Burgos, Alexander N

Subject: FW: Extended period of review, 21 NCAC 06F .0110
Attachments: 21 NCAC 06F .0110, proposed.docx

Dear Ms. Reeder,

At the Commission's June meeting, it extended the period of review for 21 NCAC 06F .0110. Attached is the revised rule by the Board of Barber Examiners that attempts to address the concern that led to the extension.

If you have any questions or concerns, please contact me at dseavers@ncbarbers.com or (919) 981-5210 x22.

Dennis Seavers
Executive Director
North Carolina Board of Barber Examiners

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.

21 NCAC 06F .0110 is readopted with changes as published in 30:14 NCR 1510 as follows:

21 NCAC 06F .0110 ROSTER AND STUDENT RECORDS

Each barber school shall:

(1) maintain an up-to-date written roster system ~~which~~ that shall be used to ensure that each student serves substantially equal numbers of ~~patrons;~~ patrons for practical work;

(2) maintain a ~~complete~~ record of each ~~student~~ student, including a weekly record of the number of days and hours the student attended classes in practical work and theory;

(3) maintain a separate daily record of the number of patrons the student served for haircuts, ~~shaves~~ shaves, and other ~~clinical~~ barbering services;

(4) maintain a weekly record of the subject matter taught to the student in theory classes;

(5) submit the Form BAR-10 as required by 21 NCAC 06N .0111;

~~(5)~~(6) provide to the Board the list of students required by G.S. 86A-22(5) by the 15th day of each month; and

~~(6)~~(7) maintain the signed acknowledgment ~~regarding notification of the Board's rules regarding criminal convictions and sex offenders~~ required by 21 NCAC 06F .0116.

History Note: *Authority G.S. 86A-22;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. April 1, 2010; June 1, 2008; May 1, 1989; March 1, ~~1983.~~ 1983;
Readopted Eff. September 1, 2016.

State of North Carolina
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Board Members
Don Beal
Lance Crumley
David Hood
Steffon Sharpless
Valerie Willis

Pat McCrory
Governor

Dennis Seavers
Executive Director

June 21, 2016

Amanda J. Reeder
Commission Counsel
6714 Mail Service Center
Raleigh, NC 27699-6700

Sent by email to amanda.reeder@oah.nc.gov

Dear Ms. Reeder:

In response to the objections by the Rules Review Commission, the board has authorized the repeal of the eight rules listed below.

21 NCAC 06B .0103
21 NCAC 06B .0301
21 NCAC 06B .0302
21 NCAC 06B .0305
21 NCAC 06B .0308
21 NCAC 06C .0501
21 NCAC 06C .0909
21 NCAC 06H .0102

In addition, the board has authorized the revision of the two rules listed below.

21 NCAC 06B .0101
21 NCAC 06N .0110

The board understands that there are 21 additional rules that received objections but that are not addressed in this letter, plus one rule that received an extended period of review. The board will respond within the prescribed time frame but wanted to resolve these 10 rules earlier than required.

Thank you for your assistance, and I appreciate the commission's time in reviewing this response. If you have any questions, please contact me at dseavers@ncbarbers.com or (919) 981-5210 x22.

Sincerely,

Dennis Seavers
Executive Director

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 21, 2016

Dennis Seavers
Executive Director
Board of Barber Examiners
Sent via email to dseavers@ncbarbers.com

Re: **Objection to Rules**:
21 NCAC 06B .0101, .0103, .0105, .0301, .0302, .0305, .0308, .0503, .0505;
21 NCAC 06C .0202, .0203, .0501, .0909;
21 NCAC 06F .0116;
21 NCAC 06G .0106;
21 NCAC 06H .0102;
21 NCAC 06I .0101, .0105;
21 NCAC 06J .0101;
21 NCAC 06K .0104;
21 NCAC 06L .0118, .0119;
21 NCAC 06N .0103, .0104, .0106, .0108, .0110;
21 NCAC 06O .0120; and
21 NCAC 06Q .0101, .0103, .0104

Extension of the Period of Review for Rule 21 NCAC 06F .0110.

Dear Mr. Seavers:

At its meeting on June 16, 2016, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10(2). It also extended the period of review for Rule 21 NCAC 06F .0110 pursuant to G.S. 150B-21.10(3).

The Commission objected to Rules 06B .0101 and .0103 based upon lack of statutory authority and ambiguity. The Commission found that the Board does not have authority to require a petitioner for rulemaking to include a summary of the contents rather than the draft required by G.S. 150B-21.2, and to ask for the effects on existing practices. Further, the Rules were unclear as written as to the effects of a rule on existing practices and what "existing practices in the area involved" means.

The Commission objected to Rule 06B .0105 based upon ambiguity. The Commission found that the language in Paragraph (a) is unclear regarding how the Chairman will determine whether the additional information or recommendations will be deemed relevant. It is also unclear what the "public interest" standard is or entails. Further, there is no guidance in the Rule on how "public interest' will be determined.

The Commission objected to Rule 06B .0301 based upon a lack of necessity. The Rule stated that unless otherwise noticed, the rulemaking hearing will be held at the Board's office. However, G.S. 150B-21.2(c)(5) requires the Notice of Text for permanent rules to state the "place of any public hearing." G.S. 150B-21.1(a)(4) requires a notice of public hearing to be posted on the OAH website for temporary rules. Therefore, the rule is not necessary, as the APA will control regarding rulemaking public hearing notices.

The Commission objected to Rule 06B .0302 based upon a lack of statutory authority. The language in the Rule encourages individuals to take an action. It does not set any standard. Further, G.S. 150B-21.1 and 21.2 set forth the timeframes for public hearings. This Rule appears to contradict those statutory timeframes.

The Commission objected to Rule 06B .0305 for lack of statutory authority and ambiguity. The Rule appears to state that the Board will accept written comments but the Rule shortens the timeframe for submitting written comments set forth in G.S. 150B.

The Commission objected to Rule 06B .0308 for ambiguity and lack of statutory authority and necessity. The Rule appears to recite G.S. 150B-21.2(h) and is therefore unnecessary. It is unclear to what types of rules (permanent or temporary) that this Rule will apply to. Further, the final sentence of the Rule is unclear as written. It allows the submission of the request prior to the hearing, but G.S. 150B-21.2(h) states that the request must be made after adoption. The agency lacks statutory authority to make the deadline earlier than the statute sets forth.

The Commission objected to Rule 06B .0503 for ambiguity. Specifically, G.S. 150B-4 requires agencies to prescribe in rule the circumstances in which declaratory rulings shall or shall not be issued. This Rule does not set any standards, but instead states that the agency may refuse to do so when the Board believes "for good reason" that the issuance is "undesirable." As written, this Rule does not establish any circumstances when it will or will not issue the ruling, nor does it give any guidance on when this will occur.

The Commission objected to Rule 06B .0505 for ambiguity. As written, this Rule is unclear as to what the procedure is, what it will consist of, and who will determine what is required to make a decision as to what is "appropriate in a particular case."

The Commission objected to Rule 06C .0202 for ambiguity. It does not set a standard – it simply encourages individuals to do something. Also, the Rule is unclear as written, as the rule does not offer guidance to what informal resolution the Board is referring to, or how one avails himself or herself of this remedy.

The Commission objected to Rule 06C .0203 based upon a lack of statutory authority. Specifically, the Board does not have the authority to require informal resolution before the filing of a contested case petition.

The Commission objected to Rule 06C .0501 based upon a lack of necessity, as the Rule essentially recites G.S. 150B-38.

The Commission objected to Rule 06C .0909 based upon a lack of necessity, as the Rule essentially recites G.S. 150B-40(e) and Rule 21 NCAC 06C .0601.

The Commission objected to Rule 06F .0116 and Rule 06Q .0103 based upon a lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require individuals seeking licensure from the Board to report that they are registered sex offenders, or to deny or revoke licensure due to being on the Registry. In light of these objections, the Commission extended the period of review for Rule 06F .0110, which may need to be rewritten as part of the Board's response to these objections.

The Commission also objected to Rule 06Q .0103 for a lack of statutory authority to abrogate G.S. 93B-8.1.

The Commission objected to Rule 06G .0106 based upon a lack of authority for the Board to require barbers to have five years of experience in order to qualify as barber instructors.

The Commission objected to Rule 06H .0102 for a lack of statutory authority, as the Commission found that the Board has no statutory authority to set the student-instructor ratio below that set forth in statute. In addition, the Commission found that the Board lacks authority to require a nonprofit school to be established within a State university or community college.

The Commission objected to Rule 06I .0101 based upon ambiguity. The Commission found that the phrase "substantially similar standards" is unclear as written, as the Rule neither defines the standards nor sets forth how they will be determined.

The Commission objected to Rules 06I .0105, 06J .0101, 06K .0104, 06N .0104, and 06N .0106 for a lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require applicants for licensure or certification to have high school diplomas or GED certificates.

The Commission objected to Rule 06L .0118, as the Commission found that the Board lacks statutory authority to state in Paragraph (f) of the Rule that violation of Chapter 86A or any administrative rule adopted by the Board or operation of a shop that receives a failing grade shall be sufficient cause for revoking or suspending the permit. G.S. 86A-18 states that the Board may revoke or suspend the permit for violation provided the Board has previously given two written warnings to the individual committing the violation. Therefore, the Commission found that the agency is without authority to

revoke a permit for failure to comply with this Rule unless the statutorily mandated two written warnings are issued first.

The Commission objected to Rule 06L .0119 because the Rule was unclear as written. As stated in the Staff Opinion issued on May 25, 2016, it included many terms that were not defined and were unclear in the context of the Rule.

The Commission objected to Rule 06N .0103 for a lack of statutory authority to charge a fee whenever a shop hires a new manager.

The Commission objected to Rule 06N .0108 based upon a lack of statutory authority to create a special class of out-of-state individuals seeking certification as apprentices.

The Commission objected to Rule 06N .0110 based upon a lack of statutory authority. Specifically, the Commission found that the Board does not have authority to charge a fee when someone is employed by a barber school to be the manager.

The Commission objected to Rule 06O .0120, finding the Board lacked statutory authority to create a civil penalty under the circumstances stated in the Rule. G.S. 86A-27 allows the Board to impose civil penalties for violation of the laws in G.S. 86A or any rules adopted by the Board. However, there are no cited any laws or rules that form the basis of the violations contained in this Rule.

The Commission objected to Rule 06Q .0101 based upon a lack of statutory authority. Specifically, the Commission found that the Board does not have authority to restrict the use of a barber pole to only licensees. In addition, the Board does not have authority to require an individual to "positively identify" a barber before having his or her hair cut.

The Commission objected to Rule 06Q .0104 based upon a lack of authority and ambiguity. Paragraphs (a) and (b) conflict with each other, and the application of the Rule is unclear. In addition, the Rule states that the Board will not act until it is satisfied with the individual's qualifications, but the Rule does not state how satisfaction will be achieved. In addition, the Rule appears to add requirements to G.S. 86A-3, which states there are four criteria for receiving a barber certificate. The Board does not have authority to add to the statutory criteria.

For the Rules that were objected to, please respond to this letter in accordance with the provisions of G.S. 150B-21.12.

Regarding Rule 21 NCAC 06F .0110, pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

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

Sincerely,

Amanda J. Reeder
Commission Counsel

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 Examiners

RULE CITATION: 21 NCAC 06B .0105

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule based upon a lack of clarity.

Staff believes the language in Paragraph (a) is unclear regarding how the Chairman will determine whether the additional information or recommendations will be deemed relevant. It is also unclear what the "public interest" standard is or entails, and it is the lodestar the agency will use for determining whether to engage in rulemaking. There is no guidance in the Rule on how this will be determined.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06B .0105

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, replace "will" with "shall"

On line 5, I suggest beginning the second sentence, "The Chairman shall consider…"

In (b), line 7, change "will" to "shall"

On line 7, I suggest stating "a recommendation to grant or deny the petition…"

In (c), line 9, insert a comma after "petition" and replace "will" with "shall" throughout the Paragraph.

Also in (c), I'd state in the second sentence "If the Board decides to grant the petition…" and in the third sentence, "If the Board decides to deny…"

In (c), you are not required to include the deadline for the Board to publish. If you wish to keep this deadline, you may do so, but you are not required to establish it.

In (c), will the notice of denying the petition include the appeal rights set forth in G.S. 150B-20?

