
www.barbers.nc.gov | www.ncbee.com
barbers@nc.gov | electrolysis@nc.gov

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1 21 NCAC 06L .0120 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0120 NOTIFICATION OF CHANGE OF ADDRESS**

4 The ~~owner or manager of a~~ barber shop or mobile barber shop ~~owner or manager~~ shall notify the Board of a change
5 in the barber shop's or mobile barber shop's mailing address or, if changed by the United States Postal Service, the
6 physical address, within five business days of the change.

7

8 *History Note: Authority ~~G.S. 86A-1~~; G.S. 86B-21;*

9 *Eff. September 1, 2009;*

10 *Readopted Eff. July 1, ~~2016~~. 2016;*

11 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0113 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0113 DISEASES**

4 (a) No holder of a ~~registered barber, barber license, apprentice, apprentice license,~~ or **barber** student **barber** permit
5 shall **knowingly** serve a patron:

- 6 (1) with an open sore or sores;
- 7 (2) exhibiting symptoms of an infectious dermatologic disease or disorder;
- 8 (3) with parasitic infestations of the skin or hair; or
- 9 (4) with a communicable ~~disease.~~ disease that can be spread by providing barber services.

10 (b) No holder of a ~~registered barber, barber license, apprentice, apprentice license,~~ or student barber permit who
11 knows he or she has an infectious dermatologic disease that can be spread by providing barbering services, infectious
12 disease with open sore or sores on the hand or hands, ~~or~~ parasitic infestation of the skin or hair in a communicable
13 ~~stage stage,~~ or any other communicable disease shall provide barber service in a barber shop, mobile barber shop or,
14 when authorized by Rule .0111 of this Section, ~~in a~~ client's home.

15 ~~(c) The Board shall have the right to require a physical examination of any barber employed in any barber shop [or~~
16 ~~mobile barber shop] who is suspected of having an infectious dermatologic disease, infectious disease with open sore~~
17 ~~or sores on the hand or hands, or parasitic infestation of the skin or hair in a communicable stage.~~

18

19 *History Note: Authority G.S. ~~86A-15; 86B-31;~~*
20 *Eff. June 1, 2008;*
21 *Readopted Eff. July 1, ~~2016; 2016;~~*
22 *Temporary Amendment Eff. May 2, 2023.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 18, 2023 11:31 AM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06L .0116 (Temp) Staff Opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06L .0116.doc

Good morning Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, April 17, 2023 4:33 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06L .0112 (Temp) Staff opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06L. 0112.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Saturday, April 15, 2023 3:03 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06L .0113 Temp
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06L .0113.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
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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: Board of Barber and Electrolysis Examines

RULE CITATION: 21 NCAC 06L .0113 Temporary Rule

RECOMMENDATION DATE: April 15, 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:

As written, the Board grants authority unto itself in Paragraph (c) to require a physical examination of any barber it suspects of having an infectious disease or parasitic infestation under certain circumstances.

A Board cannot grant unto itself authority. All authority is derived from the people as embodied by the General Assembly. Executive Branch agencies, boards and commissions cannot create their own authority.

Further, the Rule would "require a physical examination." While it appears that the Board can revoke a barber's license for failure to present satisfactory results from an examination pursuant to G.S.96B-35¹, staff counsel does not see any authority to force a barber to have an examination.

¹ G.S. 86B-35 IS NOT IN THE HISTORY NOTE.

William W. Peaslee
Commission Counsel

Accordingly, staff counsel recommends the Commission object to the rule pursuant to G.S. 150B-21.9(a)(1) for exceeding the Board's authority, as written.

Staff counsel believes that the Board intended to state that barbers (and perhaps other licensees) whom the Board suspects of having a communicable disease or infestation shall submit to a physical examination by a licensed physician.

However, as written by the Board, the Rule is ambiguous. The Board does not provide a definition of "suspicion" or lay out any criteria which would be the basis for a suspicion. As written, the enforcement of this subparagraph would be open to arbitrary or unequal application.

It is also unclear what a parasitic infestation "in a communicable stage" is.

Absent a definition of "medical provider" or "physical examination", it is unclear whether a nurse taking the barber's temperature would satisfy the requirement. It should also be noted that the Rule does not require a report from the examination be presented to the Board. It is unclear whether the examination is for the barber's own enlightenment or if the barber's license is in peril.

Accordingly, staff counsel recommends the Commission object to the rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguousness.

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.)

§ 86B-31. Sanitary rules and regulations; inspections.

(a) Each barber and each owner or manager of a barbershop, mobile barbershop, barber school or college, or any other place where barber service is rendered, shall comply with the following sanitary rules and regulations:

(1) Proper quarters. -

- a. Every barbershop, or other place where barber service is rendered, shall be located in buildings, mobile units, or rooms of such construction that they may be easily cleaned, well lighted, well ventilated and kept in an orderly and sanitary condition.
- b. Each area where barber service is rendered or where a combination of barber service and cosmetology service is rendered shall be separated by a substantial partition or wall from areas used for purposes other than barber services, cosmetology services, or shoe shining services.
- c. Walls, floor and fixtures where barber service is rendered are to be kept sanitary.
- d. Running water, hot and cold, shall be provided, and sinks shall be located at a convenient place in each barbershop so that barbers may wash their hands after each haircut. Tanks and lavatories shall be of such construction that they may be easily cleaned. The Board shall adopt rules regarding the disposal of wastewater in a barbershop or mobile barbershop.
- e. Every barbershop or other place where barber service is rendered, and every building or structure used as a part of a barber school, shall comply with applicable building and fire codes and regulations.
- f. If a mobile barbershop, all applicable requirements in accordance with G.S. 86B-30.

(2) Equipment and instruments. -

- a. Each person serving as a barber shall, immediately before using razors, tweezers, combs, contact cup or pad, sterilize the instruments by immersing them in a product or solution that the Board may approve. Every owner or manager of a barbershop shall supply a separate container for the use of each barber, adequate to provide for a sufficient supply of the above solutions.
- b. Each barber shall maintain combs and hair brushes in a clean and sanitary condition at all times and shall thoroughly clean mug and lather brush before each separate use.
- c. The headrest of every barber chair shall be protected with clean paper or a clean laundered towel. Each barber chair shall be

covered with a smooth nonporous surface, such as vinyl or leather, that is cleaned easily.

- d. Every person serving as a barber shall use a clean towel for each patron. All clean towels shall be placed in closed cabinets until used. Receptacles composed of material that can be washed and cleansed shall be provided to receive used towels, and all used towels must be placed in receptacles until laundered. Towels shall not be placed in a sterilizer or tank or rinsed in the barbershop. All wet and used towels shall be removed from the workstand or lavatory after serving each patron.
- e. Whenever a hair cloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neckstrap shall be placed around the patron's neck so as to prevent the hair cloth from touching the skin. Hair cloths shall be replaced when soiled.

(3) Barbers. -

- a. Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each patron.
- b. Each person working as a barber shall be clean both as to person and dress.
- c. No barber shall serve any person who has an infectious or communicable disease, and no barber shall undertake to treat any patron's infectious or contagious disease.

(4) Any person, other than a licensed barber, shall before undertaking to give shampoos in a barbershop furnish the Board with a health certificate on a form provided by the Board.

(5) The owner or manager of a barbershop, mobile barbershop, or any other place where barber service is rendered shall post a copy of these rules and regulations in a conspicuous place in the shop or other place where the services are rendered.

(b) All barbershops, mobile barbershops, barber schools and colleges, and any other place where barber service is rendered, shall be open for inspection at all times during business hours to any members of the Board or its agents or assistants. Initial inspections conducted by the Board pursuant to this Chapter shall not be delayed if the sole reason for delay is the lack of a certificate of occupancy by a unit of local government. A copy of the sanitary rules and regulations set out in this section shall be furnished by the Board to the owner or manager of each barbershop, mobile barbershop, or barber school, or any other place where barber service is rendered in the State, and that copy shall be posted in a conspicuous place in each barbershop, mobile barbershop, or barber school. The Board shall have the right to make additional rules and regulations governing barbers and barbershops, mobile barbershops, and barber schools for the proper administration and enforcement of this section, but no such additional rules or

regulations shall be in effect until those rules and regulations have been furnished to each barbershop within the State.

(c) Notwithstanding any other provision of law, a licensed barber may practice barbering in a client's home out of medical necessity without meeting the requirements of subsection (b) of this section. The Board shall adopt rules to allow this exception. (1929, c. 119, s. 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, s. 7; 1961, c. 577, s. 3; 1979, c. 695, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 7; 2009-471, s. 1; 2014-115, s. 39.7; recodified from N.C. Gen. Stat. 86A-15 by 2022-72, s. 1(v); 2022-72, s. 2.)

§ 86B-35. Disqualifications for license.

