



THE OHIO STATE BOARD OF COSMETOLOGY.

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John R. Kasich, Governor

JAMES P. TRAKAS, EXECUTIVE DIRECTOR TOMMY TANEFF, CHAIRMAN

To: Paula J. Steele, Regulatory Policy Advocate

From: James P. Trakas, Executive Director

Date: March 19, 2013

The Board received your memorandum on February 28, 2013, in which you requested additional information and BIA revisions concerning the public purpose of the regulation, how the Board would measure the success of the rule. You also requested a revision of OAC 4713-21-03 to clearly prescribe the continuing education requirements of each practicing licensee, managing license, instructor license and independent contractor license.

The Board members discussed the review at their March 12, 2013 meeting and have agreed to change the rules as suggested. The Board members also agreed to change the BIA to reflect a metric to measure the impact of the new, clearer rules on the licensed population and on small business.

The Board is submitting a revised rule package and a revised BIA to the CSI for Chapter 4713-21 in the format requested to demonstrate that the Board has complied with the recommendations of the CSI Office.

Thank you for your comprehensive review and comments.

What was written in the BIA for proposed Chapter 4713-21 of the Administrative Code, address the question you asked, but probably could have done so in a stronger, clearer manner. While the BIA asks for the statute authorizing the Agency to adopt the regulation, it does not have a space in the BIA in which to list the statutes that the rules are to amplify. The answer to the question you posed was, therefore, scattered throughout the BIA. To clarify the laws that the rules in this chapter are to amplify, I have attached to this document the general authority for all the rules in this chapter¹.

That the practice of cosmetology is a business as well as a profession was discussed throughout the BIA. As stated when discussion proposed rule 4713-21-03, R.C. 4713.39 permits the Board to promulgate rules to govern the independent contractors, who operate small businesses within the business of a licensed salon. In question sixteen, the answer begins by pointing out that almost all licensees of the Board either work for or own small business. As set out in in the BIA, Part one, Regulatory Intent, Chapter 4713-21 was promulgated to ensure cosmetology professionals maintain their skills or even improve them by taking continuing education courses.

Perhaps not sufficiently clear in the BIA is the fact that for a small business person, one skill necessary to operate a business is a certain amount of knowledge as to how business works. All students of a branch of cosmetology receive very basic business education, because cosmetology is a business as well as a profession. Individuals, who have acquired a managing license, have taken as part of their schooling, courses in consumer and product safety, salon operation and procedures, salon supervision and management, product and service sales training, communication skills. Included in these broader topics are business skills, tax law, laws and rules, both of the Board and necessary business laws and rules. To obtain a managing license, R.C. 4713.30 requires that the applicant either have working knowledge of the profession or take courses for the managing license. Thus, as part of earning the license, the holder of a managing license has had basics of business and taxes and business law of business as the laws and rules of the board.

As stated above, the courses to obtain licensure contain business related subject matter. One of the key purposes of the managing license is to enhance the skills of members of the cosmetology profession. This is important, because from 1933 when the General Assembly passed the first cosmetology laws, salons are to be overseen by licensees holding managing licenses. By teaching them skills that the board is proposing to enhance with continuing education classes, the licensees can better meet

requirements set forth in R.C. 4713.41. However, a managing license holder would generally not know when these laws change or are modified. Because tax laws, cosmetology laws and rules, and business models evolve, these managing license holders will have very needed skills updated and taught to them in continuing education courses. Given the nature of their businesses, they would have very few opportunities to find out important information that often times has changed substantially since it was first taught to them in a school of cosmetology. Up-to-date information about the laws and rules is very important for licensees to have in order to successfully run their businesses.

A salon is required under R.C. 4713.41 to have an individual holding a managing cosmetology license in charge of and in immediate supervision of a salon at all times when the salon is open. It is important to remember that the Board licenses the physical property of the salon. Under the current law, the owner of a salon can have a profession other than that of a cosmetology professional. As long as the owner does not practice any branch of cosmetology in the salon and has someone with a managing license overseeing the salon's operation, the requirements of R.C. 4713.41 regarding salon management and operation have been complied with.

The independent contractor, whose right to operate is mandated under R.C. 4713.39, essentially must have all the skills necessary to operate a salon and then a few other business skills in order to obtain initial licensure as he or she is essentially a business on its own. So the skills proposed in this section are first taught in the managing courses by schools of cosmetology, and now proposed to be enhanced through continuing education. R.C. 4713.62(B) sets forth the general requirements for the courses a continuing education provider may require in three distinct categories, enhancing the professional competency of the affected licensees, protecting the public and educating the licensees in the laws and rules regulating the practice of a branch of cosmetology.

Enhancing the skills of a managing licensee who also has acquired an independent contractor's license, therefore, is required by statute. To mandate that the individuals holding a managing license/independent contractor's license increase their knowledge of business and tax law as well as their skills fits right into the requirement for programs of continuing education set forth in R.C. 4713.62(B)(4). It certainly enhances the professional competency of the independent contractor, and, at the same time, protects the public if the licensee is required to have additional training in business skills, by which the licensee is provided with a more thorough understanding of commerce, policy, and law.

Not clarified in the BIA is the new requirement under 4743.07 for Boards and agencies to offer training in trafficking. Sadly, the cosmetology profession has been used as a common vehicle for trafficked women and men snuck in and out of Ohio, and it was only recently that the Board has made an effort to alert its licensees as to the signs of this very serious crime. The mandatory training added to continuing education as well as to other educational opportunities will be designed to help that process and to try to protect innocents, a worthy goal that is a priority of state government.

This, too, comes clearly under R.C. 4713.62(B)(4)(b), as it is the general public that will be protected as well, because some of the trafficked who try to practice cosmetology lack training in infection control and safety. Educating licensees and permit holders about trafficking has become a priority of Governor John R. Kasich who in Executive Order 2012-06K, ordered state agencies to provide continuing education for licensed professionals in Ohio. This requirement complies with the law and The Governor's Executive Order.

Authority for Proposed Rules:

4713-21-01

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.60, 4713.61, 4713.62

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-02

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.60, 4713.61, 4713.62

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-03

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09, 4713.39

Rule Amplifies: 4713.20, 4713.39, 4713.59, 4713.60, 4713.61, 4713.62

Prior Effective Dates: 6/15/95, 1/26/97, 4/1/01, 1/10/04, 5/1/04,
6/21/2011

4713-21-04

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.60, 4713.61,

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-05

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.60, 4713.61

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-06

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.60, 4713.61, 4713.63

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-07

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59

Prior Effective Dates: 6/15/95, 1/26/97, 6/21/2011

4713-21-08

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09, 4713.39

Rule Amplifies: 4713.39, 4713.59, 4713.62, 4743.07

Prior Effective Dates: 6/15/95, 1/26/97, 4/1/01, 6/21/2011

4713-21-09

R.C. 119.032 review dates: _____

Promulgated Under: 119.03

Statutory Authority: 4713.08, 4713.09

Rule Amplifies: 4713.59, 4713.62, 4743.07

Prior Effective Dates: 6/15/95, 1/26/97, 4/1/01, 6/21/2011