What will occur if the Board does not take action on the petition? Or will the Board always act?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06B .0105 is readopted with changes as published in 30:14 NCR 1508 as follows:

21 NCAC 06B .0105 GRANTING OR DENYING PETITIONS

(a) The Chairman of the Board will make a preliminary determination, based on a study of the facts stated in the petition, of whether the public interest will be better served by granting or denying a rule-making petition. He will consider all the contents of the submitted petition, plus any additional information deemed relevant.

(b) The Chairman will make a recommendation for the granting or denial of the petition for rule-making to the Board.

(c) Within 120 days of submission of the petition the Board will render a final decision. If the decision is to grant the petition, the Board, within 120 days of submission, will initiate a rule-making proceeding by issuing a notice as provided for in G.S. ~~150B-12(c).~~ 150B-20(c). If the decision is to deny the petition, the Board will send the petitioner written notice of the decision. The notice will state the reasons for denying the petition.

History Note: *Authority G.S. ~~150B-16;~~ 150B-20;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06B .0503

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because the Rule is unclear and ambiguous.

G.S. 150B-4 requires agencies to prescribe in rule the circumstances in which declaratory rulings shall or shall not be issued. This Rule does not set any standards, but instead states that the agency may refuse to do so when the Board believes "for good reason" that the issuance is "undesirable." As written, this Rule does not establish any circumstances when it will or will not issue the ruling, nor does it give any guidance on when this will occur.

Amanda J. Reeder
Commission Counsel

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling.

(a1) An agency shall respond to a request for a declaratory ruling as follows:

(1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.

(2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.

(3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.

(4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits, and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved.

(b) Repealed by Session Laws 1997-34, s. 1. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 4; c. 477, s. 2.1; 1997-34, s. 1; 2011-398, s. 56.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06B .0503

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

As this Rule was initially noticed to be repealed and is now being adopted, you need to amend the Introductory Statement to state that. See the example for Rule 21 NCAC 06B .0501.

On line 4, define "good reason" and "undesirable"

Also, you state that when the Board makes a decision it "may" refuse to act. When will the Board issue the ruling when it determines that the ruling will be undesirable? Do you mean "shall" instead?

On line 5, insert a comma after "exist"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06B .0503 is readopted with changes as published in 30:14 NCR 1508 as follows:

21 NCAC 06B .0503 REFUSAL TO ISSUE DECLARATORY RULING

Whenever the Board believes for good reason that the issuance of a declaratory ruling is undesirable it may refuse to do so. When good reason is deemed to exist the Board will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

History Note: *Authority G.S. ~~150B-17;~~ 150B-4;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06B .0505

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because the Rule is unclear and ambiguous.

As written, this Rule is unclear as to what the procedure is, what it will consist of, and who will determine what is required to make a decision as to what is "appropriate in a particular case."

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06B .0505

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

As this Rule was initially noticed to be repealed and is now being adopted, you need to amend the Introductory Statement to state that. See the example for Rule 21 NCAC 06B .0501.

On line 4, please insert a comma after "hearings"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06B .0505 is readopted with changes as published in 30:14 NCR 1508 as follows:

21 NCAC 06B .0505 PROCEDURE

A declaratory ruling procedure may consist of written statements, oral hearings or such other procedures as may be appropriate in a particular case.

History Note: *Authority G.S. ~~150B-17;~~ 150B-4;*
Eff. February 1, 1976;
Readopted Eff. February 8, ~~1978.~~ 1978;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06C .0202

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

X Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because it does not appear to be a "rule" as defined in the APA. Further, it is unclear as written.

This rule does not set a standard – it simply encourages individuals to do something. Therefore, staff does not believe this is a rule as defined in G.S. 150B-2(8a).

Further, staff believes the rule is unclear as written, as the rule does not offer guidance to what informal resolution the Board is referring to, or how one avails him or herself of this remedy.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06C .0202

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, define "reasonable"

On line 5, replace "should" with "shall" assuming that is what you mean.

In the History Note, what part of G.S. 150B-38 are you relying upon? Do you mean instead G.S. 150B-22?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06C .0202 is readopted as published in 30:14 NCR 1509 as follows:

21 NCAC 06C .0202 INFORMAL RESOLUTION ENCOURAGED

Before a hearing request is made, the person affected is strongly encouraged to make reasonable efforts to resolve the problem with the Board informally. To initiate informal resolution, the person should contact the Board.

History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06C .0203

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because as written, it appears to require an informal review with the agency before filing a request for an administrative hearing. Staff is not aware of any law that requires an individual to have informal hearing with the agency before filing a contested case.

It is possible that the agency is relying upon G.S. 150B-22; however, that law does not require informal settlement, but encourages it.

> **§ 150B-22. Settlement; contested case.**
> It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

Even if accepted that G.S. 150B-22 requires informal settlement, there is a question as to whether 150B-22 applies to occupational licensing boards, which hold hearings under Article 3A of 150B. Further, staff notes that the "informal contact" set forth in Rule 21 NCAC 06C .0202 is currently not defined and is ambiguous.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06C .0203

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, what is an "administrative hearing"? Do you mean "contested case"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06F .0110

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), line 5, replace "which" with "that"

Also in Item (1), what do you mean? The roster is for practical work only, not theory?

In Item (2), line 7, delete or define "complete"

Also on line 7, insert a comma after "student"

In Item (3), line 9, insert a comma after "shaves"

On line 10, what other clinical services are you referring to? Does your regulated public know?

In Item (4), it appears you are missing language. Do you mean "… subject matter taught to the students…"?

In Item (5), I suggest inserting language. "provide to the Board the list…"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06F .0110 is readopted as published in 30:14 NCR 1510 as follows:

21 NCAC 06F .0110 ROSTER AND STUDENT RECORDS

Each barber school shall:

(1) maintain an up-to-date written roster system which shall be used to ensure that each student serves substantially equal numbers of patrons;

(2) maintain a complete record of each student including a weekly record of the number of days and hours the student attended classes in practical work and theory;

(3) maintain a separate daily record of the number of patrons the student served for haircuts, shaves and other clinical services;

(4) maintain a weekly record of the subject matter taught the student in theory classes;

(5) provide the list of students required by G.S. 86A-22(5) by the 15th day of each month; and

(6) maintain the signed acknowledgment regarding notification of the Board's rules regarding criminal convictions and sex offenders required by 21 NCAC 06F .0116.

History Note: *Authority G.S. 86A-22;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. April 1, 2010; June 1, 2008; May 1, 1989; March 1, ~~1983.~~ 1983;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06F .0116

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because the Board does not cite to, and staff cannot find, any statutory authority to require notice that individuals are registered sex offenders.

In Paragraph (a) of this Rule, the Board states that barber school applicants must be notified of the Board's statutes and rules regarding registered sex offenders. The Board does not have authority to inquire of sexual offender status.

It may be that the Board is relying upon G.S. 86A-18, which states, in relevant part:

> **§ 86A-18. Disqualifications for certificate.**
> The Board may either refuse to issue or to renew, or may suspend or revoke any certificate of registration or barbershop permit or barber school permit for any one or combination of the following causes:
> (1) Conviction of the applicant or certificate holder of a felony proved by certified copy of the record of the court conviction;

However, status on the NC Sex Offender and Public Protection Registry is not the same as having a felony conviction. It appears that the Board is conflating the two.

In addition, there are misdemeanor convictions that can cause an individual to be on the Registry (such as misdemeanor sexual battery). Therefore, even if the Commission finds that the Board has the authority to seek this because it can act based upon a felony conviction, staff believes the

Board cannot require this information for all individuals, who may be on the Registry due to a misdemeanor conviction.

§ 86A-18. Disqualifications for certificate.

The Board may either refuse to issue or to renew, or may suspend or revoke any certificate of registration or barbershop permit or barber school permit for any one or combination of the following causes:

(1) Conviction of the applicant or certificate holder 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. 86A-20;

(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 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.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06F .0116

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, is the only statute G.S. 86A-18?

What is your authority to require information for registered sex offenders who were not convicted of felonies?

In (b), why the Federal Bureau of Information and not the SBI? Are you relying upon G.S. 93B-8.1?

Also regarding Paragraph (b), I found this on the FBI website:

> The FBI's authority to conduct an Identity History Summary check for non-criminal justice purposes is based upon Public Law (Pub. L.) 92-544. Pursuant to that law, the FBI is empowered to exchange Identity History Summary information with officials of state and local governments for employment, licensing, which includes volunteers, and other similar non-criminal justice purposes, if authorized by a state statute which has been approved by the Attorney General of the United States. The U.S. Department of Justice has advised that the state statute establishing guidelines for a category of employment or the issuance of a license must, in itself, require fingerprinting and authorize the governmental licensing or employing agency to exchange fingerprint data directly with the FBI.

I take it the Board has received this authorization? However, where is the fingerprinting requirement in your statutes?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06F .0116 is readopted as published in 30:14 NCR 1510 as follows:

21 NCAC 06F .0116 STUDENTS WITH CRIMINAL RECORDS

(a) Prior to enrollment and the acceptance of any enrollment fee or tuition, the barber school shall notify the applicant of the Board's statutes and rules regarding criminal convictions and registered sex offenders and have the applicant sign and date the notice indicating that the applicant has been so informed.

(b) Persons making application for student permits who have been convicted of a felony shall furnish to the Board a certified copy of their Federal Bureau of Investigation criminal record report.

(c) Failure to include any information regarding felony convictions on applications for student permits shall result in revocation of a student permit after a hearing.

History Note: *Authority G.S. 86A-18; 86A-22;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Amended Eff. September 1, 2013; April 1, 2010; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06G .0106

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority.

The Board does not cite to, and staff cannot find, any authority to require the applicant for an instructor's certificate have five years of good standing as a registered barber as set forth in Item (4).

G.S. 86A-23 states, in relevant part:

§ 86A-23. Instructors.

(a) The Board shall issue an instructor's certificate to any currently registered barber who has passed an instructor's examination given by the Board. This examination shall cover the subjects listed in G.S. 86A-22(4) and in the Textbook of Barber Styling approved by the Board.

The statute does not restrict the certificate to those with five or more years of registration, and staff is not aware of any authority for the Board to add this requirement to issue the certificate. Therefore, staff recommends objection for lack of statutory authority for Item (4).

Further, staff notes that in Item (5), the Board is requiring a criminal background check. Staff notes that G.S. 86A-23 only requires an exam, an application, and a fee. This background check is not included in statute.

Amanda J. Reeder
Commission Counsel

§ 86A-23. Instructors.

(a) The Board shall issue an instructor's certificate to any currently registered barber who has passed an instructor's examination given by the Board. This examination shall cover the subjects listed in G.S. 86A-22(4) and in the Textbook of Barber Styling approved by the Board.

(b) A person desiring to take an instructor's examination must make application to the Board for examination on forms to be furnished by the Board and pay the instructor's examination fee. Each person who passes the instructor's examination shall be issued a certificate of registration as a registered instructor by paying the issuance fee. Every instructor's certificate shall expire on May 31 of each year. Any instructor's certificate issued under this Chapter is automatically suspended by operation of law after failure to renew the instructor's certificate by the expiration date and may be renewed only upon payment of all lapsed renewal fees and the required late fee. Any person whose instructor's certificate has expired for a period of three years or more shall be required to take and pass the instructor's examination before the certificate can be renewed. (1945, c. 830, s. 8; 1961, c. 577, s. 5; 1973, c. 1331, s. 3; 1979, c. 695, s. 1; 1981, c. 457, s. 13; 1995 (Reg. Sess., 1996), c. 605, s. 12.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06G .0106

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please note, this is not the proper way to reflect changes to adoptions made after publication. Please see Rule 26 NCAC 02C .0405(b)(1).

On line 4, change "must" to "shall"

Is Item (1) necessary? G.S. 86A-23 requires that the Board only issue certificates to "currently registered barbers" after all.

In Item (2), please insert a cross-reference to Rule 21 NCAC 06N .0107, which sets forth the contents of the Form BAR-6.

In Item (3), what is this test? How does this fit in with the examination required by 21 NCAC 06G .0103?

On line 7, I understand if you need "at least" but you do not need to retain "or better" That is just redundant. Please delete it.

What is your authority for Item (4)?

