

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

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ADMINISTRATIVE
HEARINGS

In the Matter of the Proposed
Adoption of Rules Relating to
Minnesota Statutes Chapter 155A
(Cosmetology)

STATEMENT OF
NEED AND
REASONABLENESS

Director of the Office of Consumer Services, Krista L. Sanda ("Director") presents herein her statement of the need for and the reasonableness of the adoption of proposed rules relating to Minnesota Statutes Chapter 155A (1981).

The above captioned rules are new rules and replace in its entirety the previous rules adopted by the former Board of Cosmetology examiners. On October 21, 1981, the Office caused to be published at 6 State Register 1172 a notice of intent to solicit outside opinions concerning changes in the cosmetology rules.

The general statutory authority to promulgate rules under Minnesota Statutes Chapter 155A is set forth at Minnesota Statutes Section 155A.05.

The Director has determined that the proposed adoption of these rules is reasonably necessary to carry out and to make effective the provisions and purposes of Minnesota Statutes Chapter 155A (1981).

The need for and reasonableness of each of the proposed rules and the rationale and process through which they were developed is as follows:

I. BACKGROUND

The 1981 Minnesota Legislature passed a statute, Minnesota Statutes 155A, which transferred all authority for licensing and regulation of the Cosmetology industry from the former Board of Cosmetology Examiners to the Director of the Office of Consumer Services. The effective date of that transfer was July 1, 1981.

The Legislature incorporated into the transfer legislation a specific mandate that the Director of Consumer Services develop and adopt a new set of rules to govern the cosmetology industry in Minnesota: "The Director shall develop and adopt rules to carry out the provisions of Section 31 to 48 by December 31, 1982, pursuant to Chapter 15" (Minnesota Statutes Chapter 155A.05.)

Since the assumption of regulatory authority for the Cosmetology industry, the Director of Consumer Services and the staff of the Cosmetology Unit have been actively involved in developing the content for the proposed rules presented herein. Tremendous input into this process has been received from the Minnesota Cosmetology Advisory Council, (MCAC), a nine member citizen body appointed by the Governor, at the direction of Chapter 155A, to advise the Director of Consumer Services on matters relating to cosmetology. The nine members of the MCAC as specified by statute, include 1 representative of public cosmetology schools, 1 representative of private cosmetology schools, 1 representative of Manufacturers of Cosmetology Products, 3 representatives of consumers, and 3 representatives of cosmetologists or shop managers. The members of the Council were appointed by Governor Quie on October 17th, 1981.

The development of the proposed rules has included extensive efforts to obtain input from members of the regulated industry with regard to their concerns and desires in the area of rules. It has included a thorough review of the old rules under

which the previous Board of Cosmetology Examiners had operated. It has also involved extensive deliberations with groups and individuals within the industry.

The most extensive suggestions for and comments upon the draft rules, apart from the MCAC, come from an industry group called the Cosmetology Council, which includes individuals in leadership position in the Minnesota Hairdressers and Cosmetologists Association (MHCA), public and private cosmetology school personnel, salon owners, and product manufacturers. This group was involved in passage of the legislation which became Chapter 155A, and it was concerned that the rules be consistent with and reflect the intent of the statute. Other interested groups of organized individuals have included the MHCA, the Professional Salon Owners Forum, and representatives of the retail community. Many individuals have offered constructive comments as well.

Some of these efforts to involve members of the cosmetology profession in the rule making procedure are as follows:

1. In August, 1981 a mailing was sent to approximately 5000 licensed cosmetology salons in the state of Minnesota. The mailing was a flyer captioned **"Attention All Cosmetologists"** and a request was made that the flyer be posted in the salon. The flyer described a series of widespread informational meetings which the management of the Office of Consumer Services held through-out the state to meet with members of the cosmetology profession in some 12 separate communities. During the period of between September 22, 1981 and October 19, 1981 meetings were held in Brainerd, Mankato, Rochester, Duluth, Virginia, Bemidji, Thief River Falls, Fergus Falls, St. Paul, Marshall, St. Cloud and Minneapolis. Nearly 500 members of the cosmetology profession attended these meetings. At the meetings, the Director and members of the Cosmetology Unit staff summarized the effect of the new legislation and explained in detail the steps of the rule-making process under which new rules would be developed. Heavy emphasis was placed upon the fact that those

present had an opportunity to contribute to the deliberations on the proposed rules, and they were strongly encouraged to communicate their specific concerns and suggestions to the Office of Consumer Services.

