

**ARKANSAS
STATE BOARD
OF COSMETOLOGY**

**LEGISLATIVE
COMMITTEE**

MEETING REPORT

JULY 16, 2007

LEGISLATIVE COMMITTEE MEMBERS (PRESENT)

Jane Powell, President

Susan Collins-Burrough, 1st Vice President

Scottie Burchett, Board Member

Ann Pickering, Board Member

Cathy Caver-Blade, Board Member

Kathy Wittum, Director

Erika Gee, Legal Counsel

COMMITTEE MEMBERS (NOT PRESENT)

OTHER PARTICIPANTS IN ATTENDANCE

Meeting Report

The Legislative Committee held its first meeting today following the regular board meeting. The purpose of this Committee is to begin reviewing the Board's Rules to make recommendations on revisions that are necessary for bringing the rules into compliance with recent law revisions and to identify areas of the rules where recommendations should come from one of the other committees. The meeting was called to order at 2:42 p.m.

Ann Pickering volunteered for the Chairperson position for this Committee.

Note: Susan Whitson, CCR continued to record minutes for the Legislative Committee meeting and transcribed them with the regular board meeting minutes. A copy of this portion of the minutes is attached to this Committee Report.

Director Kathy Wittum distributed copies of Act 223 and a color-coded compilation of the statutes contained in the Cosmetology Law reflecting whether revisions occurred to each statute.

Chairperson Pickering inquired if the Committee members were interested in holding regional meetings during this process. The discussion that followed included a discussion about the process in general and how public comment would be incorporated. Legal Counsel Erika Gee explained there are statutory revisions going into effect that require some rule changes and these need to be addressed first followed by an overall review of the rules to identify other changes that may be necessary or desired. She also explained that a public comment period is required for all proposed changes to the rules, even those that are mandatory because of statutory changes. At the end of the discussion on this subject, the consensus among Committee members was to hold meetings in Little Rock.

Committee members debated how to proceed in reviewing the statutory changes and chose to simply begin with the first provision and work their way through each. A discussion also ensued concerning a need to make the rules more user-friendly and consistent with the law. In addition, Committee members agreed that repetitive language did not need to be included in the rules, if the law addressed an issue adequately enough. Ms. Gee stated it would be appropriate to include language in the rules if it is intended to interpret or clarify language contained in the law.

The Committee also determined that areas needing to be addressed by one of the other committees (i.e. Fee Structure Committee, Equipment Use/Scope of Practice Committee or Grievance Committee) would be referred to the appropriate committee by the Legislative Committee.

The below information briefly outlines how each provision was addressed:

- 17-26-102 – *substantive changes were made to some areas of the definitions, which included the following discussions:*
 - *The Committee discussed new language added under subsection (a)(3)(B) that allows practitioners to perform services outside a licensed salon when the services involve a special event. The consensus was that this is something that cannot be monitored and does not require mandates in the rules.*

- *Rule 4 containing definitions will need to be revised in order to remove repetitive language.*
- *17-26-103 – no substantive changes made to this provision.*
- *17-26-104 – referred to the Fee Structure Committee.*
- *17-26-105 – referred to the Fee Structure Committee.*
- *17-26-201 – substantive changes were made to this provision; however, the language in Rule 1.2 is general and requires no modification.*
- *17-26-204 – substantive change was made to this provision to remove the mandatory employment age for the board’s staff; however, this does not require changes to Rule 1.4.*
- *17-26-205 – clarification changes made to this provision do not require rule changes.*
- *17-26-206 – substantive changes made to this provision to revise the administering of exams. The Committee determined that Rule 3 would need to be completely rewritten and will need to account for the process changes now that the exams will be outsourced with Professional Credential Services (PCS).*
 - *Ms. Gee raised another issue during the discussion of this provision concerning certified and uncertified hours. She stated that it has been the policy for the Board to not allow a student to examine when a school reports uncertified hours due to a balance owed on tuition; however, she explained that the law does not clearly state this to be the case.*
 - *President Powell stated she believes a school should have the opportunity to not certify a student’s hours due to non-payment of tuition, as it is currently being done. She explained that some schools will certify hours for a student who owes a tuition balance by allowing the student to sign a promissory note. This is not currently addressed in the law or rules but should be clarified. She encouraged the Committee to consider developing language that would be student-friendly but also afford schools protection in this regard.*
 - *Ms. Gee recommended language to be added to Rule 3, such as: “In order to be eligible for the examination one of the requirements is that hours be certified by the school. Certified hours mean that tuition has either been paid in full or there has been a promissory note that is acceptable to the school.”*
 - *Other areas in Rule 3 that need to be addressed when this rule is rewritten are: exam deadline, exam process, interpreters, ADA requests.*
- *17-26-207 – no substantive changes were made to this provision.*
- *17-26-208 – substantive changes were made to this provision to better clarify hearings and investigations. These changes will require the creation of a rule that better clarifies these*

processes. The Legislative Committee determined this is closely linked to grievances; therefore, this statutory change will be referred to the Grievance Committee to be addressed.