For Item (5), please note my earlier questions regarding FBI background checks. Also, what is the authority to require this? Are you tying this to G.S. 86A-18? If so, why isn't this in the History Note? And don't you have this from when the individual applied to the barber school? Is this to update it?

In the History Note, why are you citing to G.S. 86A-22(2)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06G .0106 is adopted with changes as published in 30:14 NCR 1512 as follows:

21 NCAC 06G .0106 INSTRUCTOR APPLICATION

To become a registered barber instructor an applicant must:

(1) meet the qualifications in G.S. 86A-3;

(2) furnish the Board with Form BAR-6 and pay the fee according to 21 NCAC 06N .0101;

(3) make a score of at least 70 percent or better on the clinical portion of the registered barber examination;

(4) have been a [~~registerd~~]registered barber in good standing for five years; and

(5) submit a FBI Criminal Record Check with the application.

History Note: Authority G.S. 86A-22(2); 86A-23(a); 86A-25;
Eff. July 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06I .0101

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I understand – this is not for individuals who have out-of-state licenses, but for those who attended out-of-state barber schools and wish to seek licensure in this State?

On line 5, how will the Board determine whether the standards are "substantially similar"? And to what standards are you referring – the curriculum or the Rules of 21 NCAC 06F?

Also on line 5, you appear to be missing some language. "standards as <u>those</u> required by …"

Please capitalize "State" on line 5.

In the History Note, to what part of G.S. 86A-15 is you citing? 86A-15(b)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06I .0101 is readopted as published in 30:14 NCR 1512 as follows:

21 NCAC 06I .0101 CREDIT FOR OUT-OF-STATE TRAINING

A student may receive credit for training in a barber school in another state if the Board determines that the school has substantially similar standards as required by the statutes and rules of this state.

History Note: Authority G.S. 86A-15;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06I .0105

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority to require out-of-state applicants for registration as an apprentice to have completed high school or have a GED, as set forth in Item (6) of this Rule.

The Board, in its History Note, refers to several statutes. G.S. 86A-5 states, in relevant part:

§ 86A-5. Powers and duties of the Board.

(a) The Board has the following powers and duties:

(3) To review the barber licensing laws of other states and to determine which are the substantive equivalent of the laws of North Carolina for purposes of G.S. 86A-12.

(4) To conduct examinations of applicants for certificate of registration as registered barber, registered apprentice and barber school instructor.

G.S. 86A-12 states:

§ 86A-12. Applicants licensed in other states.

(a) The Board shall issue, without examination, a license to applicants already licensed in another state provided the applicant presents evidence satisfactory to the Board that:

(1) He is currently an active, competent practitioner in good standing; and

(2) He has practiced at least three out of the five years immediately preceding his application; and

(3) He currently holds a valid license in another state; and

(4) There is no disciplinary proceeding or unresolved complaint pending against him at the time a license is to be issued by this State; and

(5) The licensure requirements in the other state are the substantive equivalent of those required by this State.

(b) The requirements in subdivisions (1) or (5), or both, of subsection (a) of this section may be waived by the Board provided that the applicant presents evidence satisfactory to the Board that the applicant:

(1) Has met the licensure requirements of the state in which he received his license;

(2) Has at least five years practical experience; and

(3) Demonstrates his knowledge of barbering skills and of the sanitary regulations in North Carolina by passing a practical, written or oral examination.

(c) Any license granted pursuant to this section is subject to the same duties and obligations and entitled to the same rights and privileges as a license issued under G.S. 86A-3. (1929, c. 119, s. 12; 1941, c. 375, s. 5; 1947, c. 1024; 1961, c. 577, s. 2; 1979, c. 695, s. 1; 1981, c. 457, s. 8; 1987, c. 210.)

Reviewing these statutes together, one could argue that the Board does not have authority to issue an apprentice license to an out-of-state individual under G.S. 86A-24. However, staff is not taking that view.

What staff notes is that G.S. 86A-24 sets the following requirements for apprenticeship:

§ 86A-24. Apprenticeship.

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

The law does not require any applicant for an apprentice license to have a high school education or GED.

Further, staff notes G.S. 86A-3, which sets the qualifications for barbers, does not have any minimum education requirements outside of attending barber school.

Therefore, staff recommends objecting to this Rule for lack of statutory authority to require applicants to have completed high school or have a GED certificate.

§ 86A-3. Qualifications for certificate as a registered barber.

A certificate of registration as a registered barber shall be issued by the Board to any person who meets all of the following qualifications:

(1) Has attended an approved barber school for at least 1528 hours.
(2) Has completed a 12-month apprenticeship under the supervision of a licensed barber, as provided in G.S. 86A-24.
(3) Has passed a clinical examination conducted by the Board.
(4) Has submitted to the Board the affidavit required by G.S. 86A-24(c) certifying that the applicant has served the apprenticeship required by subdivision (2). (1929, c. 119, ss. 3, 4, 11; 1941, c. 375, s. 3; 1961, c. 577, s. 1; 1979, c. 695, s. 1; 1981, c. 457, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 1.)

§ 86A-5. Powers and duties of the Board.

(a) The Board has the following powers and duties:

(1) To see that inspections of barbershops and schools are conducted to determine compliance with sanitary regulations. The Board may appoint inspectors as necessary.
(2) To adopt sanitary regulations concerning barber schools and shops and procedural rules in accordance with the guidelines established in G.S. 86A-15.
(3) To review the barber licensing laws of other states and to determine which are the substantive equivalent of the laws of North Carolina for purposes of G.S. 86A-12.
(4) To conduct examinations of applicants for certificate of registration as registered barber, registered apprentice and barber school instructor.
(5) To employ and fix the compensation of personnel that the Board deems necessary to carry out the provisions of this Chapter.
(6) To assess civil penalties pursuant to G.S. 86A-27.

(b) The Board shall adopt regulations:

(1) Prohibiting the use of commercial chemicals of unknown content by persons registered under this Chapter. For purposes of this section, "commercial chemicals" are those products sold only through beauty and barber supply houses and not available to the general public;
(2) Instructing persons registered under this Chapter in the proper use and application of commercial chemicals where no manufacturer's instructions are included. In the alternative, the Board shall prohibit the use of such commercial chemicals by persons registered under this Chapter.

(c) Each Board member shall submit periodic reports to the Board concerning his activities in carrying out duties as a Board member. (1929, c. 119, ss. 10, 12, 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, ss. 5, 7; 1945, c. 830, s. 8; 1947, c. 1024; 1961, c. 577, ss. 2, 3, 5; 1973, c. 1331, s. 3; 1979, c. 695, s. 1; 1981, c. 457, ss. 3, 4; 2004-146, s. 2.)

§ 86A-12. Applicants licensed in other states.

(a) The Board shall issue, without examination, a license to applicants already licensed in another state provided the applicant presents evidence satisfactory to the Board that:

(1) He is currently an active, competent practitioner in good standing; and

(2) He has practiced at least three out of the five years immediately preceding his application; and
(3) He currently holds a valid license in another state; and
(4) There is no disciplinary proceeding or unresolved complaint pending against him at the time a license is to be issued by this State; and
(5) The licensure requirements in the other state are the substantive equivalent of those required by this State.

(b) The requirements in subdivisions (1) or (5), or both, of subsection (a) of this section may be waived by the Board provided that the applicant presents evidence satisfactory to the Board that the applicant:

(1) Has met the licensure requirements of the state in which he received his license;
(2) Has at least five years practical experience; and
(3) Demonstrates his knowledge of barbering skills and of the sanitary regulations in North Carolina by passing a practical, written or oral examination.

(c) Any license granted pursuant to this section is subject to the same duties and obligations and entitled to the same rights and privileges as a license issued under G.S. 86A-3. (1929, c. 119, s. 12; 1941, c. 375, s. 5; 1947, c. 1024; 1961, c. 577, s. 2; 1979, c. 695, s. 1; 1981, c. 457, s. 8; 1987, c. 210.)

§ 86A-18. Disqualifications for certificate.

The Board may either refuse to issue or to renew, or may suspend or revoke any certificate of registration or barbershop permit or barber school permit for any one or combination of the following causes:

(1) Conviction of the applicant or certificate holder 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. 86A-20;
(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 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.)

§ 86A-24. Apprenticeship.

(a) Before being issued an apprentice license, an applicant must pass an examination conducted by the Board to determine his competence, including his 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 certificate restored immediately upon paying all lapsed renewal fees and the required late fee. The certificate of registration of an apprentice is valid only so long as the apprentice works under the supervision of a registered barber. The registered 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 registered licensed barber or barbers, and upon meeting the other requirements of G.S. 86A-3, the apprentice shall be issued a license as a registered barber, pursuant to G.S. 86A-10. No registered apprentice may practice for a period exceeding three years without retaking and passing the required examination to receive a certificate as a registered 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.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06I .0105

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), how will the individual prove "satisfactorily" to the Board that the training is the "substantive equivalent"?

In Item (3), please insert a cross-reference to Rule 21 NCAC 06N .0108, which sets forth the contents of the form.

In Item (5), please note earlier questions regarding the FBI record check.

In Item (6), do you want someone to have completed high school and have a certificate, or have graduated and have a diploma?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06I .0105 is readopted as published in 30:14 NCR 1512 as follows:

21 NCAC 06I .0105 APPRENTICE BARBER

A student who has trained in another state may take the examination to become a registered apprentice barber provided:

(1) he or she proves satisfactorily to the Board that his or her hours of training in the out-of-state barber school are the substantive equivalent to those in North Carolina;

(2) he or she provides proof of completion of barber school training;

(3) he or she completes and furnishes to the Board Form BAR-7;

(4) he or she pays the required fee according to 21 NCAC 06N .0101; ~~and~~

(5) he or she furnishes a certified copy of his or her Federal Bureau of Investigation criminal record ~~report.~~ report; and

(6) he or she has completed high school or has a GED certificate.

History Note: *Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Amended Eff. September 1, 2013; June 1, 2008; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06J .0101

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority to require applicants for registration as an apprentice to have completed high school or have a GED, as set forth in Item (5) of this Rule.

As stated more fully in the Staff Opinion for Rule 21 NCAC 06I .0105, staff does not believe the Board has authority to require any applicant for an apprentice license to have a high school diploma or GED.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06J .0101

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, replace "must" with "shall"

In Item (1), line 5, I take it you wish to retain "at least'?

On line 5, state "1528 hours as set forth in Rule 21 NCAC 06F .0120" and delete the sentence in parenthesis on line 6.

Also on line 5, what is the "equivalent"? Is this for those from another state?

In Item (2), insert a cross-reference to Rule 21 NCAC 06N .0105, which sets forth the contents of the form.

In Item (3), line 8, I assume you wish to retain "at least" here as well?

In Item (4), please note earlier questions regarding the FBI record check.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06J .0101 is readopted as published in 30:14 NCR 1512 as follows:

21 NCAC 06J .0101 REGISTERED APPRENTICE

A registered apprentice must:

(1) attend an approved barber school for a period of at least 1528 hours or the equivalent as determined by the Board. (For curriculum requirements see 21 NCAC 06F .0120);

(2) furnish the Board with Form BAR-4 and pay the fee according to 21 NCAC 06N .0101;

(3) make a score of at least 70 percent on both a written and practical apprentice examination; ~~and~~

(4) submit a certified copy of his or her Federal Bureau of Investigation criminal record ~~report.~~ report; and

(5) submit a copy of his high school diploma or GED certificate.

History Note: Authority G.S. 86A-3; 86A-10; 86A-24; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Amended Eff. September 1, 2013; June 1, 2008; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06K .0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority to require out-of-state applicants for registration as a barber to have completed high school or have a GED, as set forth in Item (6) of this Rule. Staff notes that G.S. 86A-12 sets the requirements for licensure without examination for out-of-state licensees, and that statute does not include any educational requirements.

As stated more fully in the Staff Opinion for Rule 21 NCAC 06I .0105, staff does not believe the Board has authority to require any applicant for a barber license to have a high school diploma or GED.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06K .0104

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, make "State" capitalized

Also on line 5, replace "must" with "shall" the first time it's used, and delete the term altogether the second time.

On line 5, replace "his" with "his or her"

In Item (2), line 8, please insert a cross-reference to Rule 21 NCAC 06N .0109, which contains the contents of the form.

Also on that line, do you need to insert a cross-reference for the fee?