The Board may either refuse to issue or to renew, or may suspend or revoke any license, barbershop permit, or barber school permit issued under this Article for any one or combination of the following causes:

- (1) Conviction of the applicant or licensee of a felony proved by certified copy of the record of the court conviction.
- (2) Gross malpractice or gross incompetence.
- (3) Continued practice by a person knowingly having an infectious or contagious disease after being warned in writing by the Board to cease practice.
- (4) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit forming drugs.
- (5) The commission of any of the offenses described in subdivisions (3), (5), and (6) of G.S. 86B-37.
- (6) The violation of any one or more of the sanitary rules and regulations established by statute or rule or regulation of the Board, provided that the Board has previously given two written warnings to the individual committing the violation.
- (7) The violation of the rules and regulations pertaining to barber schools, provided that the Board has previously given two written warnings to the barber school. (1929, c. 119, s. 19; 1941, c. 375, s. 8; 1945, c. 830, s. 6; 1961, c. 477, s. 4; 1979, c. 695, s. 1; 1981, c. 457, s. 9; recodified from N.C. Gen. Stat. 86A-18 by 2022-72, s. 1(z); 2022-72, s. 2.)

Burgos, Alexander N

From: Peaslee, William W
Sent: Saturday, April 15, 2023 1:34 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06J .0101 TEMPORARY RULE
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06J .0101.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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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: Board of Barber and Electrolysis Examines

RULE CITATION: 21 NCAC 06J .0101 Temporary Rule

RECOMMENDATION DATE: April 15, 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:

Barber apprentices must be licensed by the Board. G.S. 86B-40 establishes the requirements for apprentice licensure. G.S. 86B-40 requires a prospective barber apprentice licensee to pass an examination conducted by the Board. The statute places no prerequisites to taking the apprentice examination¹.

The Rule requires prospective barber apprentice licensees to attend “an approved barber school” for a prescribed period prior to apprentice licensure.

In response to a query in staff's Request for Changes about the Board's authority to establish prerequisites to apprentice licensure, the Board cited G.S. 86B-25 which reads in its entirety:

¹ G.S. 86B-23 LISTS THE REQUIREMENTS FOR A PERSON TO BE A LICENSED BARBER BUT THESE ARE NOT APPLICABLE TO APPRENTICE LICENSURE.

William W. Peaslee
Commission Counsel

The Board shall conduct examinations of applicants for licensure to practice barbering as licensed barbers and licensed apprentices, not less than four times each year, at such times and places as will prove most convenient and as the Board may determine. The Board may adopt rules establishing procedures for the administration of examinations.

The Board opines that this language empowers it to “promulgate minimum standards” for licensure.

However, G.S. 86B-26 clearly states, “Whenever the provisions of **this Chapter** have been complied with, the Board shall issue, or have issued, a license as a barber or as an apprentice, as the case may be.” (Emphasis added)

In short, if the General Assembly had wanted to require additional “minimum standards” for apprentice licensure, it would have either prescribed the standards or authorized the Board to promulgate the same. By the plain language of G.S. 86B-40, the only prerequisite to apprentice licensure is passing the examination. Training from a Board accredited school is not a prerequisite to barber apprentice licensure.

It appears to staff counsel that the Board is establishing a barrier to apprenticeship licensure without authority.

Accordingly, staff counsel recommends the Commission object to the rule pursuant to G.S. 150B-21.9(a)(1) for exceeding the Board’s 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.)

§ 86B-25. Board to conduct examinations not less than four times each year.

The Board shall conduct examinations of applicants for licensure to practice barbering as licensed barbers and licensed apprentices, not less than four times each year, at such times and places as will prove most convenient and as the Board may determine. The Board may adopt rules establishing procedures for the administration of examinations. (1929, c. 119, s. 10; 1979, c. 695, s. 1; 2004-146, s. 4; recodified from N.C. Gen. Stat. 86A-9 by 2022-72, s. 1(q); 2022-72, s. 2.)

§ 86B-26. Issuance of certificates of registration.

Whenever the provisions of **this Chapter have been complied with**, the Board shall issue, or have issued, a license as a barber or as an apprentice, as the case may be. (1929, c. 119, s. 11; 1979, c. 695, s. 1; 1981, c. 457, s. 5; recodified from N.C. Gen. Stat. 86A-10 by 2022-72, s. 1(r); 2022-72, s. 2.)

§ 86B-40. Apprenticeship.

(a) Before being issued an apprentice license, an applicant must pass an examination conducted by the Board to determine his or her competence, including his or her knowledge of barbering, sanitary rules and regulations, and knowledge of diseases of the face, skin and scalp.

(b) An apprentice license expires on May 31 of each year. Every holder of an apprentice license shall annually renew the apprentice license by the expiration date and pay the required renewal fee. An apprentice license issued under this Chapter is automatically suspended by operation of law after failure to renew the apprentice license by the expiration date. An apprentice whose apprentice license has expired may have the license restored immediately upon paying all lapsed renewal fees and the required late fee. The license of an apprentice is valid only so long as the apprentice works under the supervision of a licensed barber. The licensed barber shall remain present on the premises of the barbershop at all times while the apprentice is working. No apprentice shall operate a barbershop.

(c) On completion of at least one year's apprenticeship, evidenced by affidavit of the supervising licensed barber or barbers, and upon meeting the other requirements of G.S. 86B-23, the apprentice shall be issued a license as a barber, pursuant to G.S. 86B-26. No licensed apprentice may practice for a period exceeding three years without retaking and passing the required examination to receive a license as an apprentice. (1929, c. 119, ss. 4, 5; 1941, c. 375, s. 3; 1975, c. 68, ss. 1, 2; 1979, c. 695, s. 1; 1981, c. 457, s. 14; 1995 (Reg. Sess., 1996), c. 605, s. 13; 2004-146, s. 8; recodified from N.C. Gen. Stat. 86A-24 by 2022-72, s. 1(ee); 2022-72, s. 2.)

Burgos, Alexander N

From: Peaslee, William W
Sent: Saturday, April 15, 2023 1:11 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06I .0105 Temp Staff Opinion
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06I .0105.doc

Good afternoon Dennis,

Attached please find the staff opinion on the above captioned rule. The rule will be considered at the RRC's next meeting on Thursday, April 20, 2023. Please let me know if you intend to address the Commission.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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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: Board of Barber and Electrolysis Examines

RULE CITATION: 21 NCAC 06I .0105 Temporary Rule

RECOMMENDATION DATE: April 15, 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:

Barber apprentices must be licensed by the Board. G.S. 86B-40 establishes the requirements for apprentice licensure. G.S. 86B-40 requires a prospective barber apprentice licensee to pass an examination conducted by the Board. The statute places no prerequisites to taking the apprentice examination¹.

The Rule prohibits barber students who have been trained in another state from taking the apprentice examination unless his or her hours of training hours have been credited pursuant to Rule .0101 of Subchapter 06I.

¹ G.S. 86B-23 LISTS THE REQUIREMENTS FOR A PERSON TO BE A LICENSED BARBER BUT THESE ARE NOT APPLICABLE TO APPRENTICE LICENSURE.

William W. Peaslee
Commission Counsel

In response to a query in staff's Request for Changes concerning the Board's authority to establish prerequisites to taking the apprentice examination, the Board cited G.S. 86B-25 which reads in its entirety:

The Board shall conduct examinations of applicants for licensure to practice barbering as licensed barbers and licensed apprentices, not less than four times each year, at such times and places as will prove most convenient and as the Board may determine. The Board may adopt rules establishing procedures for the administration of examinations.

The Board opines that this language empowers it to "promulgate minimum standards as to whom the Board may administer the examination".

However, G.S. 86B-26 clearly states, "Whenever the provisions of **this Chapter** have been complied with, the Board shall issue, or have issued, a license as a barber or as an apprentice, as the case may be." (Emphasis added)

In short, if the General Assembly had wanted to require "minimum standards" to take the apprenticeship examination, it would have either prescribed the standards or authorized the Board to promulgate the same. By the plain language of G.S. 86B-40, the only prerequisite to apprentice licensure is passing the examination. Prospective apprentice licensees are not required to have training from a Board accredited school in or out of state.

It appears to staff counsel that the Board is establishing a barrier to taking the apprenticeship examination, and consequently apprenticeship licensure, without authority.

Accordingly, staff counsel recommends the Commission object to the rule pursuant to G.S. 150B-21.9(a)(1) for exceeding the Board's 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.)

§ 86B-25. Board to conduct examinations not less than four times each year.

The Board shall conduct examinations of applicants for licensure to practice barbering as licensed barbers and licensed apprentices, not less than four times each year, at such times and places as will prove most convenient and as the Board may determine. The Board may adopt rules establishing procedures for the administration of examinations. (1929, c. 119, s. 10; 1979, c. 695, s. 1; 2004-146, s. 4; recodified from N.C. Gen. Stat. 86A-9 by 2022-72, s. 1(q); 2022-72, s. 2.)

§ 86B-26. Issuance of certificates of registration.

Whenever the provisions of **this Chapter have been complied with**, the Board shall issue, or have issued, a license as a barber or as an apprentice, as the case may be. (1929, c. 119, s. 11; 1979, c. 695, s. 1; 1981, c. 457, s. 5; recodified from N.C. Gen. Stat. 86A-10 by 2022-72, s. 1(r); 2022-72, s. 2.)

§ 86B-40. Apprenticeship.

(a) Before being issued an apprentice license, an applicant must pass an examination conducted by the Board to determine his or her competence, including his or her knowledge of barbering, sanitary rules and regulations, and knowledge of diseases of the face, skin and scalp.

