

July 31, 2023

VIA EFILING ONLY

Gina Fast, Executive Director
Jenna Bohl, Rule Requestor
Tami Thein, Rule Requestor
Minnesota Board of Cosmetologist
Examiners
1000 University Ave W Ste 100
Saint Paul, MN 55104
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**Re: *In the Matter of the Proposed Rules of the Board of Cosmetologist
Examiners Relating to Education, Licensing, and Practice of
Cosmetology, Minnesota Rules Chapter 2110
OAH 65-9013-36457; Revisor R-4456***

Dear Ms. Fast, Ms. Bohl, and Ms. Thein:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW
OF RESUBMITTED RULES UNDER MINN. STAT. § 14.16, SUBD. 2 AND MINN.
R. 1400.2240, SUBP. 4** in the above-entitled matter.

If you have any questions regarding this matter, please contact William Moore at
(651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission
Ryan Inman
Representative Ginny Klevorn
Senator Erin P. Murphy

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of
the Board of Cosmetologist Examiners
Relating to Education, Licensing, and
Practice of Cosmetology, Minnesota
Rules Chapter 2110

**ORDER ON REVIEW OF
RESUBMITTED RULES UNDER
MINN. STAT. § 14.16, SUBD. 2
AND MINN. R. 1400.2240, SUBP. 4**

This matter came on for review by Chief Administrative Law Judge Jenny Starr pursuant to Minn. Stat. § 14.16, subd. 2 (2022) and Minn. R. 1400.2240, subp. 4 (2021). The proposed rules concern the Board of Cosmetologist Examiners' (Board) rules relating to education, licensing, and practice of cosmetologists and other licensed professionals in the beauty industry.

Following a public hearing, Administrative Law Judge Ann C. O'Reilly disapproved portions of the proposed rules in a Report dated January 30, 2023.¹ By Order dated February 9, 2023, the Chief Administrative Law Judge concurred with most of the determinations made by Judge O'Reilly but disagreed with a few approvals and disapprovals.²

On June 28, 2023, the Board resubmitted modified proposed rules for approval pursuant to Minn. R. 1400.2240, subp. 5.³ As part of its resubmission, the Board withdrew most of its proposed changes to Minn. R. 2110.0010.⁴ The Board resubmitted only the following proposed rules for approval: Rules 2110.0010, subp. 12a; .0390, subps. 1A, B, D; .0400; .0505A; .0550; .0580; .0630.⁵ The Board also withdrew the repeal of Rules 2110.0010, subps. 14, 15; .0100; .0320, subps. 9, 11, 12; .0330, subps. 3, 4, 5; .0390, subp. 3a; and .0410, subps. 2, 5.⁶ The Board submitted only Rule 2110.0710 for repeal.⁷

By Order dated July 6, 2023, the Chief Administrative Law Judge approved all but one of the Board's modifications.⁸ The Chief Judge determined that, given the Board's withdrawal of most of its proposed rules, the definition of "course completion certificate"

¹ Report of Administrative Law Judge (Jan. 30, 2023).

² Order of the Chief Administrative Law Judge on Review of Rules (Feb. 9, 2023).

³ Board's Resubmission of Proposed Rules (June 28, 2023).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Order on Review of Resubmitted Rules (July 6, 2023).

in proposed Rule 2110.0010, subp. 12a was ambiguous and conflicted with current provisions of the rules. The Chief Judge disapproved the proposed rule part as defective.⁹

On July 24, 2023, the Board resubmitted the proposed rules and requested the Chief Administrative Law Judge review and approve its modifications.¹⁰ The Board withdrew proposed Rule 2110.0010, subp. 12a and made two other minor modifications recommended by the Chief Judge in her Order dated July 6, 2023. The Board provided a copy of the Revisor's draft of the proposed rules dated July 18, 2023, reflecting the final modifications.¹¹

The Chief Administrative Law Judge finds that all defects identified in the prior orders have now been corrected. In addition, the Chief Judge finds that the Board's proposed modifications do not render the final proposed rules substantially different from those published in the *State Register* on September 26, 2022.

The Chief Judge notes, however, that the Board did not include in its proposed Order Adopting Rules a description of the changes made to the proposed rules in the adopted rules and an explanation of the reason for the changes, as required by Minn. R. 1400.2090 (2021). The Board's Order Adopting Rules must identify the proposed rule parts and amendments it withdrew or changed and state the reason for the changes. The Board may remedy this issue by stating that the proposed rule amendments were withdrawn due to defects found by the Administrative Law Judge in her Report dated January 30, 2023.

The Board's proposed Order Adopting Rules also indicates that the Board adopted the rules at its meeting on June 12, 2023. The proposed rules were significantly modified after that date and the current Revisor's draft of the rules is dated July 18, 2023. Based upon this timeline, the Board could not have adopted the rules as revised and currently proposed. The Board must amend its Order Adopting the Rules to indicate when the Board adopted the current version of the proposed rules.

Therefore, based upon a review of the modifications made by the Board as presented in their July 24, 2023, submissions, and the rulemaking record,

IT IS HEREBY ORDERED THAT:

1. The proposed rules, as modified on July 18, 2023, are **APPROVED** as to legality.
2. The Board shall amend its proposed Order Adopting Rules to comply with Minn. R. 1400.2090 by including a description of the changes made to the proposed rules and an explanation of the reasons for the changes.

⁹ *Id.*

¹⁰ Board's Resubmission of Proposed Rules (July 24, 2023).

¹¹ *Id.*

3. The Board shall amend its proposed Order Adopting Rules to indicate when the Board adopted the current version of the proposed rules, and state whether a quorum was present as required by Minn. R. 1400.2090.

4. The Board shall also amend its proposed Order Adopting Rules to correctly reflect that it resubmitted the modified rules to the Office of Administrative Hearings on July 24, 2023.

Dated: July 31, 2023

A handwritten signature in black ink, appearing to be 'JS', written over a horizontal line.

JENNY STARR
Chief Administrative Law Judge