What is your authority for Item (3)? Please note earlier questions regarding FBI background checks.

On line 9, replace "his" with "his or her"

I take it that Sub-Items (4)(a) and (b) are to satisfy G.S. 86A-12(a)(2)?

Is Sub-Item (4)(c) to satisfy 86A-12(a)(1)?

Is Sub-Item (4)(d) to satisfy 86A-12(a)(4)?

What is the authority for Item (5)? Are you relying upon G.S. 86A-12(5)? If so, don't you need more than just information on the training from the school the applicant attended to determine whether "the licensure requirements in the other state are the substantive equivalent in this State" given that this state also requires an apprenticeship?

On line 17, make "his" "his or her"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

Why are you citing to G.S. 86A-15 in the History Note?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06K .0104 is readopted as published in 30:14 NCR 1512 as follows:

21 NCAC 06K .0104 OUT-OF-STATE APPLICANTS

An applicant who is licensed as a barber in another state and who wants to apply to become registered as a barber in this state must establish his out-of-state license and experience and must provide:

(1) a certified copy of the applicant's out-of-state license;

~~(2) three sworn affidavits verifying the experience of the applicant;~~

~~(3)~~(2) form BAR-8 and the required fee;

~~(4)~~(3) a certified copy of his Federal Bureau of Investigation criminal record report;

~~(5)~~(4) a certified statement from the applicant's out-of-state Board stating the following:

(a) the applicant's length of licensure in that state;

(b) whether such licensure has been continuous or has been interrupted by periods when the applicant was not licensed in the state;

(c) the reasons for any such interruptions in licensure; and

(d) whether or not there have been any disciplinary actions against the applicant's license; ~~and~~

~~(6)~~(5) a certified transcript describing the number of instructional hours and course content from the school where the applicant received his barber ~~training.~~training; and

(6) a copy of his or her high school diploma or GED certificate.

History Note: Authority G.S. 86A-12; 86A-15; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Amended Eff. September 1, 2013, May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06L .0118

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objecting to this Rule for lack of statutory authority.

In Paragraph (f), the Board states that violation of Chapter 86A or any administrative rule adopted by the Board or operation of a shop that receives a failing grade shall be sufficient cause for revoking or suspending the permit.

However, G.S. 86A-18 states that the Board may revoke or suspend the permit for violation provided the Board has previously given two written warnings to the individual committing the violation.

Therefore, staff believes that the agency is without authority to revoke a permit for failure to comply with this Rule unless the statutorily mandated two written warnings are issued first. This Rule does not include any reference to those warnings, and also does not cite G.S. 86A-18 in the History Note. Staff believes that the Board is without statutory authority to abrogate the requirements of G.S. 86A-18.

Amanda J. Reeder
Commission Counsel

§ 86A-18. Disqualifications for certificate.

The Board may either refuse to issue or to renew, or may suspend or revoke any certificate of registration or barbershop permit or barber school permit for any one or combination of the following causes:

(1) Conviction of the applicant or certificate holder 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. 86A-20;

(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 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.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06L .0118

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, when you state "this Subchapter" do you really mean Rule 21 NCAC 06L .0119? That appears to contain the system of grading.

I take it in (a)(1) and (2), you need to retain "at least"?

In (a)(3), line 9, you refer to "sanitation rating" but in (a)(1) and (2), lines 6 and 7, you refer to just "rating." Assuming this is the same thing, please be consistent in the terminology.

In (a)(1), line 6, delete the comma after "more"

In (b), with the deletion, how often will the inspections occur?

In (c), line 12, why is "failing" capitalized?

On line 12, I see you are defining "conspicuous" on line 13. Consider stating "… conspicuous place, defined as a place…"

In (f), line 17, replace "which" with "that'

On line 18, there is no need to state "at least 80 percent" and "grade B" as they are duplicative. Use one or the other.

What is the purpose of (g)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06L .0118 is readopted with changes as published in 30:14 NCR 1514 as follows:

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

(a) The sanitary rating of a barber shop shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

(1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;

(2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded a grade ~~B.~~B; and

(3) a sanitation rating of less than 80 percent shall be awarded a failing grade.

(b) Every barber shop shall be given a sanitary rating. ~~A barber school shall be graded one to three times a year, and a barber shop shall be graded one to three times a year.~~

(c) The sanitary rating of A, B, or Failing given to a barber shop establishment shall be posted in a conspicuous place, a place easily seen by the public at the front of the shop, at all times.

(d) No newly established barber shop shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.

(e) Barber inspectors shall give each barber shop a new sanitary rating ~~card each year.~~ card.

(f) Violation of Chapter 86A or any administrative rule adopted by the Board or the operation of a barber shop which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising a failing sanitary rating of a barber shop shall not be given within 30 days.

History Note: *Authority G.S. 86A-5(a)(1); 86A-15;*
Eff. June 1, 2008;
Amended Eff. September 1, ~~2013.~~ 2013;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06L .0119

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objecting to this Rule for lack of clarity, as there are several Items in the Rule that are unclear as written.

In Item (2), does "hot and cold running water, septic system" mean the shop or school must have them? This is not clear from the context of the Rule.

Staff does not know what Sub-Item (3)(a) means for "construction and covering" of walls, ceilings, and floors and the Rule does not state what it means.

Staff does not know what is mean by Sub-Item (7)(b), "soiled towels." Staff thought this might tie into the requirement to keep soiled towels separate from clean towels, but that appears to be covered by Item (8). Therefore, staff cannot discern if there is a requirement to have soiled towels on the premises or what this means.

Sub-Item (9)(b) refers to "proper" use of disinfectants, but there is no standard given for what "proper" is. The Board may intend to refer to another Rule, but it does not include a cross-reference.

Sub-Item (10)(d) prohibits "unnecessary articles" but does not state what those are, or what articles are deemed necessary.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06L .0119

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Again, the name of the Rule is not subject to RRC review. However, the name of this Rule is "Systems of Grading Barber Shops" but line 4 states that the Rule also applies to barber schools. Consider renaming it "Systems of Grading Barber Shops and Barber Schools"

On line 5, what do you mean by "considered"?

In Item (3), line 8, insert a comma after "ceiling"

In Sub-Item (5)(a), line 13, "well-ventilated" is hyphenated

In Item (6), is this for each licensee? Can you get more than one point per licensee?

In Sub-Item (7)(c), what is "hair cloth"?

In Sub-Item (9)(c), line 26, should this be "properly" instead of "property"?

Why are you ending Items (11) and (12) (lines 32 and 33) with semicolons? Delete those or add them everywhere else.

Just to be clear – the intent is to allow a maximum of 99 points?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06L .0119 is readopted as published in 30:14 NCR 1514 as follows:

21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS

The system of grading the sanitary rating of all barber shops and schools, shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

(1) clean entrance and waiting area 2;

(2) water system; hot and cold running water, septic system 2;

(3) walls, ceiling and floors:

(a) construction and covering 6;

(b) clean 5;

(4) lighting and ventilation (windows included); their adequacy and cleanliness 3;

(5) public toilet:

(a) clean and well ventilated 5;

(b) soap and individual towels furnished 5;

(c) hot and cold running water 2;

(6) cleanliness as to person and dress 1;

(7) linens:

(a) supply of clean towels 2;

(b) soiled towels 3;

(c) hair cloth 1;

(8) soiled towel receptacle 4;

(9) tools and instruments 4;

(a) disinfectants selected from those approved by the Federal Environmental Protection Agency 4;

(b) disinfectants used properly 4;

(c) all implements cleaned, disinfected, and property stored 8;

(10) working area

(a) clean work stand 3;

(b) clean lavatories 2;

(c) clean and disinfected jars and containers 1;

(d) no unnecessary articles in work area 1;

(11) certificate posted; 10;

(12) sanitary law posted; 1;

(13) sterilizing solution/container 20;

History Note: *Authority G.S. 86A-5(a)(1); 86A-15;*
Eff. June 1, 2008;

Amended Eff. September 1, ~~2013.~~ 2013;

Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06N .0103

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objecting to this Rule for lack of statutory authority.

In Paragraphs (b) and (c) of this Rule, the Board states that a change in management for any barbershop shall require a new permit and the payment of a fee. The Board does not cite to, and staff is not aware of, any statutory authority to support this.

Staff notes that the law governing permits is found in G.S. 86A-13, which states that permits expire annually. Staff notes that the statute refers to owners renewing the permits. The statute does not even use the term "managers." Staff further notes that the only statutes in G.S. 86A that uses the term "barbershop manager" are G.S. 85A-15, which governs sanitary regulations of shops and G.S. 86A-1 that refers to management, but it does not tie validity of a permit to a manager.

Even if the Commission finds that the changing of managers means that a shop loses its license and must be "reopened" under a new permit, the Board does not have authority to allow a shop to reopen without first being inspected pursuant to G.S. 86A-13(a). This Rule does not include any reference to this inspection taking place.

Therefore, staff recommends objection to this Rule for lack of statutory authority. Staff does not believe that the Board has the authority to state that whenever a shop changes managers that a valid permit expires and that the Board has the authority to charge a new fee to issue another one.

Amanda J. Reeder
Commission Counsel

§ 86A-13. Barbershop and barber school permits.

(a) Any person, firm or corporation, before establishing or opening a barbershop or barber school not heretofore licensed by the State or the Board shall make application to the Board on forms to be furnished by the Board, for a permit to operate a barbershop or barber school, and the shop or school of the applicant shall be inspected and approved by the State Board of Barber Examiners or an agent designated for that purpose by the Board, before the barbershop or barber school may open for business. It is unlawful to open a new or reopened barbershop or barber school until that shop or school has been inspected and determined by the Board to be in compliance with the requirements of G.S. 86A-15 in the case of shops and G.S. 86A-15 and 86A-22 in the case of schools. Upon compliance by the applicant with all requirements set forth in G.S. 86A-15, and the payment of the prescribed fee the Board shall issue to the applicant the permit applied for. Notwithstanding any other provision of this Chapter, no person, firm, or corporation shall be issued a permit to operate a barbershop in a location registered as a barber school, nor shall any person, firm, or corporation be issued a permit to operate a barber school in a location registered as a barbershop.

(b) The owners of every registered barbershop and barber school shall annually, on or before May 31 of each year, renew the barbershop's or barber school's certificate of registration and pay the required renewal fee. Every certificate of registration for any barbershop or barber school shall expire on the 31st day of May in each year. Any certificate of registration issued under this Chapter shall be suspended automatically by operation of law after failure to renew the certificate of registration by the expiration date. The owner of any barbershop or barber school whose certificate of registration has expired may, after the barbershop or barber school has been inspected as required in subsection (a) of this section, have the certificate restored immediately upon paying all lapsed renewal fees and the required late fee. (1929, c. 119, ss. 1, 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, ss. 1, 7; 1945, c. 830, ss. 1, 8; 1961, c. 577, ss. 3, 5; 1973, c. 1331, s. 3; 1979, c. 695, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 5.)

§ 86A-1. Necessity for certificate of registration and shop or school permit.

No person or combination of persons shall, either directly or indirectly, practice or attempt to practice barbering in the State of North Carolina without first obtaining a certificate of registration either as a registered apprentice or as a registered barber issued pursuant to provisions of this Chapter by the State Board of Barber Examiners. No person or combination of persons, or corporation, shall operate, manage or attempt to operate or manage a barber school, barbershop, or any other place where barber services are rendered, after July 1, 1945, without first obtaining a shop permit, or school permit, issued by the State Board of Barber Examiners, pursuant to the provisions of this Chapter. (1929, c. 119, s. 1; 1941, c. 375, s. 1; 1945, c. 830, s. 1; 1979, c. 695, s. 1.)

§ 86A-15. Sanitary rules and regulations; inspections.

(a) Each barber and each owner or manager of a 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 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 lavatory must have a drain pipe to drain all waste water out of the building.

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.

(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 solution of fifty percent (50%) alcohol, five percent (5%) carbolic acid, twenty percent (20%) formaldehyde, or ten percent (10%) lysol or other 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 registered 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 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, 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 of Barber Examiners 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 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 or barber school. The Board shall have the right to make additional rules and regulations governing barbers and 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 registered 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 of Barber Examiners 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.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06N .0103

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why is there no reference to this Rule in Subchapter 06L, which sets forth the standards for operating barber shops?