(b) An apprentice license expires on May 31 of each year. Every holder of an apprentice license shall annually renew the apprentice license by the expiration date and pay the required renewal fee. An apprentice license issued under this Chapter is automatically suspended by operation of law after failure to renew the apprentice license by the expiration date. An apprentice whose apprentice license has expired may have the license restored immediately upon paying all lapsed renewal fees and the required late fee. The license of an apprentice is valid only so long as the apprentice works under the supervision of a licensed barber. The licensed barber shall remain present on the premises of the barbershop at all times while the apprentice is working. No apprentice shall operate a barbershop.

(c) On completion of at least one year's apprenticeship, evidenced by affidavit of the supervising licensed barber or barbers, and upon meeting the other requirements of G.S. 86B-23, the apprentice shall be issued a license as a barber, pursuant to G.S. 86B-26. No licensed apprentice may practice for a period exceeding three years without retaking and passing the required examination to receive a license as an apprentice. (1929, c. 119, ss. 4, 5; 1941, c. 375, s. 3; 1975, c. 68, ss. 1, 2; 1979, c. 695, s. 1; 1981, c. 457, s. 14; 1995 (Reg. Sess., 1996), c. 605, s. 13; 2004-146, s. 8; recodified from N.C. Gen. Stat. 86A-24 by 2022-72, s. 1(ee); 2022-72, s. 2.)

Burgos, Alexander N

Subject: FW: Subchapter O Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, April 14, 2023 5:03 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Subchapter O Rules

Thank you. That's works.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Subchapter O Rules
Attachments: 21 NCAC 06P .0103 - RRC revised.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Friday, April 14, 2023 1:16 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Subchapter O Rules

Dear Bill,

Thanks for the comments and sharing your concerns. I appreciate you trying to make sure that these rules aren't applied arbitrarily.

I don't agree that the term is ambiguous. And while I acknowledge that the commission can certainly change its view, it reviewed these rules in 2005, 2016, and even quite recently, in 2020, without any concerns about the term "offense." It would be hard to understand the shift if the commission suddenly were to find ambiguity, without underlying changes in the statute that would explain the shift. That's especially true when the commission has repeatedly reviewed rules, rather than reviewing a rule once and later realizing that it made an oversight. I feel confident that in previous instances, the commission thoroughly reviewed these rules. Nonetheless, I'm certainly not opposed to offering a definition, which I've included in the attached version of 21 NCAC 06P .0103. (Please note that I struck that term "pick-up order" because of the language struck in 21 NCAC 06N .0101(a)(28).)

You referred to a grace period to remediate a violation. But our rules don't refer to any process for remediating violations as a way of "undoing" a detected violation, and thus there wouldn't be a question about whether there was the past violation was an "offense" following remediation. If the person committed the violation, of course we want him or her to address the problem, but doing so wouldn't change the fact that a violation occurred. The concept is analogous to a person who is caught speeding and receives a traffic ticket. The instance of a violation or offense isn't nullified by the person starting to drive the correct speed limit.

With this definition, I don't think there would be a chance of inequitable or arbitrary application of the rule to the regulated public. If you have any concerns about the definition, please let me know. Thanks again for your thoughtful comments on the rules.

Dennis

1 21 NCAC 06P .0103 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06P .0103 GENERAL DEFINITIONS**

4 For purposes of the rules in this Chapter, the following definitions shall apply:

- 5 (1) "Barber" means any person who engages in or attempts to engage in the practice of barbering or
6 provide barbering services.
- 7 (2) "Barber instructor" means any person who engages in or attempts to engage in the teaching of the
8 practice of barbering.
- 9 (3) "Barber pole" means an actual or representation of a cylinder or pole with alternating stripes of any
10 combination including red and white, and red, white, and blue that run diagonally along the length
11 of the cylinder or pole.
- 12 (4) "Barber school" means any establishment that ~~engages in teaches~~ or attempts to ~~engage in the~~
13 ~~teaching of teach~~ the practice of barbering.
- 14 (5) "Barber student" means any person who is enrolled in barber school, including those taking classes
15 beyond the ~~4528~~ 1,528 hours required ~~hours.~~ by [S.L. 2022-72, s. 2.] G.S. 86B-38.
- 16 (6) "Board" means the ~~State~~ North Carolina Board of Barber and Electrolysis Examiners.
- 17 (7) "License" or "permit" ~~or "certificate of registration"~~ means the actual license or permit issued by the
18 Board and current government issued photo identification depicting the licensee's or permittee's
19 photograph and legal name.
- 20 (8) "Military service record" means veteran service records, such as the U.S. Department of Defense
21 Form 214 (DD-214), or other military service records from the military or National Archives.
- 22 (9) "Pick up order" means an order issued by the Board and signed by the Executive Director
23 authorizing an inspector to physically retrieve a permit or license. "Offense," as used in Subchapter
24 O, means each instance of a violation of the cited rule or statute that is memorialized in writing from
25 the Board to the individual. If an individual requests a hearing before the Board or judicial review,
26 the alleged violation of rule or statute will not be deemed an offense until the Board issues a final
27 agency decision or the judicial review is finalized, whichever occurs later.
- 28 (10) "Practice of barbering" and "barber services" means all activities set forth in ~~G.S. 86A-2,~~ [S.L. 2022-
29 72, s. 2.] G.S. 86B-22 and the sanitary requirements of ~~Chapter 86A~~ [S.L. 2022-72, s. 2.] G.S. 86B
30 and the sanitary rules adopted by the Board.
- 31 (11) "Sanitary" means free of infectious agents, diseases, or infestation by insects or vermin and free of
32 soil, dust, or dirt.

33
34 *History Note:* Authority G.S. 86A-2; 86A-5; 86A-13; 86A-15; 86A-22; 86A-23; 86B-2; 86B-10; 86B-22; 86B-29;
35 86B-31; 86B-38; 86B-39; 93B-15.1;

36 *Eff. June 1, 2008;*

37 *Readopted Eff. July 1, 2016;*

- 1 *Amended Eff. April 1, ~~2017~~ 2017;*
- 2 *Temporary Amendment Eff. May 2, 2023.*

Burgos, Alexander N

Subject: FW: Subchapter O Rules
Attachments: 04.23 Barber and Electrolysis Examiners Temp Rule 21 NCAC 06J .0102 - .0126.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, April 13, 2023 5:33 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Subchapter O Rules

Good afternoon Dennis,

Thank you for your email and your response to the questions raised in the RFC regarding the Subchapter O rules and what the Board means by "offense". While the explanation was informative there was no attempt to resolve the ambiguity in the rules. Further, it is unclear, for example, whether an offense from 10 years ago is counted as a prior offense for presumptive penalty purposes. I have attached a draft of my recommendation to the RRC.

I believe that by adding a paragraph defining what the board means by offense, this ambiguity in these rules can be resolved easily. However, if the Board would like to proceed with the rules as written, that is certainly its prerogative.

Please reply by 5:00 pm Friday April 14 with your revisions or intentions.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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RRC STAFF OPINION DRAFT

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: Board of Barber and Electrolysis Examines

RULE CITATION: 21 NCAC 06O .0102, .0104 -.0106, .0108 -.0110, .0112 -.0114, .0116 -.0119, .0121 -.0126 Temporary Rules

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:

In each of the above captioned rules, the Board establishes "presumptive penalties" for the violation of various rules. The presumptive penalties increase after the first and second "offense".

The Board offers no definition for "offense" or when the "offense" is considered to have occurred which would trigger a greater presumptive penalty. For example, if a violator is given a grace period to correct a violation, it is unclear whether a remedied violation is considered an offense.

It is also unclear what effect a pending appeal has on the definition of offense. Further, it is unclear whether offenses are counted in perpetuity.

As written, the rules could lead to inequitable and arbitrary application to the regulated public due to their ambiguity.

William W. Peaslee
Commission Counsel

Accordingly, staff counsel recommends the Commission object to the above captioned rules pursuant to GS 150B-21.9(a)(2).

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.)

Burgos, Alexander N

From: Seavers, Dennis
Sent: Tuesday, April 11, 2023 5:44 PM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: RE: 21 NCAC 06F .0120
Attachments: 21 NCAC 06F .0120 - RRC revised.docx

Hi, Bill,

Please see the attached revision to Paragraph (c), which I think addresses your concern.

Dennis

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, April 11, 2023 4:39 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 21 NCAC 06F .0120

Good afternoon Dennis,

In 21 NCAC 06F .0120, notwithstanding your explanation, “specifically created for the purpose of teaching barbering skills” is unclear and ambiguous. If the Board’s requirement is that the textbook not cover any topics other than barbering, that should be plainly stated.

