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: NC BOARD OF COSMETIC ART EXAMINERS

RULE CITATION: 21 NCAC 14T .0614

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Extend the period of review

COMMENT:

*In both items (5) and (6) of this rule there are some general standards that cosmetic arts schools and students must follow. The first concerns performing work services on clients in (5) and the second concerns student conduct in general in (6). Both rules provide that violations of these rules “may result” in some sort of discipline against either the school or the student.*

*The standards to be used in deciding the discipline are unclear since they are not set out in the rule.*

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AGENCY: NC BOARD OF COSMETIC ART EXAMINERS

RULE CITATION: 21 NCAC 14T .0701

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Extend the period of review

COMMENT:

*The rule is unclear as to the teacher-student ratios required under the rule.*

*In (j) the rule requires “one teacher for every 25 enrolled students” in a cosmetic arts school. However the rule in (k) states that the teacher student ratio “may exceed 1:25” for theory or demonstration classes. It is unclear whether the rule in (j) would still require that ratio to be met if the rule in (k) resulted in a need for less than one teacher to every 25 enrolled students.*

*Note that there is no problem with using the permissive “may” in (k) without setting any standards. In this case it appears that this is a blanket permit by the board for a school to use whatever ratio they desired in these “theory or demonstration” classes*

rrc staff OPINION

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AGENCY: NC BOARD OF COSMETIC ART EXAMINERS

RULE CITATION: 21 NCAC 14T .0704

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Extend the period of review

COMMENT:

*This rule is either ambiguous or unnecessary. If it is clear and necessary then it still lacks required standards and there is no authority to set those standards outside rulemaking.*

*The rule seems to allow someone with a felony conviction – that might disqualify him or her from licensure – who is considering attending (and paying for) a cosmetic art school to apply to the Board to determine whether or not the conviction would prevent licensure. But then the rule states that “final approval shall take place prior to examination.” This is another way of stating that final approval might not take place until just before the licensing examination – after a person has completed attending school.*

*The rule seems to imply that some sort of pre-approval may be provided, but does not actually grant it. That makes it misleading. If something else is intended, that is not clear. If it is not actually providing for something that someone cannot already do without the rule, such as asking the board to answer a question, then it is unnecessary.*

*It is also unclear what standards the board shall use to deny or grant licensure approval for someone with such a conviction. There is no authority to set the standards outside rulemaking.*

rrc staff OPINION

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AGENCY: NC BOARD OF COSMETIC ART EXAMINERS

RULE CITATION: 21 NCAC 14T .0801

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

Unclear or ambiguous

X Unnecessary

Extend the period of review

COMMENT:

*There is no necessity for this rule. The contents of this rule are almost identical to the contents of Rule .0803 in this same chapter and section. That rule also contains other requirements. If there is anything in this rule that is not in rule .0803, then that requirement should be incorporated into .0803.*