In (a), line 4, begin the sentence "The Form BAR-2" and replace "must" with "shall"

On line 5, delete "such as, but not limited to"

Also on line 5, what else are you requesting on this form? G.S. 150B requires the contents of forms to be set forth in Rule or law. Are the other contents in this form in another rule or law?

Consider beginning (a)(1) through (3) with articles, such as "the"

So that I understand (a)(1) – even if the name is not changing, the Board wants to know the name two times?

In (b), line 9, replace "must" with "shall"

In (c), line 10, replace "A" with "The" and why are you citing to statute, rather than your Rule (21 NCAC 06N .0101)?

Also on line 12, replace "must" with "shall"

In (d), line 1, state "The Form BAR-1 shall be notarized."

In the History Note, G.S. 150B-11 was repealed in 1991. Please remove it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06N .0103 is readopted as published in 30:14 NCR 1514 as follows:

21 NCAC 06N .0103 FORM BAR-2

(a) Form BAR-2 must be filed when there is a change of management at any barber shop. It requires information such as, but not limited to, the following:

(1) name of barber shop both before and after the change of management;

(2) name, address, and certificate number of the new manager or managers; and

(3) former manager's name.

(b) A new permit must be issued whenever there is a change of management in any barber shop.

(c) A fee according to G.S. 86A-25 must accompany Form BAR-2 as a permit fee.

(d) Form BAR-2 must be notarized.

History Note: *Legislative Objection Lodged Eff. March 7, 1983;*
Statutory Authority G.S. 86A-1; 86A-25; 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06N .0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority to require applicants for barber school to have completed high school or have a GED, as set forth in Item (7) of this Rule.

As stated more fully in the Staff Opinion for Rule 21 NCAC 06I .0105, staff does not believe the Board has authority to require any applicant to have a high school diploma or GED.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06N .0104

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why is there no reference to this Rule in Subchapter 06F, which sets forth the standards for operating barber schools?

In (a), line 4, begin the sentence "The Form BAR-3" and replace "must" with "shall"

Consider beginning (a)(1) through (7) with articles, such as "the"

In (a)(5), line 9, state "his or her" and please note earlier questions regarding FBI background checks.

In (b), line 12, state "The fee" and replace "must" with "shall"

Further in (b), the citation you give to Rule 21 NCAC 06N .0101 is correct; however, this is not how you cross-reference elsewhere. Please keep that in mind as you make changes elsewhere in this Subchapter.

In the History Note, line 14, why are you citing to G.S. 86A-18? Is it to justify (a)(5)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06N .0104 is readopted as published in 30:14 NCR 1514 as follows:

21 NCAC 06N .0104 FORM BAR-3

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

(1) name, address, and birth date of applicant;

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

(3) name of school enrolled;

(4) date of enrollment;

(5) a certified copy of his Federal Bureau of Investigation criminal record report; ~~and~~

(6) signature of school ~~manager.~~ manager; and

(7) a copy of his or her high school diploma or GED certificate.

(b) A fee as required in Rule .0101 of this Subchapter must accompany this form.

History Note: Authority G.S. 86A-18; 86A-22; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06N .0106

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority to require applicants for the barber examination to have completed high school or have a GED, as set forth in Item (6) of this Rule.

As stated more fully in the Staff Opinion for Rule 21 NCAC 06I .0105, staff does not believe the Board has authority to require any applicant to have a high school diploma or GED.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06N .0106

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, state "The Form BAR-5…" and replace "must" with "shall"

On line 4, consider replacing "desiring" with "seeking"

Consider beginning (a)(1) through (6) with articles.

In (a)(4), line 9, state "his or her" and please note earlier questions regarding FBI background checks.

In (b), line 12, state "The Form BAR-4 shall be notarized"

In (c), line 13, state "The fee" and replace "must" with "shall"

Further in (c), the citation you give to Rule 21 NCAC 06N .0101 is correct; however, this is not how you cross-reference elsewhere. Please keep that in mind as you make changes elsewhere in this Subchapter.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06N .0106 is readopted as published in 30:14 NCR 1514 as follows:

21 NCAC 06N .0106 FORM BAR-5

(a) Form BAR-5 must be filed by one desiring to take the examination to receive a registered barber certificate. It requires the following:

(1) name, address, and birthdate of applicant;

(2) place of proposed employment;

(3) barber school training;

(4) a certified copy of his/her Federal Bureau of Investigation criminal record report; ~~and~~

(5) barbering ~~experience.~~ experience; and

(6) a copy of his or her high school diploma or GED certificate.

(b) Form BAR-5 must be notarized in two places.

(c) A fee as required in Rule .0101 of this Subchapter must accompany this form.

History Note: *Authority G.S. 86A-1; 86A-3; 86A-10; 86A-25;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06N .0108

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any authority for this Rule.

The Rule purports to create different standards for an out-of-state practitioner to apply to take an examination to become a registered apprentice. The History Note cites to G.S. 86A-1, 86A-12, and 86-25 for the authority for this Rule. None of these cited laws give any authority to establish a different process for individuals to become apprentice barbers.

G.S. 86A-1 establishes the necessity for being licensed to practice. G.S. 86A-12 allows the Board to issue, without examination, a license to practice if the applicant is from out-of-state and already licensed. This statute does not allow the issuance of a license with examination for out-of-state licensees. Further, that law expressly applies only to licensees who practiced at least three years and this Rule applies to those who have practiced less than three years. G.S. 86A-25 establishes fees.

Staff notes that the law establishing apprenticeship with examination is G.S. 86A-24, which is not cited by the Board in this Rule. That law requires examination of all applicants and does not differentiate by licensure out of state.

Staff notes that Rule 21 NCAC 06N .0105 sets forth the requirements for becoming a registered apprentice. Staff believes that Rule applies to all applicants seeking to become registered apprentices. Staff notes that this Rule appears to require more of applicants than Rule .0105 of the Section.

Amanda J. Reeder
Commission Counsel

Therefore, staff recommends objection to this Rule because the Board does not have statutory authority to treat applicants for registered apprentices differently.

Amanda J. Reeder
Commission Counsel

Chapter 86A.

Barbers.

§ 86A-1. Necessity for certificate of registration and shop or school permit.

No person or combination of persons shall, either directly or indirectly, practice or attempt to practice barbering in the State of North Carolina without first obtaining a certificate of registration either as a registered apprentice or as a registered barber issued pursuant to provisions of this Chapter by the State Board of Barber Examiners. No person or combination of persons, or corporation, shall operate, manage or attempt to operate or manage a barber school, barbershop, or any other place where barber services are rendered, after July 1, 1945, without first obtaining a shop permit, or school permit, issued by the State Board of Barber Examiners, pursuant to the provisions of this Chapter. (1929, c. 119, s. 1; 1941, c. 375, s. 1; 1945, c. 830, s. 1; 1979, c. 695, s. 1.)

§ 86A-12. Applicants licensed in other states.

(a) The Board shall issue, without examination, a license to applicants already licensed in another state provided the applicant presents evidence satisfactory to the Board that:

(1) He is currently an active, competent practitioner in good standing; and
(2) He has practiced at least three out of the five years immediately preceding his application; and
(3) He currently holds a valid license in another state; and
(4) There is no disciplinary proceeding or unresolved complaint pending against him at the time a license is to be issued by this State; and
(5) The licensure requirements in the other state are the substantive equivalent of those required by this State.

(b) The requirements in subdivisions (1) or (5), or both, of subsection (a) of this section may be waived by the Board provided that the applicant presents evidence satisfactory to the Board that the applicant:

(1) Has met the licensure requirements of the state in which he received his license;
(2) Has at least five years practical experience; and
(3) Demonstrates his knowledge of barbering skills and of the sanitary regulations in North Carolina by passing a practical, written or oral examination.

(c) Any license granted pursuant to this section is subject to the same duties and obligations and entitled to the same rights and privileges as a license issued under G.S. 86A-3. (1929, c. 119, s. 12; 1941, c. 375, s. 5; 1947, c. 1024; 1961, c. 577, s. 2; 1979, c. 695, s. 1; 1981, c. 457, s. 8; 1987, c. 210.)

§ 86A-24. Apprenticeship.

(a) Before being issued an apprentice license, an applicant must pass an examination conducted by the Board to determine his competence, including his 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 certificate restored immediately upon paying all lapsed renewal fees and the required late fee. The certificate of registration of an apprentice is valid

only so long as the apprentice works under the supervision of a registered barber. The registered 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 registered licensed barber or barbers, and upon meeting the other requirements of G.S. 86A-3, the apprentice shall be issued a license as a registered barber, pursuant to G.S. 86A-10. No registered apprentice may practice for a period exceeding three years without retaking and passing the required examination to receive a certificate as a registered 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.)

§ 86A-25. Fees collectible by Board.

The State Board of Barber Examiners shall charge fees not to exceed the following:

Certificate of registration or renewal as a barber	$ 50.00
Certificate of registration or renewal as an apprentice barber	50.00
Barbershop permit or renewal	50.00
Examination to become a registered barber	85.00
Examination to become a registered apprentice barber	85.00
Late fee for restoration of an expired barber certificate within first year after expiration	35.00
Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration	70.00
Late fee for restoration of an expired apprentice certificate within first year after expiration	35.00
Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate	45.00
Late fee for restoration of an expired barbershop certificate	45.00
Examination to become a barber school instructor	165.00
Student permit	25.00
Issuance of any duplicate copy of a license, certificate, or permit	10.00
Barber school permit or renewal	130.00
Late fee for restoration of an expired barber school certificate	85.00
Barber school instructor certificate or renewal	85.00
Late fee for restoration of an expired barber school instructor certificate within first year after expiration	45.00
Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration	85.00
Inspection of newly established barbershop	120.00
Inspection of newly established barber school	220.00
Issuance of a registered barber or apprentice certificate by certification	120.00
Barbers 70 years and older certificate or renewal	No charge
Reasonable charges for certified copies of public documents	
Reasonable charges for duplication services and material.	

(1929, c. 119, s. 14; 1937, c. 138, s. 4; 1945, c. 830, ss. 4, 8; 1951, c. 821, s. 1; 1957, c. 813, s. 3; 1961, c. 577, s. 5; 1965, c. 513; 1971, c. 826, ss. 1, 2; 1973, c. 1331, s. 3; c. 1398; 1979, c. 695, s. 1; 1981, c. 753; 1989 (Reg. Sess., 1990), c. 1029, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 14; 2004-146, s. 11.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06N .0108

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, state "The Form BAR-7…" and replace "must" with "shall"

On line 5, consider replacing "and who desires" with "applying"

Consider beginning (a)(1) through (3) with articles.

In (a)(4), line 9, state "his or her" and please note earlier questions regarding FBI background checks.

In (a)(5), line 10, should this read "a photograph of the applicant"?

Also on line 10, define "approximately"

In (b), line 11, state "The fee" and replace "must" with "shall"

Further in (b), the citation you give to Rule 21 NCAC 06N .0101 is correct; however, this is not how you cross-reference elsewhere. Please keep that in mind as you make changes elsewhere in this Subchapter.

In (c), line 12, state "The form BAR-7 shall be notarized."

In (d), line 13, begin the sentence with "The" and replace "must" with "shall"

In (e), line 15, begin the sentence with "The" and replace "must" with "shall"

In the History Note, line 17, why are you citing to G.S. 86A-12?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06N .0108 is readopted as published in 30:14 NCR 1515 as follows:

21 NCAC 06N .0108 FORM BAR-7

(a) Form BAR-7 must be filed by one who has practiced less than three years in some state other than North Carolina and who desires to take the examination to obtain an apprentice license in North Carolina. It requires the following:

(1) name, address and birthdate of applicant;

(2) name of barber school attended;

(3) experience background and status of each barber license in another state;

(4) a certified copy of his Federal Bureau of Investigation criminal record report; and

(5) a photograph approximately 2" x 3 " in size.

(b) An examination fee according to Rule .0101 of this Subchapter must accompany this form.

(c) Form BAR-7 must be notarized.

(d) Form BAR-7 must be accompanied by a copy of a barber school transcript and a letter from the other state Board verifying licensure in that state if licensed.

(e) Form BAR-7 must be accompanied by one sworn affidavit verifying experience, if any.

History Note: *Authority G.S. 86A-1; 86A-12; 86A-25;*
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, ~~1989.~~ 1989;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06O .0120

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any Rules or law that require the registered barber or the apprentice to notify the Board of a change in supervisor.