Thank you

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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1 21 NCAC 06F .0120 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06F .0120 BARBER SCHOOL CURRICULA CURRICULUM**

4 (a) The following categories and courses shall comprise the minimum course work for all **barber** students at barber
5 schools:

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Hours

Classroom Lecture and Study Periods:

Hygiene and Good Grooming, Professional Ethics 25

Bacteriology, Sterilization, Sanitation 50

Implements, Honing, Stropping, and Shaving 30

Men's Haircutting 20

Cutting and Styling Curly Hair, Mustaches, and Beards 10

Shampooing and Rinsing, Scalp and Hair Treatments 10

Theory of Massage and Facial Treatments 5

Men's Razor Cutting, Women's Razor, and Shear Cutting 30

Finger Waving Men's Hair, Air Waving, and Curling Iron Techniques 5

Permanent Waving For Men, Chemical Hair Relaxing, and Blow Drying 25

Hair Coloring 10

Men's Hair Pieces 5

The Skin, Scalp, and Hair 30

Disorders of the Skin, Scalp, and Hair 15

Anatomy and Physiology 10

Electricity Therapy, Light Therapy, and Chemistry 10

Barber Styling, Barber Shop and Mobile Barber Shop Management, and Product Knowledge

70

Licensing Laws and Rules and History of Barbering 20

Supervised Practice in Barbering:

Shampooing and Scientific Hair and Scalp Treatments 55

Shaving 50

Tapered Hair Cutting 250

Hair Styling of Men and Women 400

Facials, Massages, and Packs 10

Bleaching, Frosting, Hair Coloring, and Body Permanents 90

Cutting and Fitting Hair Pieces 5

Hair Straightening 5

The Analyzing and Treatment of Hair and Skin Disorders 10

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Lectures and Demonstrations on Practical Work:	
Shampooing and Scientific Hair and Scalp Treatments	15
Shaving	20
Tapered Hair Cutting	70
Hair Styling of Men and Women	100
Facials, Massages, and Packs	5
Bleaching, Frosting, Hair Coloring, and Permanent Waving	30
Cutting and Fitting Hair Pieces	5
Hair Straightening	3
The Analyzing and Treating of Hair and Skin Disorders	10
Men's and Women's Razor Cutting	15
	Total Hours 1,528 <u>1,528</u>

(b) Barber schools shall offer no more than the following hours through online classes based on the curriculum set forth in Paragraph (a) of this Rule:

	Hours
Classroom Lecture and Study Periods:	380
Supervised Practice in Barbering:	
Tapered Hair Cutting	25
Hair Styling of Men and Women	34
Bleaching, Frosting, Hair Coloring, and Body Permanents	35
Lectures and Demonstrations on Practical Work:	
Shampooing and Scientific Hair and Scalp Treatments	8
Shaving	5
Tapered Hair Cutting	20
Hair Styling of Men and Women	50
Bleaching, Frosting, Hair Coloring, and Permanent Waving	5
The Analyzing and Treating of Hair and Skin Disorders	7
Men's and Women's Razor Cutting	7
	Total Online Hours 576

1 (c) All barber schools shall use course books and training materials specifically created for the purpose of teaching
2 barbering skills. Unless the course book or training material has separate and distinct sections covering the practice of
3 barbering, cosmetology course books and training materials are not acceptable. that only cover topics related to
4 barbering, unless the other topics are in sections separate from barbering topics.

5 (d) Through December 31, 2021, barber schools may offer all hours listed in Paragraph (a) of this Rule through online
6 classes, Paragraph (b) of this Rule notwithstanding.

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8 *History Note: Authority G.S. ~~86A-22(1)~~; ~~86A-22(4)~~; 86B-38;*

9 *Eff. March 1, 1983;*

10 *Amended Eff. June 1, 2008; May 1, 1989;*

11 *Readopted Eff. July 1, 2016;*

12 *Amended Eff. April 1, ~~2021~~; 2021;*

13 *Temporary Amendment Eff. May 2, 2023.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 11, 2023 4:39 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: 21 NCAC 06F .0120

Good afternoon Dennis,

In 21 NCAC 06F .0120, notwithstanding your explanation, “specifically created for the purpose of teaching barbering skills” is unclear and ambiguous. If the Board’s requirement is that the textbook not cover any topics other than barbering, that should be plainly stated.

Thank you

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, April 11, 2023 3:23 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: RE: Verification of rules

Hi Dennis,

Thank you for your email.

I have not had the time to analyze your list however I can state that the absence of a Request for Changes on a specific rule does not necessarily mean that the rule will not be subject to a recommendation for an objection.

Further, compliance with a Request for Changes prior to the RRC meeting does not necessarily mean that the rule will not be subject to a recommendation for an objection.

That having been said, it is my present intention to recommend approval of the rules which were not subject to a Request for Changes and those for which the Board has complied to Requests issued so far.

Hope that helps.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Tuesday, April 11, 2023 12:26 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: Verification of rules

Hi, Bill,

Below is a list of rules that I submitted for RRC approval but which weren't on your change-request document. My understanding is that these rules are OK as submitted. I just wanted to make sure we were both on the same page and that you weren't waiting on revisions or responses for rules that I believed were OK. No need to respond if these rules were OK as submitted.

Ti	Chapt	Subchapt	Ru
21 06	G		0106
21 06	I		0110
21 06	K		0101
21 06	K		0104
21 06	K		0111
21 06	L		0107
21 06	L		0111
21 06	L		0205
21 06	N		0103
21 06	N		0106
21 06	N		0107
21 06	N		0110
21 06	N		0112
21 06	O		0102
21 06	P		0103
21 06	Q		0101

Thanks for your work on these rules!

Dennis

Dennis Seavers
 Executive Director
 NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS
 (919) 814-0641 (Office)
 (919) 981-5068 (Fax)
 7001 Mail Service Center
 Raleigh, NC 27699-7000
www.barbers.nc.gov | www.ncbee.com
barbers@nc.gov | electrolysis@nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: Verification of rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, April 11, 2023 3:23 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Verification of rules

Hi Dennis,

Thank you for your email.

I have not had the time to analyze your list however I can state that the absence of a Request for Changes on a specific rule does not necessarily mean that the rule will not be subject to a recommendation for an objection.

Further, compliance with a Request for Changes prior to the RRC meeting does not necessarily mean that the rule will not be subject to a recommendation for an objection.

That having been said, it is my present intention to recommend approval of the rules which were not subject to a Request for Changes and those for which the Board has complied to Requests issued so far.

Hope that helps.

William W. Peaslee
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Bill.Peaslee@oah.nc.gov

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ficial.

Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023
Attachments: 21 NCAC 06K .0110 - RRC revised.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Tuesday, April 11, 2023 9:59 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Hi, Bill,

Please see the attached revision to 21 NCAC 06K .0110

Dennis

ate official.

1 21 NCAC 06K .0110 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06K .0110 IDENTIFICATION**

4 All ~~registered licensed~~ barbers shall maintain their ~~permit~~ license as defined in 21 NCAC 06P .0103(7) in their
5 possession ~~at all times while~~ whenever they are performing barbering services. The individual conducting barbering
6 services shall produce ~~the~~ a current government-issued photo identification to the Board's Executive Director or
7 inspector upon request.

8

9 *History Note: Authority G.S. ~~86A-1; 86A-10; 86B-21; 86B-26;~~*

10 *Eff. June 1, 2008;*

11 *Readopted Eff. July 1, ~~2016.~~ 2016;*

12 *Temporary Amendment Eff. May 2, 2023.*

Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, April 11, 2023 9:43 AM

To: Seavers, Dennis <dennis.seavers@nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Good morning,

In 21 NCAC 06K .0110, consider "a current government-issued photo identification". When the Board uses "the" it implies there is a certain one. "Barbering services" is correct.

06L .0114, 06N .0101, and 06N .0109 look good.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023
Attachments: 21 NCAC 06K .0110 - RRC revised.docx; 21 NCAC 06L .0114 - RRC revised.docx; 21 NCAC 06N .0101 - RRC revised.docx; 21 NCAC 06N .0109 - RRC revised.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Monday, April 10, 2023 6:49 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Hi, Bill,

Thanks for the comments. Please see my notes inline, and I've attached the revised rules.

Dennis

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, April 10, 2023 6:20 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Good afternoon Dennis,

I am still reviewing the changes and responses submitted to the other rules. The following will resolve my concerns about the rules listed herein.

21 NCAC 06K .0110 Change second sentence to "Licensees shall produce a current government-issued photo identification to the Board's Executive Director or inspector upon request." Or perhaps Individual conducting barbering activities shall produce...

Please let me know if I misunderstood the second option. I used the phrase "barbering services" to match the defined term in 21 NCAC 06P .0101.

21 NCAC 06L .0114 Change "service dogs" to "service animals" as defined by 28 CFR 36.104. "Service dog" is undefined.

Done

21 NCAC 06N .0101 Remove Subparagraphs (a) (27) & (28).

Done. Fun to format!

21 NCAC 06N .0109 Either remove "at least one year" or add "at least one year within the five years immediately preceding application" or consider "pursuant to G.S. 86B-28" after "North Carolina" in Line 6.

Done

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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1 21 NCAC 06K .0110 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06K .0110 IDENTIFICATION**

4 All ~~registered licensed~~ barbers shall maintain their ~~permit~~ license as defined in 21 NCAC 06P .0103(7) in their
5 possession ~~at all times while~~ whenever they are performing barbering services. The individual conducting barbering
6 services shall produce the current government-issued photo identification to the Board's Executive Director or
7 inspector upon request.

8

9 *History Note: Authority G.S. ~~86A-1; 86A-10; 86B-21; 86B-26;~~*

10 *Eff. June 1, 2008;*

11 *Readopted Eff. July 1, ~~2016.~~ 2016;*

12 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0114 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0114 PETS PROHIBITED**

4 ~~With the exception of trained guide or assistance animals,~~ Except for service [~~dogs,~~ animals as defined in 28 CFR
5 36.104, no animals shall be permitted in a barber shop or mobile barber shop.