- *17-26-209 – substantive changes whereby fees are removed from the law and will be stated in the rules; therefore, this statutory change will be referred to the Fee Structure Committee to be addressed.*
- *17-26-302 – no substantive changes made to this provision.*
- *17-26-303 – revisions need to be addressed in Rule 3 concerning examinations.*
- *17-26-304 – revisions need to be addressed in Rule 3 concerning examinations.*
 - *Ms. Burchett questioned the ability for PCS to schedule all candidates who apply during the one-day per month when exams will be conducted, and she questioned if PCS would ever hold exams for more than the one-day. Director Wittum explained how the space in the exam facility would be utilized to ensure all applicants are scheduled.*
- *17-26-306 – revisions need to be addressed in Rule 3 concerning examinations.*
 - *Ms. Gee questioned if subsection (D) needed to be addressed, as it mandates for the Board to specify by rules the training and practice for electrologists. Director Wittum stated it is currently regulated under Rule 6.12. In addition, revisions would be required under Rule 7 to address changes to an instructor that is no longer limited to a cosmetologist.*
- *17-26-307 – revisions need to be addressed in Rule 3 concerning examinations.*
- *17-26-309 – revisions need to be addressed in Rule 3 concerning examinations.*
- *17-26-310 – revisions need to be addressed in Rule 3 concerning examinations.*
- *17-26-312 – no substantive changes made to this provision.*
- *17-26-314 – no substantive changes made to this provision.*
- *17-26-315 – substantive changes were made to this provision, especially concerning the examination process for reciprocity applicants. Rule 8 will need to be rewritten to address these changes.*
- *17-26-316 – substantive changes were made to this provision addressing the display of a license. Rule 4.2(B) will need to be revised to conform to these changes. Other rules may need to be revised to conform to the inclusion of a photo on licenses as well.*

- *Ms. Collins-Burrough stated she did not like the change to give the option to wear the license on his/her person. Clarification was given that the licensee has the option to display the license in a conspicuous place or wear the license on his/her person.*
- *Ms. Gee questioned if a licensee would provide a photo only once or multiple times. Director Wittum stated she considered it being done once, but asked the Committee their opinion. President Powell and Ms. Burchett stated they had considered a new photo being presented each time, and the consensus of the Committee agreed with this. Director Wittum conceded this to be the best choice, so this language will need to be included when the rule is revised to address the inclusion of a photograph on licenses.*
- *17-26-317 – no substantive changes made to this provision.*
- *17-26-319 – numerous substantive changes were made to this provision that addresses the renewal process. (See comments above under 17-26-316 that will apply here as well.) In addition, new language will need to be incorporated into the rules addressing the creation of a lifetime license.*
 - *The inclusion of a medical waiver is referred to the Fee Structure Committee.*
- *17-26-323 – referred to the Fee Structure Committee.*
- *17-26-401 – no substantive changes made to this provision.*
- *17-26-402 – no substantive changes made to this provision.*
- *17-26-403 – no substantive changes made to this provision.*
- *17-26-404 – no substantive changes made to this provision.*
- *17-26-405 – the only substantive change made to this provision was the removal of the square feet mandate for new salons. This is not addressed in the rules; therefore, it does not necessitate a rule change.*
- *17-26-406 – substantive changes were made to this provision consisting of the Board’s authority to deny a license to a school or licensee when there is evidence of public health and safety being jeopardized.*
 - *Ms. Gee requested clarification from the Committee on what this would entail. President Powell recalled previous discussions on this issue including moral character, communicable disease. Ms. Gee requested an example of an instance where this would occur to which President Powell, Ms. Collins-Burrough and Director Wittum suggested various health/sanitation issues. Ms. Gee stated the law already allowed the Board the authority to revoke a license for these type issues, so she did not understand why this language was included. President Powell and Director Wittum stated they recalled a similar discussion dealing with moral character and the fact that the Board could not define moral turpitude. No definitive answer was given on this issue. President Powell stated that in addition to the issue of revoking a license there*

seemed to be the belief that the Board has the authority to deny a person the opportunity to open a business (school or salon), but free enterprise would dictate otherwise.

- 17-26-409 – *the only substantive change made to this provision was the removal of the word immediate when referring to the school supervisor.*
- 17-26-410 – *substantive changes were made to this provision concerning instructor qualifications and will require revisions to Rule 7.*
- 17-26-411 – *no substantive changes made to this provision.*
- 17-26-412 – *substantive change made to the clarification of the number of days per week a cosmetology student can attend.*
- 17-26-414 – *substantive change made to the clarification of the number of days per week a student in a specialty course can attend.*
- 17-26-415 – *substantive changes made to this provision include simplifying the re-enrollment process; clarification that hours cannot be earned prior to the date a student is permitted; and the inclusion of a photograph on student permits.*
- 17-26-417 – *substantive changes made to this provision include new language concerning a student's ability to provide volunteer services in charity or special events. This change will require the creation of a new rule.*
- 17-26-418 – *no substantive changes made to this provision.*

Committee members were encouraged to independently review the rules and bring back suggestions on other changes that may be necessary, especially as the Committee's time today was spent simply identifying which law revisions would require changes to the rules.

Ms. Burchett initiated a discussion concerning public comment and whether the Committee was ready to engage in this part of the process to which the response was no. Ms. Gee stated that she projected that the Committee would review a draft of the rule revisions at its next meeting and come to a consensus about the recommendations to propose. These recommendations would then be ready to submit to the Board and if the Board agrees with them, then it would be time for the 30-day public comment period to begin. Ms. Burchett commented that it appeared the public comment was being omitted from the process and stated it did not make sense for the Committee to vote on its recommendations prior to the public comment period. Ms. Gee stated that any member of the public is welcomed to make comments during committee meetings, as they are open to the public anyway. She stated it is appropriate for the 30-day public comment period to occur after the Board has voted on the proposed changes it considers necessary to make in compliance with the law changes or industry needs. She also clarified for Ms. Burchett that the Board cannot adopt a rule until it has completed the public comment period.

Director Wittum asked if each committee would complete the above process independently, or if all committee recommendations would be merged and presented to the Board at one time. A decision was not made and went unanswered during the remainder of the meeting.

After no additional comments were forthcoming from participants, the meeting was concluded at 4:42 p.m.

*** End of Report ***

Report prepared by:

Kathy Wittum, Director