G.S. 86A-27 allows the Board to impose civil penalties for violation of the laws in G.S. 86A or any rules adopted by the Board. Staff is not aware that there are any laws or rules that can form the basis of the violations contained in this Rule.

Staff notes that G.S. 86A-24 requires apprentices to work under the supervision of a licensed barber. However, it does not state that the apprentice can only work under one specific barber. Further, staff is aware that Rule 21 NCAC 06J .0110 requires the apprentices to report a change in mailing address; however, it does not require sending notice of a change in the supervising barber. Further, staff is not aware of any rule or law requiring the barber to report the change.

Therefore, staff recommends objection to this Rule for lack of statutory authority to impose the civil penalties in this Rule as this is not a violation of any law or Rules.

Amanda J. Reeder
Commission Counsel

§ 86A-27. Civil penalties; disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of five hundred dollars ($500.00) per offense for the violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board.

(d) Costs. – The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought. (2004-146, s. 10.)

§ 86A-24. Apprenticeship.

(a) Before being issued an apprentice license, an applicant must pass an examination conducted by the Board to determine his competence, including his 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 certificate restored immediately upon paying all lapsed renewal fees and the required late fee. The certificate of registration of an apprentice is valid only so long as the apprentice works under the supervision of a registered barber. The registered 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 registered licensed barber or barbers, and upon meeting the other requirements of G.S. 86A-3, the apprentice shall be issued a license as a registered barber, pursuant to G.S. 86A-10. No registered apprentice may practice for a period exceeding three years without retaking and passing the required examination to receive a certificate as a registered 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.)

21 NCAC 06J .0110 NOTIFICATION OF ADDRESS CHANGE

All apprentice barbers and student barbers with permission to work shall notify the Board within 60 days of any change in their permanent mailing address.

History Note: Authority G.S. 86A-11; 86A-24;
Eff. September 1, 2009.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06O .0120

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, and (b), line 10, replace "as to" with "of"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06O .0120 is adopted as published in 30:14 NCR 1517 as follows:

21 NCAC 06O .0120 FAILURE TO NOTIFY BOARD OF CHANGE OF SUPERVISING BARBER OF AN APPRENTICE BARBER

(a) The presumptive civil penalty for the failure of a registered barber for failure to notify the Board as to a change of supervision of an apprentice barber:

(1)	1st offense	$50.00
(2)	2nd offense	$100.00
(3)	3rd offense	$200.00

(b) The presumptive civil penalty for an apprentice barber for failure to notify the Board as to a change in supervising registered barber:

(1)	1st offense	$50.00
(2)	2nd offense	$100.00
(3)	3rd offense	$200.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-24; 86A-27;
Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06Q .0101

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority. The Board does not cite to, and staff is not aware of, any law that supports finding fraudulent misrepresentation for using a barber pole when not licensed, as set forth in Sub-Item (1)(c). In addition, staff is not aware of any authority for the Board to find fraudulent misrepresentation for any individual failing to positively identify an individual as being licensed by the Board before allowing barbering services in Sub-Item (1)(d).

Regarding the issue of the barber pole in Sub-Item (1)(c), staff notes there is no reference to a barber pole in G.S. 86A. Staff notes that the Commission reviewed this Rule in 2013. At that time, counsel issued a Staff Opinion on this issue, but ultimately the rule was passed with the language intact. In researching this issue, staff found Senate Bill 25, filed in the 2011-2012 session; the bill would have given the Board explicit authority for this language, but it did not pass.

Staff looked for case law regarding this topic, and found Kindsgrab v. State Board of Barber Examiners, 763 S.E.2d 913 (2014). That case stated that the Board had authority to levy civil penalties against non-licensees. However, staff does not read the case to hold that the Board had authority to require only licensees to use the sign.

Regarding the issue of the individual required to positively identify the licensee in Sub-Item (1)(d), the plain language of this Rule states that a patron who does not "positively identify" a barber before having his or her hair cut can be found by the Board to have committed fraudulent misrepresentation and thus subject to civil penalties of $500 for the first offense (see Rule 21 NCAC 060 .0107). Staff does not believe that the Board has this authority, even under the holding in

Kindsgrab. *If the Board intended to state that this action should be someone within the Board's authority, such as a manager, then staff believes that the failure to do so makes the Rule ambiguous as written.*

Therefore, staff recommends objection to this Rule for lack of statutory authority.

SB25

A BILL TO BE ENTITLED

AN ACT providing that only barbers may use the striped barber pole as a means of advertisement.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 86A-1 reads as rewritten:

"§ 86A-1. Necessity for certificate of registration and shop or school permit.

No person or combination of persons shall, either directly or indirectly, practice or attempt to practice barbering in the State of North Carolina without first obtaining a certificate of registration either as a registered apprentice or as a registered barber issued pursuant to provisions of this Chapter by the State Board of Barber Examiners. No person or combination of persons, or corporation, shall operate, manage or attempt to operate or manage a barber school, barbershop, or any other place where barber services are rendered, after July 1, 1945, without first obtaining a shop permit, or school permit, issued by the State Board of Barber Examiners, pursuant to the provisions of this Chapter. <u>No person or combination of persons, or corporation, shall advertise or other otherwise represent oneself, or itself, as qualified or authorized to engage in the practice of barbering, including use or display of the barber pole, without first obtaining a certificate of registration as a registered barber or a shop permit or school permit issued by the State Board of Barber Examiners, pursuant to the provisions of this Chapter. A violation of this section is a Class 3 misdemeanor.</u>"

SECTION 2. This act is effective when it becomes law.

Amanda J. Reeder
Commission Counsel

763 S.E.2d 913
Court of Appeals of North Carolina.

Hans KINDSGRAB, Petitioner–Appellant,
v.
STATE of North Carolina BOARD OF BARBER EXAMINERS, Respondent–Appellant.

No. COA13–1321.
|
Oct. 7, 2014.

***914** Appeals by petitioner and respondent from orders entered 3 May 2013 and 11 September 2013 by Judge Howard E. Manning, Jr., in Wake County Superior Court. Heard in the Court of Appeals 23 April 2014.

Attorneys and Law Firms

Harris & Hilton, P.A., Raleigh, by Nelson G. Harris, for petitioner-appellant.

N.C. Board of Barber Examiners, by W. Bain Jones, Jr., and Allen, Pinnix & Nichols, P.A., Raleigh, by M. Jackson Nichols and Catherine E. Lee, for respondent-appellant.

Opinion

McCULLOUGH, Judge.

Hans Kindsgrab ("petitioner") appeals from the Order On Petition For Judicial Review filed 11 September 2013. The State of North Carolina Board of Barber Examiners ("respondent" or "the Board") appeals from the interlocutory order denying its Motion To Dismiss Petition For Judicial review filed 3 May 2103 and from the Order On Petition For Judicial Review filed 11 September 2013. For the following reasons, we affirm in part and reverse in part.

I. *Background*

Petitioner is an owner of Maybe Someday, Inc., which owns and operates franchises of "The Barbershop—A Hair Salon for Men" at three locations in the triangle area—Cary, Durham, and Raleigh. At all times relevant to this appeal, each location held a Cosmetic Arts Salon License issued by the North Carolina State Board of Cosmetic Art Examiners.

In 2012, an investigation by barber examiner William Graham revealed that the Cary and Raleigh locations displayed barber polls and advertised barber services without barber permits and without licensed barbers on the premises. As a result, Graham issued "Notice[s] Of Violation[s]" to the Raleigh and Cary locations on 31 July 2012 specifying fraudulent misrepresentation in violation of N.C. Gen.Stat. § 86A–20 and N.C. Admin. Code tit. 21, r. 6O.0107. Following the notices issued by Graham, on 7 September 2012, the Board sent petitioner a Notification of Probable Cause to Fine and ordered petitioner to pay civil penalties, attorney's fees, and costs.

By letter to the Board dated 2 October 2012, petitioner requested an administrative hearing to contest the fraudulent misrepresentation charges. On 3 October 2012, the Board responded to petitioner by letter providing notice that an administrative hearing had been scheduled for 22 October 2012. The hearing took place as scheduled.

Following the 22 October 2012 hearing, the board issued its Final Decision on 6 November 2012. Among the conclusions issued by the board were the following:

> 10. Petitioner must comply with the statutes and administrative rules concerning barber shops, barbering services and use of a barber pole.
>
> 11. The preponderance of the evidence established that it [sic] the Board properly ***915** cited Petitioner for misrepresenting itself as a barber shop or barber salon when it failed to have a barber shop permit and a licensed barber at each of its franchise locations in Cary and Raleigh.

The Board then ordered petitioner to "pay one thousand dollars ($1,000.00) in civil penalties for fraudulent misrepresentations concerning attempts to barber and provide barber services without a shop permit and a licensed barber on the premises at the Cary and Raleigh locations[, five hundred dollars ($500.00) per location,]" and to "pay one thousand six hundred fifty dollars ($1,650.00) in attorney's fees and costs for services rendered by the Board Counsel and staff."

On 3 December 2012, petitioner filed a Petition For Judicial Review in Wake County Superior Court seeking review of the Board's Final Decision. After numerous motions by both sides attempting to settle the record, on 26 April 2013, respondent filed a Motion To Dismiss

Petition For Judicial Review on the basis that petitioner failed to "specifically state the grounds for exception [.]" Respondent's motion to dismiss came on to be heard with the motions to settle the record on 3 May 2013. Following the hearing, the trial court filed an order denying respondent's motion to dismiss.

Respondent's Petition For Judicial Review came on to be heard in Wake County Superior Court before the Honorable Howard E. Manning, Jr., on 4 September 2013.

In an Order On Petition For Judicial Review filed 11 September 2013, the trial court affirmed the Board's Final Decision in part and reversed in part. Specifically, the trial court found the Board's findings to be supported by substantial evidence and found the board's conclusions to be supported by the findings of fact and the whole record. The trial court also made the following more specific findings:

> 4. The Court affirms in part Paragraph 1 of the Order portion of the Final Agency Decision which holds that Petitioner's businesses, The Barber Shop—A Hair Salon For Men, were providing barber services without a barber shop permit and a licensed barber on the premises at Respondent's Cary and Raleigh locations.
>
> 5. The Court affirms in part the Final Agency Decision, which holds that Petitioner is not allowed to use or display a barber pole for the purpose of offering barbering services, and Petitioner is ordered to remove the barber pole unless licensed by Respondent Board.
>
> 6. The Court affirms in part the Final Agency Decision which holds that Petitioner's businesses, advertising of its services as a barber shop is a misrepresentation and confusing and deceptive to the consuming public, and Petitioner is ordered to remove and cease such advertisements unless licensed by Respondent Board.
>
> 7. The Court reverses in part the Final Agency Decision in its imposition of fines because the Court concludes that Respondent Board does not have the statutory authority to impose fines on persons or entities not licensed by the Board.
>
> 8. The Court reverses in part the Final Agency Decision in its imposition of attorney fees and costs for services rendered by the Board Counsel and staff because the Court concludes that Respondent Board does not have the statutory authority to impose such fees and costs on persons or entities not licensed by the Board.

Based on these findings, the trial court ordered the imposition of civil penalties and the award of attorney's fees and costs for services be reversed. Both petitioner and respondent appealed.

II. *Discussion*

[1] "When reviewing a superior court order concerning an agency decision, we examine the order for errors of law. The process has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly." *Poarch v. N.C. Dep't of Crime Control & Pub. Safety,* ——N.C.App. ——, ——, 741 S.E.2d 315, 318 (2012) (quotation marks and citations omitted).

A. *Petitioner's Appeal*

[2] The sole issue raised on appeal by petitioner is whether the trial court exceeded the permissible scope of review when it ordered ***916** him to remove the barber pole and cease advertising barber services unless licensed by the Board. Petitioner contends the trial court did and that those portions of the trial court's order must be reversed. We agree.

N.C. Gen.Stat. § 150B–51 governs the scope of judicial review of an agency decision. It provides in pertinent part:

> (b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:
>
> > (1) In violation of constitutional provisions;
> >
> > (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
> >
> > (3) Made upon unlawful procedure;
> >
> > (4) Affected by other error of law;
> >
> > (5) Unsupported by substantial evidence admissible under G.S. 150B–29(a), 150B–30, or 150B–31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

N.C. Gen.Stat. § 150B–51 (2013).