6

7 *History Note: Authority G.S. ~~86A-15;~~ 86B-31;*

8 *Eff. June 1, 2008;*

9 *Amended Eff. September 1, 2013;*

10 *Readopted Eff. July 1, ~~2016;~~ 2016;*

11 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06N .0101 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06N .0101 FEES, ACCESS TO FORMS, AND RENEWALS**

4 (a) The Board charges the following amounts for the fees authorized by G.S. 86A-25: [S.L. 2022-72, s. 2] G.S. 86B-
5 41:

6	(1)	Certificate of registration or renewal as a <u>licensed</u> barber	\$50.00
7	(2)	Certificate of registration or renewal as an a <u>licensed</u> apprentice barber	\$50.00
8	(3)	Barbershop <u>Barber shop</u> permit or renewal	\$50.00
9	(4)	<u>Mobile barber shop</u> permit or renewal	\$50.00
10	(4) (5)	Examination to become a registered <u>licensed</u> barber	\$85.00
11	(5) (6)	Examination to become a registered <u>licensed</u> apprentice barber	\$85.00
12	(6) (7)	Late fee for restoration of an expired barber certificate <u>license</u> within first year after expiration	\$35.00
13			\$35.00
14	(7) (8)	Late fee for restoration of an expired barber certificate <u>license</u> after first year after expiration but within five years after expiration	\$70.00
15			\$70.00
16	(8) (9)	Late fee for restoration of an expired apprentice certificate <u>license</u> within the first year after expiration	\$35.00
17			\$35.00
18			\$35.00
19	(9) (10)	Late fee for restoration of an expired apprentice certificate <u>license</u> after first year after expiration but within three years of first issuance of the certificate <u>license</u>	\$45.00
20			\$45.00
21	(10) (11)	Late fee for restoration of an expired barber shop certificate <u>permit</u>	\$45.00
22	(12)	<u>Late fee for restoration of an expired mobile barber shop permit</u>	\$45.00
23	(11) (13)	Examination to become a barber school instructor	\$165.00
24	(12) (14)	<u>Student Barber student</u> permit	\$25.00
25	(13) (15)	Issuance of any duplicate copy of a license, certificate, <u>license</u> or permit	\$10.00
26	(14) (16)	Barber school permit or renewal	\$130.00
27	(15) (17)	Late fee for restoration of an expired barber school certificate <u>permit</u>	\$85.00
28	(16) (18)	Barber school instructor certificate <u>license</u> or renewal	\$85.00
29	(17) (19)	Late fee for restoration of an expired barber school instructor certificate <u>license</u> within first year after expiration	\$45.00
30			\$45.00
31	(18) (20)	Late fee for restoration of an expired barber school instructor certificate <u>license</u> after first year after expiration but within three years after expiration	\$85.00
32			\$85.00
33	(19) (21)	Inspection of newly established barbershop <u>barber shop</u>	\$120.00
34	(22)	<u>Inspection of newly established mobile barber shop</u>	\$120.00
35	(20) (23)	Inspection of newly established barber school	\$220.00
36	(21) (24)	Issuance of a registered barber or apprentice certificate <u>license</u> by certification <u>reciprocity</u>	\$120.00
37	(22) (25)	Charge for certified copies of public documents \$10.00 for first page, \$0.25 per page thereafter	

1 ~~(23)~~(26) Charge for duplication services and material shall be as set forth in 26 NCAC 01 .0103(a), including
2 any subsequent amendments and editions of the Rule

3 (24)~~(27)~~ Certificate of registration or renewal [Licensure] as a barber [~~or apprentice barber~~] for barbers over
4 70 years of age _____ \$0.00

5 (25)~~(28)~~ Administrative fee under G.S. 86A 27(d) [S.L. 2022 72, s. 2] for paying any required fee for
6 renewal or restoration, or a civil penalty and attorney fee, where the apprentice barber or registered
7 barber is subject to a pick up order issued to an inspector. _____ \$70.00

8 (b) Except as set forth in Paragraph (c) of this Rule, if an applicant is unable to attend an examination, he or she may
9 request a refund of the fee. To request the refund, the applicant shall submit a written request to the address listed in
10 21 NCAC 06A .0102 at least 10 days before the scheduled examination.

11 (c) If an applicant submits a request for a refund of examination fees later than 10 days before the scheduled
12 examination, the Board shall consider the request on a case-by-case basis and only grant the request if the applicant
13 demonstrates good cause for not complying with Paragraph (b) of this Rule. For the purpose of this Rule, "good cause"
14 means that the applicant could not have submitted the written request as set forth in Paragraph (b) of this Rule due to
15 circumstances such as illness, injury, or death in the family.

16 (d) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue
17 to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the Board for
18 this purpose.

19 (e) The forms set forth in this Subchapter may be obtained on the website or at the address listed in 21 NCAC 06A
20 .0102.

21 (f) All timely renewals of ~~licenses, permits, licenses or certificates of registration~~ permits shall be submitted online
22 at the Board's ~~website, website listed in 21 NCAC 06A .0102,~~ along with any fees required by this Rule.

23 (g) Barber school permits shall be exempt from the online renewal requirement in Paragraph (f) of this Rule.

24 (h) ~~Registered Licensed~~ barbers, ~~apprentice barbers, licensed apprentices,~~ barber instructors, ~~or barber shops shops,~~
25 or mobile barber shops that are unable to comply with the online requirement of Paragraph (f) of this Rule may submit
26 the renewal and payment by mail or in person after receiving a waiver from the Board. This waiver shall be effective
27 only for one renewal period. The Board shall issue a waiver within five business days after receiving the following:

28 (1) For ~~registered licensed~~ barbers, apprentice barbers, or barber instructors, a statement from the holder
29 of the ~~license, permit, license or certificate of registration~~ permit that the individual is not able to
30 renew online; or

31 (2) For barber ~~shops, shops or mobile barber shops~~ a statement from the manager or owner that neither
32 the manager nor owner are able to renew online.

33
34 History Note: Authority ~~G.S. 86A-5; 86A-25; 86A-27(d); 86B-2; 86B-10; 86B-41; 93B-2;~~
35 Eff. February 1, 1976;
36 Readopted Eff. February 8, 1978;

1 *Amended Eff. April 1, 2010; September 1, 2009; June 1, 2008; April 1, 2005; May 1, 1989; March*
2 *1, 1983;*
3 *Readopted Eff. July 1, 2016;*
4 *Amended Eff. April 1, 2022; February 1, 2019; January 1, 2018; April 1, ~~2017~~ 2017;*
5 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06N .0109 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06N .0109 FORM BAR-8**

4 (a) The Form BAR-8 shall be filed by one who has practiced as a licensed barber in a state other than North Carolina
5 for ~~three years or more~~ at least one year within the five years immediately preceding application and is applying to
6 ~~obtain a certificate as~~ be a registered licensed barber in North Carolina. It requires the following:

- 7 (1) the name, address, social security number, and ~~birthdate~~ birth date of the applicant;
- 8 (2) whether the applicant attended barber school and the name and address of any barber school attended
9 in another state; and
- 10 (3) barbering experience and the status of each barber license in another state.

11 (b) The fee in ~~Rule .0101(a)(21)~~ Rule .0101(a)(24) of this Section shall accompany this form.

12 (c) The Form BAR-8 shall include the applicant's attestation that the information in the form is correct.

13 (d) The Form BAR-8 shall be accompanied by verification from the applicant's out-of-state agency of the applicant's
14 licensure in that state. This verification shall include:

- 15 (1) The applicant's length of licensure;
- 16 (2) Whether the applicant held the license continuously or had any breaks in licensure;
- 17 (3) If there were any breaks in licensure, the reason for those interruptions; and
- 18 (4) Whether there were any disciplinary actions or are any open complaints against the license.

19
20 *History Note: Authority G.S. ~~86A-1; 86A-12; 86A-25; 86B-21; 86B-28; 86B-41;~~*

21 *Eff. March 1, 1983;*

22 *Legislative Objection Lodged Eff. March 7, 1983;*

23 *Curative Eff. April 6, 1983;*

24 *Amended Eff. September 1, 2013; May 1, 1989;*

25 *Readopted Eff. July 1, 2016;*

26 *Amended Eff. October 1, 2020; January 1, ~~2017~~ 2017;*

27 *Temporary Amendment Eff. May 2, 2023.*

Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, April 10, 2023 6:20 PM

To: Seavers, Dennis <dennis.seavers@nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Good afternoon Dennis,

I am still reviewing the changes and responses submitted to the other rules. The following will resolve my concerns about the rules listed herein.

21 NCAC 06K .0110 Change second sentence to "Licensees shall produce a current government-issued photo identification to the Board's Executive Director or inspector upon request." Or perhaps Individual conducting barbering activities shall produce...

21 NCAC 06L .0114 Change "service dogs" to "service animals" as defined by 28 CFR 36.104. "Service dog" is undefined.

21 NCAC 06N .0101 Remove Subparagraphs (a) (27) & (28).

21 NCAC 06N .0109 Either remove "at least one year" or add "at least one year within the five years immediately preceding application" or consider "pursuant to G.S. 86B-28" after "North Carolina" in Line 6.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023
Attachments: 03.23 - Barber Board Request for Technical Changes Temporary Rules - agency comments 1.docx; 21 NCAC 06F .0104 - RRC revised.docx; 21 NCAC 06K .0112 - RRC revised.docx; 21 NCAC 06K .0113 - RRC revised.docx; 21 NCAC 06L .0104 - RRC revised.docx; 21 NCAC 06L .0106 - RRC revised.docx; 21 NCAC 06L .0114 - RRC revised.docx; 21 NCAC 06L .0115 - RRC revised.docx; 21 NCAC 06L .0117 - RRC revised.docx; 21 NCAC 06L .0118 - RRC revised.docx; 21 NCAC 06L .0201 - RRC revised.docx; 21 NCAC 06L .0202 - RRC revised.docx

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Monday, April 10, 2023 3:48 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

That's no trouble at all. Attached is what we'll call "Pass 1" for the rules, with more to come as we complete them. If you have any concerns with the responses, please let me know and we can discuss a way to resolve the issue.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, April 10, 2023 2:25 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Thank you for your email.

If it wouldn't be too much trouble, can you send me the responses as you have them and then when they are all complete, send me all of them together too?

William W. Peaslee
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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L .REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06C .0912

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (g): Is there any limit to how far back the Board can reopen a complaint? At what point is the decision final?

As a practical matter, the decision would normally be finalized at the board meeting at which the executive director presents the report of dismissed complaints. However, the rule does not have any prohibition on a board vote to reopen a previously dismissed and reported complaint.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06C .0104

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a): "Barbering activities" is an undefined term which needs definition. Consider "barbering services". See 21 NCAC 06P .0101

I made the suggested change.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06F .0120

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (c): By what criteria will a book or training material be judged as to whether it was “specifically created for the purpose of teaching barbering skills”?
This standard is ambiguous.*

The purpose of the rule is to make sure the textbook does not include material for other industries, such as cosmetology or laser hair practice. That would be the only criterion: does this book contain instruction for barbering alone, or other industries as well?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06K .0110

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 6: To what "current government-issued photo identification" is the Board referring? A driver's license.

A driver license would be an example, but other examples might include passport, state identification card, or permanent resident card. Any form of identification issued by the government that contains a photo and has not expired would qualify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06K .0112

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (c), Line 22: Include a reference to the rule or statute establishing the examination for clarity.

I added the citation.

Paragraph (d), Line 30 and 31: To which "part of the documentation" is the Board referring?

The intention is to allow individuals to get a temporary permit even if they are still collecting documentation. For example, if the individual has collected some documents showing military training or experience, but these documents do not yet establish a level of training or experience that is substantially equivalent to "standard" licensure requirements, the board will issue the temporary permit. During that time, the applicant can work and continue collecting documentation. We did not want to prevent someone from working if it appeared likely that they could meet the application requirements but were dealing with the challenges of a bureaucracy.

Paragraph (d)(2), Line 35: As written, there is no Subparagraph (c)(1) f this Rule.

I removed the reference to the repealed Subparagraph (c)(1).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06K .0113

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a), Line 6: To which statute or statutes is the Board referring in G.S. 86B?

I clarified which statute the Paragraph referred to.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0104

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a): If a barber shop is found not to have been “ready” for inspection, does this create an additional violation? What does “ready for inspection” mean?

No, this will not be a violation because the barber shop would not be operating. We want to make sure that field staff do not drive to a location, which might be quite remote, only to find out that the business is still under construction. Here, “ready for inspection” means that the shop is expected to pass inspection; for example, the shop is not still installing the sinks required by Rule .0107 of this Subchapter.

Paragraph (b): What is the Board’s authority to charge an inspection fee? Neither of the statutes cited in the History Note address fees. As written, does Paragraph (b) not require notification of a change of address prior to a move?

I added a cross-reference to 21 NCAC 06N .0101 clarify the authority. I may be misunderstanding your last sentence, but our idea is similar to Paragraph (a): please do not make us drive to a location, only to find out that the barber shop will not be at that location. For example, if you made a mistake on your application, please let us know so that we do not go to the wrong location.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0106

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a): By employing the word “may” in line 7, the Rule is permissive in nature. Is there any rule placing requirements on the partitions? Line 6 refers to “required partitions”. Is there a rule which could be cited?

I provided a citation for the statute and revised the language to clarify and avoid the use of “may.”

Paragraph (b): Why is this paragraph necessary? Would “sanitary regulations and this Subchapter” not already be applicable to the regulated?

My understanding is that the board adopted rules effective January 1, 1995, and was making sure that the rule did not apply retroactively to businesses that already existed at that time (some of which still exist).

Paragraph (c): What does the Board consider a residential building? This is a subjective standard unless defined.

The board is referring to any building where there are residences, such as an apartment building or residential house. We could include a definition, but I would respectfully suggest that the term is well understood.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0114

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 4: How does the Board define "service dogs"? Either define it or add a citation to law permitting service animals. 28 CFR 36.104?

Yes, the board is referring to the requirements under the ADA for businesses to allow service dogs. I added the CFR citation you referred to.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0115

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (b) and (c): Change "may" to "shall". If it is discretionary, what are the objective criteria which will be considered in making the decision?

I made the suggested change.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0117

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

“Signs” of rodents is ambiguous. Consider “All barber shops and mobile barber shops shall remain free of rodents, vermin, insects, mold, mildew, or water damage.”

I understand your concern. “Signs of” would also include feces, urine, or frass. I eliminated “signs of” and added clarifying language.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0118

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (d): Define "newly established". 60 days? 6 months? The initial inspection?

I added clarifying language

Paragraph (e): Do not all barber shops receive a sanitary rating card?

Yes, they do. But our current design for the card has up to four spots for each subsequent inspection. So if a shop receives a 95, 98, 98, and 99 on four consecutive inspections, we can fit all of those onto one card. We would only issue a new card for already existing businesses if the spots were already filled or the letter grade changed.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0201

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (b): Define or remove "sufficient". The Board should be able to define the number of inches or feet which are required.

I removed "sufficient." My understanding is that will address your comment, and the second paragraph (about defining the measurements) applied if we were to leave in "sufficient."

Paragraph (c): Identify the "statutes of the Division of Motor Vehicles".

In retrospect, the paragraph is unnecessary. All qualifying vehicles must comply with DMV laws in any case, regardless of whether they are mobile barber shops. I removed the paragraph and renumbered.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0202

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 5: "with for" ?

I guess you can never have enough prepositions? I fixed it.

Line 5: Can't all things be cleaned? Define "may be cleaned". Does the Board mean sanitized?

Yes, you're correct. I made the suggested change.

Line 10: Replace "must" with "shall".

I made the requested change.

Line 18: Define "suitable".

In this context, the board meant sanitary and in good operating condition, so the language was unnecessary. I removed it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06L .0203

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Subparagraph 6 (d) and (e): Define or delete "adequate".

I am not opposed to making a change here, but I respectfully disagree that "adequate" is not defined or is unclear. There are effectively definitions in place. In SubItem (d), the definition of "adequate" would be the amount of water necessary "to complete barbering services." That amount of water will be relative to the service – for example, less water may be needed for a haircut compared to a shave – which is why the amount is not measured in terms of an amount like gallons. But I believe there is enough information about what "adequate" means in this context. Similarly, in SubItem (e), the definition of "adequate" would be the amount of water necessary "to complete barbering services" – again, an amount that would be relative to the service being provided. We believe the regulated community will understand this rule and will not be dealing with ambiguous language.

If this response does not address your concerns, please let me know.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06N .0101

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a)(1)-(24), (27): Given that the fees are set in G.S. 86B-41, why is this reasonably necessary?

G.S. 86B-41 sets the maximum fees (“fees not to exceed”) but does not set the actual amounts, which could be less than the amounts listed in statute. For that reason, we specify the amounts in this rule. I suppose that Subparagraph (27) is unnecessary, and I could remove it if it causes concern.

Paragraph (a)(28): Explain the Board’s authority for creating this fee?

I agree this is not very clear. I understand the intent of the rule was to cover certain costs associated with disciplinary matters. We have never charged this fee during my tenure, so if this response does not address your concerns, we can remove the Subparagraph.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Barber and Electrolysis Examiners

RULE CITATION: 21 NCAC 06N .0109

DEADLINE FOR RECEIPT: April 14, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a), Line 5: Is there a separate form for out-of-state applicants licensed in another state less than one year? It is noted that 21 NCAC 06K .0104 does not require out of state licensure for "at least one year".

The General Assembly has determined that individuals who do not meet that one-year requirement cannot become a licensed barber in North Carolina based solely on their licensure in the other state. They would need to seek other avenues for licensure.

Although it is true that 21 NCAC 06K .0104 does not include language about being licensed in another state for "at least one year," that rule cross-references this one and should be read in conjunction with this one. Additionally, G.S. 86B-28(a)(2) sets that one-year requirement.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: April 6, 2023

1 21 NCAC 06F .0104 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06F .0104 INSTRUCTORS**

4 (a) At least one barber instructor shall supervise **barber** students whenever they are engaged in barbering ~~activities at~~
5 ~~all times.~~ **services.**

6 (b) Barber instructors shall barber only for the purpose of instruction or demonstration while on the premises of the
7 barber school.