[3] Pursuant to N.C. Gen.Stat. §§ 86A–5 & –27, the Board has the power to assess civil penalties. *See* N.C. Gen.Stat. § 86A–5 (a)(6) (2013). The Board does not, however, have the power to issue injunctions. Thus, in accordance with its powers, the Board did not enjoin petitioner, but simply found petitioner was properly cited for fraudulent misrepresentations and ordered petitioner to pay civil penalties, attorney's fees, and costs.

As detailed more fully above, petitioner petitioned the trial court to review the Board's assessment of civil penalties, attorney's fees, and costs. Upon reviewing the case, the trial court reversed portions of the Board's Final Decision and held the Board did not have the statutory authority to impose civil penalties, attorney's fees, and costs on non-licensees. The trial court did, however, affirm the Board's conclusions that petitioner was subject to the Barber Act, Chapter 86A of the General Statutes, and violated certain rules related to advertising barber services. Yet, in addition to affirming those portions of the Board's Final Decision related to advertising, the trial court ordered petitioner to remove the barber pole and cease advertising barber services unless licensed by the Board.

Defendant now contends the decretal portions of the trial court's order ordering the removal of the barber pole and cessation of advertising barber services were beyond the scope of the trial court's review.

Although the Barber Act provides an avenue for the Board to seek an injunction in superior court, see N.C. Gen.Stat. § 86A20.1 (2013) ("The Board ... may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules."), respondent concedes that it did not pursue that avenue, nor raise the issue in the underlying contested case. Nevertheless, citing *In re Alamance County Court Facilities*, 329 N.C. 84, 94, 405 S.E.2d 125, 129 (1991) ("Generally speaking, the scope of a court's inherent power is its 'authority to do all things that are reasonably necessary for the proper administration of justice.' ") (quoting *Beard v. N.C. State Bar*, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987)), respondent contends that it was within the inherent power of the court to enjoin petitioner from displaying the barber pole and advertising barber services. We disagree.

***917** Given that N.C. Gen.Stat. § 86A–20.1 provides an avenue for respondent to seek an injunction and respondent did not pursue that avenue, we hold the trial court, acting on its own to issue relief outside the authority of the Board, acted outside the scope of review provided in N.C. Gen.Stat. § 150B51. The only issues before the trial court for review were those issues decided by the Board—the assessment of civil penalties, attorney's fees, and costs. As a result, we reverse those portions of the trial court's order that mandate petitioner remove the barber pole and cease advertising barber services.

B. *Respondent's Appeal*

[4] In respondent's appeal, respondent first argues the trial court erred in its 3 May 2013 order by denying its Motion To Dismiss Petition For Judicial Review. Specifically, respondent contends dismissal was appropriate because petitioner failed to make specific exceptions to the Board's Final Decision.

N.C. Gen.Stat. § 150B–46 governs the contents of petitions for judicial review from final agency decisions. It provides, "[t]he petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks." N.C. Gen.Stat. § 150B–46 (2013). This Court has recognized that " '[e]xplicit' is defined in this context as 'characterized by full clear expression: being without vagueness or ambiguity: leaving nothing implied.' " *Gray v. Orange County Health Dept.*, 119 N.C.App. 62, 70, 457 S.E.2d 892, 898 (1995) (quoting *Vann v. N.C. State Bar*, 79 N.C.App. 173, 173–74, 339 S.E.2d 97, 98 (1986)). Applying that definition of explicit in both *Gray* and *Vann*, this Court held the trial courts erred in denying the respondents' motions to dismiss because the petitions at issue were not "sufficiently explicit" to allow effective judicial review where the petitioners did not except to particular findings of fact, conclusions of law, or procedures. *Gray*, 119 N.C.App. at 71, 457 S.E.2d at 899, *Vann*, 79 N.C.App. at 174, 339 S.E.2d at 98.

Respondent now argues for a similar result in the present case because petitioner did not take exception with specific findings of fact, conclusions of law, or procedures. Respondent claims petitioner made only general assertions of error that fail to meet the required standards of specificity under N.C. Gen.Stat. § 150B–46. We disagree.

Although petitioner did not except to specific findings or conclusions by the Board, petitioner clearly stated exceptions to the Board's Final Decision. These exceptions include the following:

> a. Petitioner is not a licensed or registered barber (hereinafter "a Licensee"), and the Board's powers over individuals who are not Licensees are limited to making a criminal referral alleging a violation of N.C.G.S. § 86A–20, or seeking injunctive relief from the Court as provided for under N.C.G.S. § 86A–20.1. The Board's imposition of fines and costs on Petitioner is beyond the power granted by the General Assembly; the Final Decision is in excess of the statutory authority or jurisdiction of the Board, and, in accordance with N.C.G.S. § 150B–51(b)(2), the Final Decision must be reversed.
>
> b. Even if N.C.G.S. § 86A–27 applies to individuals who are not Licensees, N.C.G.S. § 86A–27(d) specifically provides that the Board may only impose fees and costs on "the licensee", and Petitioner is not a Licensee. Under the circumstances, imposition of costs and attorney's fees on Petitioner is in excess of the statutory authority or jurisdiction of the Board, and, in accordance with N.C.G.S. § 150B–51(b)(2), the Final Decision must be reversed.
>
> c. N.C.G.S. § 86A–14 provides:
>
> > The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:
> >
> > ....
> >
> > (5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners.
>
> As the Board recognizes, each of Maybe Someday's locations has a Cosmetic Arts Salon License through Petitioner, and, therefore, in accordance with the provisions of N.C.G.S. § 86A, Petitioner is exempt from the provisions of the Barber ***918** Act. Under the circumstances, the Final Decision is in excess of the statutory authority or jurisdiction of the Board, and, in accordance with N.C.G.S. § 150B–51(b)(2), and [sic] it must be reversed.
>
> d. A primary basis for the Board's contention that Petitioner was "attempting to barber by fraudulent misrepresentations" is that Maybe Someday's locations have a "barber pole" in the reception area, without a barber permit for the shop. With respect to the use of the "barber pole", the Board holds that 21 NCAC 06Q.0101 "states that no person shall use or display a barber pole for the purpose of offering barbering services to the consuming public without a barber shop permit." In fact, 21 NCAC 06Q.0101 does not state anything of the sort. The cited section of the North Carolina Administrative Code simply provides "[e]very establishment permitted to practice barbering shall display at its main entrance a sign which is visible from the street, and whose lettering is no small[er] than three inches, stating 'barber shop,' 'barber salon,' 'barber styling' or similar use of the designation, 'shop, salon or styling' or shall display a 'barber pole'. .[. .]" Thus, the cited section of the North Carolina Administrative Code imposes obligations on barbers, it does not prohibit any act by individuals who are not Licensees.
>
> ....
>
> Under the circumstances, the Final Decision, in accordance with the provisions of N.C.G.S. § 150B–51(b)(2), and/or N.C.G.S. § 150B–51 (b)(4), and/or N.C.G.S. § 150B–51(b)(6), must be reversed.

Considering these exceptions in the context of the petition, we find the Petition For Judicial Review "sufficiently explicit" to allow effective judicial review. Thus, we hold the trial court did not err in denying respondent's motion to dismiss.

[5] In the second issue raised by respondent on appeal, respondent argues the trial court erred in concluding that "Respondent Board does not have the statutory authority to impose such fines on persons or entities not licensed by the Board." Upon review of the statutes, regulations, and relevant law, we agree.

Among the powers and duties assigned to the Board is the power "to assess civil penalties pursuant to [N.C. Gen.Stat. §] 86A–27." N.C. Gen.Stat. § 86A–5(a)(6). N.C. Gen.Stat. § 86A–27(a) in turn provides, in pertinent part, "[t]he Board may assess a civil penalty not in excess of five hundred dollars ($500.00) per offense for the violation of any section of this Chapter or the violation of any rules adopted by the Board." N.C. Gen.Stat. § 86A–27 (2013).

A plain reading of N.C. Gen.Stat. § 86A–27(a) reveals no indication that the imposition of civil penalties is limited solely to licensees. In fact, as respondent points out, where portions of the statute are intended to apply exclusively to licensees, the statute unambiguously provides for it; for example, N.C. Gen.Stat. § 86A–27(d), which governs the assessment of attorney's fees and costs in Board proceedings, provides that "[t]he Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, *to the licensee* against whom the proceedings were brought." N.C. Gen.Stat. § 86A–27(d) (emphasis added). Where there is no limiting language in N.C. Gen.Stat. § 86A–27(a), we will not read limiting language into the statute.

Moreover, N.C. Gen.Stat. § 86A–27(c) provides that "[t]he Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board." The Board has done so beginning with N.C. Admin. Code tit. 21, r. 6O.0101. As argued by respondent, the rules promulgated by the Board pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes, indicate that fines may be imposed on non-licensees. *See* N.C. Admin. Code tit. 21, r. 6O.0102 (June 2014) (setting forth a schedule of civil penalties for operating a barber shop without first filing an application for a barber shop license or without a valid permit).

Particularly relevant to this case, the schedule of civil penalties provides that "[t]he presumptive civil penalty for barbering or attempting to barber by fraudulent misrepresentations ...: 1st offense $500.00." ***919** N.C. Admin. Code tit. 21, r. 6O.0107 (June 2014). A subsequent regulation explains that

> [e]xcept as provided in Chapter 86A of the General Statutes, the Board:
>
> > (1) will find fraudulent misrepresentation in the following examples:
> >
> > > (a) An individual or entity operates or attempts to operate a barber shop without a permit;
> > >
> > > (b) An individual or entity advertises barbering services unless the establishment and personnel employed therein are licensed or permitted;
> > >
> > > (c) An individual or entity uses or displays a barber pole for the purpose of offering barber services to the consuming public without a barber shop permit[.]
>
> ....

N.C. Admin. Code tit. 21, r. 6Q.0101 (June 2014). Thus, it is clear from the Board rules that civil penalties may be assessed for violations by an "individual or entity", not just against those licensed by the Board.

[6] In response to respondent's argument, petitioner argues that if the Board has statutory authority to impose civil penalties on non-licensees, that authority is unconstitutional because it constitutes a grant of judicial power to the Board that is not "reasonably necessary" to accomplish the Board's purpose.

[7] [8] [9] North Carolina's Constitution provides that "[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." N.C. Const. art. I, § 6. As our Supreme Court explained in *State, ex rel. Lanier, Comm'r of Ins. v. Vines*, 274 N.C. 486, 164 S.E.2d 161 (1968),

> The legislative authority is the authority to make or enact laws; that is, the authority to establish rules and regulations governing the conduct of the people, their rights, duties and procedures, and to prescribe the consequences of certain activities. Usually, it operates prospectively. The power to conduct a hearing, to determine what the conduct of an individual has been and, in the light of that determination, to impose upon him a penalty, within limits previously fixed by law, so as to fit the penalty to the past conduct so determined and other relevant circumstances, is judicial in nature, not legislative.

Id. at 495, 164 S.E.2d at 166. Our Constitution, however, also provides that "[t]he General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created." N.C. Const. art. IV, § 3. "Whether a judicial power is 'reasonably necessary as an incident to the accomplishment of the purposes for which' an administrative office or agency was created must be determined in each instance in the light of the purpose for which the agency was established and in the light of the nature and extent of the judicial power undertaken to be conferred." *Lanier*, 274 N.C. at 497, 164 S.E.2d at 168.

What began as a narrow interpretation of "reasonably necessary" in *Lanier* has since become more liberal,

permitting administrative agencies guided by proper standards to exercise discretion in assessing civil penalties. *See In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act,* 324 N.C. 373, 381–82, 379 S.E.2d 30, 35 (1989). Applying the less mechanical approach in *In re Civil Penalty,* our Supreme Court upheld a civil penalty imposed by the North Carolina Department of Natural Resources and Community Development for violations of the Sedimentation Pollution Control Act as reasonably necessary. *Id.*

As petitioner states, "[t]he purposes of the Board are to license barbers and to prevent anyone who is not licensed as a barber from practicing barbering." *See* N.C. Gen.Stat. § 86A–1 (2013). As with most agencies, these purposes serve to protect the public.

Now on appeal, petitioner contends the Board has all the tools necessary to accomplish its purposes by referring non-licensees engaged in the practice of barbering for criminal prosecution pursuant to N.C. Gen.Stat. § 86A–20 and seeking to enjoin non-licensees from practicing barbering pursuant ***920** to N.C. Gen.Stat. § 86A–20.1. While we recognize that N.C. Gen.Stat. §§ 86A–20 & –20.1 provide means to accomplish the Board's purposes, they are not the exclusive means. As the Court noted in *In re Civil Penalty,* other avenues to prohibit violations, such as injunctions, take time during which irreparable damage may occur. "The power to levy a civil penalty is therefore a useful tool, since even the threat of a fine is a deterrent." 324 N.C. at 381, 379 S.E.2d at 35.

Similarly, in this case we hold that the imposition of civil penalties on non-licensees is reasonably necessary for the Board to serve its purpose of preventing non-licensees from engaging in the practice of barbering.

III. *Conclusion*

For the reasons discussed above, we affirm the trial court in part and reverse in part.

Affirmed in part; reversed in part.

Judges CALABRIA and ELMORE concur.

All Citations

763 S.E.2d 913

End of Document

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06Q .0101

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (1), line 5, change "will" to "shall"

What is your authority for Sub-Item (1)(c)?

On line 11, define "consuming public"

In Sub-Item (1)(d), line 12, define "positively identify" and why is "Registered Barber" capitalized?

On lines 12 - 13, please confirm the term "student barber with a right to work permit" is the intended term.

In Sub-Item (1)(e), on line 15, do you mean "maintain <u>or</u> produce" or both? Or they have to both fail to maintain and fail to produce?

On line 16, when will this request be made? Also, can't members of the Board inspect per G.S. 86A-15(b)?

Item (2) states "grounds for denial or discipline" I take it these are grounds under G.S. 86A-20? If so, state that. Further, that statute allows for suspension or denial. Are you considering suspension "discipline"?

In Sub-Item (2)(b), line 20, state "any <u>rule</u> adopted…"

What is your authority for the language "local department of health"? G.S. 86A-20.1 allows the Department of Health and Human Services to seek an injunction; what is your authority to use this?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06Q .0101 is readopted as published in 30:14 NCR 1518 as follows:

21 NCAC 06Q .0101 ADDITIONAL GROUNDS FOR DENIAL OR DISCIPLINE

Except as provided in Chapter 86A of the General Statutes, the Board:

(1) will find fraudulent misrepresentation in the following examples:

(a) An individual or entity operates or attempts to operate a barber shop or barber school without a permit;

(b) An individual or entity advertises barbering services unless the establishment and personnel employed therein are licensed or permitted;

(c) An individual or entity uses or displays a barber pole for the purpose of offering barber services to the consuming public without a barber shop or barber school permit;

(d) An individual fails to positively identify a Registered Barber, apprentice barber, or student barber with a right to work permit prior to allowing the person to perform barbering services;

(e) An individual or entity fails to maintain and produce a license or permit as defined by 21 NCAC 06P .0103(7) upon the request of the Executive Director or an inspector during an inspection;

(2) will determine if grounds for denial or discipline exist when:

(a) An individual violates a settlement agreement entered into with the Board;

(b) An individual or entity violates the Board's law or any adopted by the Board or a local department of health for barbers, barber shops or barber schools; or

(c) An individual fails to disclose a felony criminal conviction in dealing with the Board.

History Note: Authority G.S. 86A-1; 86A-2; 86A-5(a); 86A-10; 86A-11; 86A-13; 86A-15; 86A-16; 86A-17; 86A-18; 86A-20; 86A-22; 86A-23; 86A-24;
Eff. June 1, 2008;
Amended Eff. September 1, ~~2013.~~ 2013;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06Q .0103

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule because the Board does not cite to, and staff is unaware of, any statutory authority for the Board to revoke licenses or permits when a licensee or permittee has been adjudicated a felony sexual offender. As set forth in the Staff Opinion for Rule 21 NCAC 06F .0116, staff does not believe that the Board has the authority to inquire after sex offender status.

It may be that the Board is relying upon G.S. 86A-18, which states, in relevant part:

§ 86A-18. Disqualifications for certificate.

The Board may either refuse to issue or to renew, or may suspend or revoke any certificate of registration or barbershop permit or barber school permit for any one or combination of the following causes:

(1) Conviction of the applicant or certificate holder of a felony proved by certified copy of the record of the court conviction;

However, status on the NC Sex Offender and Public Protection Registry is not the same as having a felony conviction; it appears the Board is conflating the two. Staff does not believe that Board has authority to require this information, nor to automatically revoke licenses for being adjudicated a felony sex offender (as set forth on line 4 of the Rule.) Even if the intent is simply to determine whether someone has a felony conviction and may be denied or revoked under G.S. 86A-18, the Rule goes beyond that to require information on status on the Registry, rather than information of a conviction for which the Board may act.

Amanda J. Reeder
Commission Counsel

Staff also notes that in determining whether to issue or renew a license, the Board includes eight factors it will consider. However, G.S. 93B-8.1 (effective in 2013, three years after the last time the rule was reviewed by the Commission) sets forth criteria for boards to use. While some of the considerations set forth in Rule overlap with the law [see Item (7), which appears to reflect 93B-8.1(b)(7) and Item 8, which may reflect the intent of 93B-8.1(b)(8)], most are beyond the criteria set forth by the statute. Staff does not believe the Board has authority to establish criteria outside of those set by the statute.

Therefore, staff recommends objection to this Rule for lack of statutory authority.

§ 93B-8.1. Use of criminal history records.

(a) The following definitions apply in this section:

(1) Applicant. – A person who makes application for licensure from an occupational licensing board.

(2) Board. – An occupational licensing board as defined in G.S. 93B-1.

(3) Criminal history record. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.

(4) Licensee. – A person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the crime.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.

(7) The subsequent commission of a crime by the applicant.

(8) Any affidavits or other written documents, including character references.

(c) The board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(d) This section does not apply to The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission. (2013-24, s. 1.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06Q .0103

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I understand this Rule – you are saying that the board may refuse to issue or renew a license or permit, and in order to make this determination, will use the language on lines 7-17?

If that is the case, I recommend making this a two paragraph rule. Make the language on lines 4 through 6 Paragraph (a) and the rest Paragraph (b). On line 7, state "In determining whether to issue or renew a license as set forth in Paragraph (a) of this Rule, the Board shall consider the following:"

On line 5, insert a comma after "licensee"

On line 6, define "similar statutes or ordinances"

I recommend beginning (1) through (8) with articles.

In Item (2), line 9, please insert a comma after "licensee"

In Item (3), line 10, please insert a comma after "licensee"

In Item (8), how many letters? And from the community where the crime was committed and the place where the individual current lives?

On lines 16 and 17, please insert a comma after "licensee"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06Q .0103 is readopted as published in 30:14 NCR 1519 as follows:

21 NCAC 06Q .0103 REGISTERED SEX OFFENDER

The Board may refuse to issue or renew, or shall revoke any license or permit issued pursuant to Chapter 86A of the General Statutes, where the applicant, licensee or permittee has been adjudicated a felony sexual offender and is required to register pursuant to Chapter 14, Section 208.5 of the General Statutes or any similar statutes or ordinances. In determining whether to issue or renew a license, the Board shall consider the following:

(1) Crime committed for which registration was required;

(2) Length of time the applicant, licensee or permittee is to register as a sex offender;

(3) Whether the applicant, licensee or permittee is allowed to have contact with the victim or others;

(4) Length of time licensed as a barber or shop owner in this or another state;

(5) Enrollment in a treatment program relevant to the crime committed;

(6) Whether the registered sex offender is a student applicant;

(7) Additional criminal convictions; and

(8) Letters of recommendation from members of the community where the crime was committed and where the applicant, licensee or permittee currently resides stating whether or not the person considers the applicant, licensee or permittee a threat to the community.

History Note: *Authority G.S. 86A-17; 86A-18;*
Eff. June 1, 2008;
Amended Eff. April 1, ~~2010.~~ 2010;
Readopted Eff. July 1, 2016.

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 Examiners

RULE CITATION: 21 NCAC 06Q .0104

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority and ambiguity.

Paragraph (a) states that the Board shall refuse to issue or renew a license for failure to satisfy the Board that the applicant is qualified. Paragraph (a) states that failing to comply with all provisions in the Notice of Probable Cause is failure to comply. Paragraph (b) again states that the Board shall refuse to renew a license and mostly repeats the language of Paragraph (a); however, it does not include the language of "Notice of Probable Cause." Therefore, as written, Paragraph (b) contradicts Paragraph (a) of the Rule.

It may be that the Board intended for Paragraph (a) to apply only to issuance and (b) to apply to renewals, but that is not how the Rule is currently written. Therefore, it is unclear.

Further, both Paragraphs state that the Board will not act "until satisfied that the licensee meets all qualifications for licensure." It is not clear from the Rule what this satisfaction entails.

Staff further notes that G.S. 86A-3 requires the Board to issue a certificate of registration for a registered barber if the individual fulfills four conditions: 1) barber school attendance; 2) a 12-month apprenticeship; 3) passing the clinical examination; and 4) submission of an affidavit that the applicant served the apprenticeship. The statute does not give the Board authority to refuse to issue the certification for pending violations. Therefore, staff does not believe the Board has the statutory authority to refuse to issue the certification.

Amanda J. Reeder
Commission Counsel

Staff further notes that G.S. 86A-10 states:

> **§ 86A-10. Issuance of certificates of registration.**
> Whenever the provisions of this Chapter have been complied with, the Board shall issue, or have issued, a certificate of registration as a registered barber or as a registered apprentice, as the case may be. (1929, c. 119, s. 11; 1979, c. 695, s. 1; 1981, c. 457, s. 5.)

Staff is not aware of any authority of the Board to require additional information to show to its satisfaction that the individual has met the qualifications set forth in the statute.

§ 86A-3. Qualifications for certificate as a registered barber.

A certificate of registration as a registered barber shall be issued by the Board to any person who meets all of the following qualifications:

(1) Has attended an approved barber school for at least 1528 hours.

(2) Has completed a 12-month apprenticeship under the supervision of a licensed barber, as provided in G.S. 86A-24.

(3) Has passed a clinical examination conducted by the Board.

(4) Has submitted to the Board the affidavit required by G.S. 86A-24(c) certifying that the applicant has served the apprenticeship required by subdivision (2). (1929, c. 119, ss. 3, 4, 11; 1941, c. 375, s. 3; 1961, c. 577, s. 1; 1979, c. 695, s. 1; 1981, c. 457, s. 1; 1995 (Reg. Sess., 1996), c. 605, s. 1.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Barber Examiners

RULE CITATION: 21 NCAC 06Q .0104

DEADLINE FOR RECEIPT: Thursday, June 9, 2016

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, and (b), line 9, I suggest inserting a comma after "certificate"

I note that the Board is required by G.S. 86A-19 to follow G.S. 150B in order to refuse to issue, renew, or take action to revoke any certification. Is that the intent of the references to Notice of Probable Cause, Settlement Agreement, or Final Agency Order on lines 7-8 and 12? If so, consider adding G.S. 86A-19 to the History Note.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2016

21 NCAC 06Q .0104 is readopted as published in 30:14 NCR 1519 as follows:

21 NCAC 06Q .0104 EFFECT OF NOTICE OF VIOLATION ON LICENSE OR CERTIFICATE

(a) The Board shall refuse to issue or renew any license, certificate or permit issued pursuant to Chapter 86A of the General Statutes until satisfied that the applicant meets all qualifications for licensure. For purposes of this Rule, a pending violation is not considered satisfaction of qualification for licensure with the Board until the applicant has complied with all provisions contained in the Notice of Probable Cause, Settlement Agreement or Final Agency Order entered by the Board.

(b) The Board shall refuse to renew any license, certificate or permit issued pursuant to Chapter 86A of the General Statutes until satisfied that the licensee meets all qualifications for licensure. For purposes of this Rule, a pending violation is not considered satisfaction of qualification for licensure with the Board until the licensee has complied with all provisions contained in the Settlement Agreement or Final Agency Order entered by the Board.

History Note: *Authority G.S. 86A-1; 86A-10; 86A-17; 86A-18; 86A-20;*
Eff. October 1, ~~2009.~~ 2009;
Readopted Eff. July 1, 2016.