8 (c) All course work as outlined under 21 NCAC 06F .0120 shall be taught by a ~~certified~~ licensed barber instructor.

9

10 *History Note: Authority G.S. ~~86A-22; 86A-23; 86B-38; 86B-39;~~*

11 *Eff. February 1, 1976;*

12 *Readopted Eff. February 8, 1978;*

13 *Amended Eff. September 1, 2009; June 1, 2008; May 1, 1989;*

14 *Readopted Eff. July 1, ~~2016.~~ 2016;*

15 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06K .0112 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06K .0112 APPLICANTS WITH MILITARY TRAINING AND EXPERTISE**

4 (a) Except for individuals who want to apply under G.S. 86A-12 [S.L. 2022-72, s. 2,] G.S. 86B-28 for licensure as to
5 be a registered licensed barber, an individual who has military training and expertise and wants to apply to become a
6 registered licensed barber in this State shall:

- 7 (1) meet the requirements of G.S. 93B-15.1(a) or (a2); and
8 (2) submit the Form BAR-11 as set forth in 21 NCAC 06N .0112.

9 (b) The applicant shall submit with the Form BAR-11 a ~~certification~~ letter from the ~~applicant's out-of-state state~~
10 agency that issued the out-of-state license ~~of certifying~~ the applicant's licensure in that state if the following apply:

- 11 (1) the applicant has been licensed in another state;
12 (2) the applicant wants to be licensed without examination;
13 (3) the military service records do not show that the applicant received at least 1,500 hours of military
14 training and that the applicant practiced at least two of the five years preceding the date of
15 application; and
16 (4) the combination of the certification letter and the military service records show that the applicant
17 received at least 1,500 hours of training and practiced at least two of the five years preceding the
18 date of application.

19 (c) If the applicant meets the requirements in Paragraph (a) of this Rule and G.S. 93B-15.1(a2), the applicant shall
20 shall:

- 21 (1) ~~submit the fee as set forth in 21 NCAC 06N .0101(a)(4); and~~
22 (2) ~~make a score of at least 70 percent on the clinical practical examination.~~ examination required by
23 G.S. 93B-15.1(a2)(2).

24 (d) ~~After being approved under this Rule, the applicant shall submit the following fee:~~

- 25 (1) ~~if the applicant meets the requirements of this Rule for licensure without examination, the fee as set~~
26 ~~forth in 21 NCAC 06N .0101(a)(21); or~~
27 (2) ~~if the applicant meets the requirements of Paragraph (c) of this Rule, the fee as set forth in 21 NCAC~~
28 ~~06N .0101(a)(1).~~

29 ~~(e)~~(d) The Board shall issue a temporary permit for the applicant to work as a registered licensed barber while he or
30 she complies with the requirements of this Rule under the following circumstances:

- 31 (1) if the applicant has submitted the Form BAR-11 and part of the documentation required by 21
32 NCAC 06N .0112(a)(2), and this partial documentation establishes that he or she served in the
33 military and has certification or experience in barbering, the Board shall issue a temporary permit
34 that lasts 90 days or until the Board denies the application, whichever is earlier; or
35 (2) if the applicant is required to take the practical examination and has met the requirements in
36 Paragraph (a) and Subparagraph (c)(1) of this Rule, Paragraph (a), the Board shall issue a temporary
37 permit that last 90 days or until the Board denies the application, whichever is earlier. Upon written

1 request by the applicant, this temporary permit shall be extended for 90 days no more than twice,
2 unless the Board denies the application.

3

4 *History Note: Authority G.S. ~~86A-1; 86A-11; 86A-12; 86A-25; 86B-21; 86B-27; 86B-28; 86B-41; 93B-15.1;~~*

5 *Eff. April 1, ~~2017.~~ 2017.*

6 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06K .0113 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06K .0113 MILITARY SPOUSES**

4 (a) An individual who is currently licensed as a barber in another state, is the spouse of a person serving in the military,
5 and wants to apply to become a ~~registered~~ licensed barber in this State shall provide the following, unless he or she
6 wants to apply under ~~another provision in G.S. 86A~~ [S.L. 2022-72, s. 2;] G.S. 86B-28 for licensure as a ~~registered~~
7 licensed barber:

8 (1) the Form BAR-12 as set forth in 21 NCAC 06N .0113; and

9 (2) a ~~certification~~ letter from the ~~applicant's out-of-state~~ state agency that issued the out-of-state license
10 of certifying the applicant's licensure in that state.

11 (b) The applicant shall instead apply for out-of-state licensure under ~~G.S. 86A-12~~ [S.L. 2022-72, s. 2;] G.S. 86B-28
12 and Rule .0104 of this Section if the certification letter required by Subparagraph (a)(2) of this Rule does not show
13 that the ~~applicant:~~ applicant

14 (1) ~~completed at least 1,500 hours of barber school training;~~ training. and

15 (2) ~~has been licensed as a barber for at least one of the five years preceding the date of application.~~

16 ~~(c) After being approved under this Rule, the applicant shall submit the fee set forth in 21 NCAC 06N .0101(a)(21).~~

17 ~~(d)~~(c) Upon request by the applicant, the Board shall issue one temporary permit for the applicant to work as a
18 ~~registered~~ licensed barber for 90 days while the applicant gathers the documents required by this Rule.

19
20 *History Note: Authority G.S. 86A-1; 86A-3; 86A-11; 86A-12; 86A-25; 86B-21; 86B-23; 86B-27; 86B-28; 86B-41;*
21 *93B-15.1;*
22 *Eff. April 1, 2017. 2017.*
23 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0104 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0104 BARBER SHOP AND MOBILE BARBER SHOP PERMITS**

4 ~~(a) All applications for shop permits shall be on file in the office of the Board 15 days prior to the date when a shop~~
5 ~~will be complete and ready for inspection. Applications shall meet the requirements of 21 NCAC 06N .0102.~~

6 ~~(b)~~(a) If the barber shop or mobile barber shop ~~is~~ will not be ready for inspection on a scheduled date, the owner or
7 licensed barber manager shall notify the Board.

8 ~~(c)~~(b) ~~Failure~~ If a barber shop or mobile barber shop fails to notify the Board of a change of address before the
9 inspection, the barber shop or mobile barber shop shall result in forfeiture of ~~forfeit~~ the inspection ~~fee.~~ fee required by
10 21 NCAC 06N .0101(a)(21) or (22).

11

12 *History Note: Authority G.S. ~~86A-1; 86A-13; 86B-21; 86B-29;~~*

13 *Eff. February 1, 1976;*

14 *Readopted Eff. February 8, 1978;*

15 *Amended Eff. May 1, 1989; March 1, 1983;*

16 *Readopted Eff. July 1, ~~2016;~~ 2016;*

17 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0106 is amended under temporary procedures with changes as follows:

2
3 **21 NCAC 06L .0106 SEPARATION FROM OTHER BUSINESSES; RESIDENTIAL SHOPS; MOBILE**
4 **HOMES BARBER SHOPS**

5 (a) When a building or room is used for both a barber shop and for some other business and the building or room does
6 not have air conditioning, ventilation, or heat outlets, or air circulation, the ~~required~~ requirement set forth in G.S. 86B-
7 ~~31(a)(1)(b) for a~~ partition between the barber shop and the other business ~~may shall~~ be fulfilled if the partition extends
8 completed from the floor up to a minimum of six feet with material from six feet to the ceiling that permits ~~good~~ air
9 circulation.

10 (b) Notwithstanding Paragraph (a) of this Rule and ~~21 NCAC 06L .0102, Rule .0102 of this Subchapter,~~ when a
11 barber shop is located within a ~~shop~~ salon licensed by the North Carolina Board of Cosmetic Art Examiners and was
12 permitted on or after January 1, 1995, or undergoes modifications or structural renovations after that date, the area
13 where the barber chair or chairs are located shall comply with the sanitary regulations in G.S. 86A-15(a) [~~S.L. 2022-~~
14 ~~72, s. 2;~~] G.S. 86B-31 and this Subchapter not inconsistent with this Rule.

15 (c) A barber shop permitted on or after July 1, ~~2008~~ 2008, that operates in a residential building shall maintain a
16 separate entrance that shall not open off the living quarters, and shall not have any doors or openings leading to the
17 living quarters that are unlocked during business hours. Entrance through garages or any other rooms is not permitted.

18 (d) The toilet facilities or any sink in the living quarters of any residence shall not be considered to comply with the
19 toilet facility and sink requirements in 21 NCAC 06L .0103 or the sink distance requirement in 21 NCAC 06L .0107.

20 ~~(e) For barber shops permitted on or after July 1, 2008, mobile homes, motor homes, trailers or any type of recreational~~
21 ~~vehicle shall be permanently affixed so they cannot be moved. Any such structure approved for a barber shop shall~~
22 ~~maintain a separate entrance that shall not open off the living quarters, and shall not have any doors or openings to the~~
23 ~~living quarters that are unlocked during business hours.~~

24
25 *History Note: Authority G.S. ~~86A-15; 86B-31~~;*

26 *Eff. February 1, 1976;*

27 *Readopted Eff. February 8, 1978;*

28 *Amended Eff. April 1, 2010; June 1, 2008; January 1, 1995; May 1, 1989; March 1, 1983;*

29 *Readopted Eff. July 1, ~~2016~~; 2016;*

30 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0114 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0114 PETS PROHIBITED**

4 ~~With the exception of trained guide or assistance animals, Except for service [dogs,~~ **dogs as defined in 28 CFR 36.104,**

5 no animals shall be permitted in a barber shop or mobile barber shop.

6

7 *History Note: Authority G.S. ~~86A-15;~~ 86B-31;*

8 *Eff. June 1, 2008;*

9 *Amended Eff. September 1, 2013;*

10 *Readopted Eff. July 1, ~~2016;~~ 2016;*

11 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0115 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0115 INSPECTIONS OF SHOPS**

4 (a) The Board's Executive Director and its inspectors may enter and make inspections of any barber shop or mobile
5 barber shop during ~~its~~ the business hours of the barber shop or mobile barber shop for the purpose of determining
6 whether ~~or not~~ G.S. 86A [S.L. 2022-72, s. 2.] G.S. 86B and the Board's ~~administrative~~ rules are being followed.

7 Persons authorized to ~~make an inspection of~~ inspect barber shops or mobile barber shops shall prepare a report
8 according to Rule .0119 of this Section. The report shall be signed by the inspector and shall be available free of
9 charge upon request by ~~the owner or manager or~~ any member of the public. The Board shall provide a copy of any
10 violation notice ~~shall be left with~~ to the barber shop or mobile barber shop, owner or registered barber manager, and
11 ~~retained within the barbering area until the violation is resolved with the Board.~~

12 (b) The Board's Executive Director and its inspectors ~~may~~ shall inspect all areas of the barber shop or mobile barber
13 shop, including the ~~backstand and its~~ backstand, drawers and drawers, cabinets, ~~and any other drawers, closets~~ closets,
14 or other ~~enclosures within the permitted shop.~~ enclosures.

15 (c) The Board's Executive Director and its inspectors ~~may~~ shall determine and assign numerical and letter sanitary
16 grades to a barber shop or mobile barber shop following inspections as set forth in Rules .0118 and .0119 of this
17 Section. ~~The grade shall be displayed in a place visible to the public at the front of the shop.~~

18

19 *History Note: Authority G.S. 86A 5(a)(1); 86A 15; 86B-2; 86B-31;*
20 *Eff. June 1, 2008;*
21 *Amended Eff. April 1, 2010;*
22 *Readopted Eff. July 1, 2016;*
23 *Amended Eff. January 1, 2017. 2017;*
24 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0117 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0117 GENERAL SANITATION**

4 All barber shops and mobile barber shops shall remain free of any signs of rodents, rodent feces or urine, vermin,
5 insects, insect frass, mold, mildew, or water damage.

6

7 *History Note: Authority ~~G.S. 86A-15~~; G.S. 86B-31;*

8 *Eff. June 1, 2008;*

9 *Readopted Eff. July 1, ~~2016~~; 2016;*

10 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0118 is amended under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0118 SANITARY RATINGS AND POSTING OF RATINGS**

4 (a) The sanitary rating of a barber shop or mobile barber shop shall be based on a system of grading outlined in ~~21~~
5 ~~NCAC 06L .0119. Rule .0119 of this Subchapter.~~ Based on the grading, all establishments shall be rated in the
6 following manner:

- 7 (1) all establishments receiving a sanitary rating of at least 90 percent shall be awarded a grade A;
8 (2) all establishments receiving a sanitary rating of at least 80 percent, and less than 90 percent, shall
9 be awarded a grade B; and
10 (3) a sanitary rating of less than 80 percent shall be awarded a failing grade.

11 (b) Every barber shop or mobile barber shop shall be given a sanitary rating.

12 (c) The sanitary rating of A, B, or failing given to a barber shop or mobile barber shop ~~establishment~~ shall be posted
13 at all times in a conspicuous place, defined as a place inside the barber shop or mobile barber shop easily seen by the
14 ~~public at the front of the shop, at all times.~~ public.

15 (d) No newly established barber shop or mobile barber shop receiving an initial inspection shall be permitted to
16 operate ~~without first having obtained a sanitary rating card~~ with a grade of ~~not~~ less than 80 percent.

17 (e) Barber inspectors shall give each barber shop and mobile barber shop a new sanitary rating ~~card.~~ card upon initial
18 inspection.

19

20 *History Note: Authority ~~G.S. 86A-5; 86A-15; G.S. 86B-2; 86B-31;~~*

21 *Eff. June 1, 2008;*

22 *Amended Eff. September 1, 2013;*

23 *Readopted Eff. October 1, 2016;*

24 *Amended Eff. April 1, ~~2022.~~ 2022;*

25 *Temporary Amendment Eff. May 2, 2023.*

1 21 NCAC 06L .0201 is adopted under temporary procedures with changes as follows:

2
3 **SECTION .0200 – MOBILE BARBER SHOPS**

4
5 **21 NCAC 06L .0201 VEHICLES**

6 (a) Only the following vehicle types shall qualify as mobile barber shops:

7 (1) a motor home as defined in G.S. 20-4.01(27)(k); or

8 (2) a self-contained, self-supporting, enclosed mobile vehicle that is at least 16 feet in length and that
9 is not a towed unit or trailer.

10 (b) The vehicle shall have ~~sufficient~~ capacity for the barber to be able to maneuver around the barber chair and safely
11 provide barbering services.

12 ~~(e) The vehicle shall comply with the statutes and rules of the North Carolina Division of Motor Vehicles.~~

13 ~~(d)~~(c) The vehicle shall have ventilation and air circulation through the use of fans or a heating, ventilation, and air
14 conditioning system.

15 ~~(e)~~(d) Mobile homes, motor homes, trailers, or any type of recreational vehicle approved before January 1, 2023, as
16 permanently affixed barber shops are not authorized to operate as mobile barber shops unless they meet the
17 requirements of this Section and 21 NCAC 06N .0116.

18 ~~(f)~~(e) Mobile barber shops shall display the name of the mobile barber shop and permit number on the outside of the
19 vehicle so that the name and permit number can be seen by the public from a distance of 50 yards.

20
21 *History Note: Authority G.S. 86B-30;*

22 *Temporary Adoption Eff. May 2, 2023.*

1 21 NCAC 06L .0202 is adopted under temporary procedures with changes as follows:

2

3 **21 NCAC 06L .0202 EQUIPMENT**

4 Mobile barber shops shall:

5 (1) have at least one cabinet ~~with~~ for barbering equipment that is constructed of material that may be
6 ~~cleaned~~; sanitized;

7 (2) have safety catches for all storage cabinet doors and securely anchor to the mobile vehicle all
8 equipment not stored in cabinets;

9 (3) have at least one covered container made of noncorrosive metal or plastic, where all hair clippings,
10 refuse, and other waste materials ~~must~~ shall be deposited;

11 (4) have smooth finished walls and floors;

12 (5) have at least one barber chair, with all barber chairs covered with a smooth, non-porous surface,
13 such as vinyl or leather, that is easily cleaned as required by ~~S.L. 2022-72, s. 2~~; G.S. 86B-31(a)(2)(c);

14 (6) maintain a supply of clean towels sufficient to provide barbering services;

15 (7) have a cabinet, or other method of storage, such that clean towels are stored separate from used
16 towels; and

17 (8) ensure that all equipment and tools used in the practice of barbering as set forth in ~~S.L. 2022-72, s.~~
18 ~~2, is~~ G.S. 86B-22 ~~are suitable for the safe cutting of hair and~~ maintained in sanitary and good
19 operating condition as required by ~~S.L. 2022-72, s. 2~~ G.S. 86B-31(a)(2).

20

21 *History Note: Authority G.S. 86B-30;*

22 *Temporary Adoption Eff. May 2, 2023.*

Burgos, Alexander N

Subject: FW: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023
Attachments: 03.23 - Barber Board Request for Technical Changes Temporary Rules.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, April 10, 2023 12:41 PM
To: Seavers, Dennis <dennis.seavers@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Dear Dennis,

It has come to my attention that a couple of rule citations were incorrect in the Request for Changes. I hope this has not caused you too much trouble. I have made corrections and highlighted them in the attached.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Seavers, Dennis <dennis.seavers@nc.gov>
Sent: Thursday, April 6, 2023 4:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023

Dear Bill,

Thank you for sending this to me. I also appreciate you working on so many rules very quickly. I will review these over the weekend and respond as quickly as possible.

Have a great weekend and holiday!

Dennis

Dennis Seavers
Executive Director
NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS

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barbers@nc.gov | electrolysis@nc.gov

ties by an authorized state official.

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, April 6, 2023 3:15 PM
To: Seavers, Dennis
Cc: Burgos, Alexander N
Subject: NC Board of Barber and Electrolysis Examiners - Temporary Rules April 2023
Attachments: 03.23 - Barber Board Request for Technical Changes Temporary Rules.docx

Good afternoon Dennis,

Attached please find the Request for Changes for the above captioned rules. The Rules Review Commission will consider these rules at its next meeting on April 20, 2023. Please have your responses back to me no later than April 14, 2023 at 5:00 pm.

As always if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

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1711 New Hope Church Road

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