2. All individual Cosmetology licenses were due for renewal at the end of December, 1981. In the renewal notices sent to each licensed individual, the Office of Consumer Services inserted an update notice which summarized some of the key provisions of the legislation and outlined the rule-making process. Again, individuals were encouraged to communicate their concerns and suggestions with regard to the rules to the office staff.

3. On October 21, 1981 the office published in the **State Register** a notice of intent to solicit outside opinions with regard to the Cosmetology rule making process.

4. The Minnesota Cosmetology Advisory Council has held 14 meetings, the majority of time at almost all of which was devoted to deliberation and discussion of the rules. In addition to the full council meetings, sub-committees of the Council met on numerous occasions. Both at the sub-committee level and the full Council level there was extensive input from interested members of the profession. Those discussions were not limited just to Council members and frequently involved interchange with the non-members who were in attendance. All of the meetings were open to the public and, indeed, interested members of the public were present at almost all of the meetings.

5. As the proposed rules began to take shape, the Office of Consumer Services management met with a number of groups and individuals who had been active in the rule making process to get feed-back from them with regard to the draft format and content of the rules. As a result of those discussions numerous content or technical changes were made in the rules. The comment from these groups was incorporated into the final proposal as published and to be discussed at the public hearings. Copies of

all changes and each draft ammendment to the draft rules were shared with the Minnesota Cosmetology Advisory Council, and that Council has approved and voted its' support for the proposed rules as they are contained in the Notice of Hearing.

6. The Office of Consumer Services Cosmetology Unit staff has had informational booths at 5 of the industry trade shows held in the Twin Cities in the last year and a half. These have included two of the state meetings of the Minnesota Hairdressers and Cosmetologist Association (MHCA), the largest organized group within the cosmetology profession. Representatives of the office staff have made presentations regarding the rule process and proposed rules at the delegate assembly of both the 1981 and 1982 state conventions of the MHCA. In addition to this, several of the cosmetology supply houses have held trade shows at which the office has been invited to have an informational booth.

All of these efforts have resulted in a great deal of thoughtful, very helpful input and contribution to the rule-making process by the members of the professional cosmetology industry which will be affected by these rules.

II. GENERAL THEMES

There are a number of recurring themes which are woven through the proposed rules:

1. The overriding concern throughout the rules is to assure the health and safety both of the consumer of cosmetology services and of the practitioner who provides those services. This concern is consistent with the policy statement which is found at the very beginning of the Cosmetology statute: "The Legislature finds that the health and safety of the people of the state are served by the licensing of the practice of cosmetology because of the use of chemicals, apparatus and other appliances requiring special skills and education." (Minnesota Statutes Chapter 155A.01) Many of the rules contain requirements which relate specifically to this safety, health and welfare concern.

2. A second theme which runs through the rules is an effort to reduce, to the greatest extent possible, any opportunity for arbitrary judgement and to instead set definitive standards which will enable any licensee to know whether or not, at any given time, he/she is in compliance with the requirements of the rules. One of the frequently-voiced criticisms of past rules is that their interpretation and application in a given situation tended to be arbitrary and that their requirements were stated in such a vague manner that the individual licensee truly could not know whether or not, upon investigation by the state shop inspectors, he/she would be found to be in compliance. Every effort has been made to be specific and clear as to the nature of the requirements made of or placed upon the licensee.

3. A third general theme or assumption found in the rules is that knowledge and skills remain valid for a limited period of time, after which time an individual should obtain some type of refresher training before resuming professional cosmetology activities and performing services upon the public. The

assumption is made that skills and knowledge do in fact become "rusty" if not used. In most cases, for individual practitioners who have been licensed and who have practiced, the proposed rules set this time limit at three years. This is consistent with the three year license validity period established by the legislature in Minnesota Statutes Chapter 155A. In addition, the three-year renewal date is administratively the most feasible and efficient point at which to review an individual licensee's credentials.

4. A fourth assumption is that consumers of cosmetology services, including students of cosmetology education services, are entitled to as full and complete information upon which to base their purchase decisions as is reasonably practical. To this end a number of the rules relate to mandatory disclosures or provisions of information.

5. A fifth theme is that the cosmetologist license is an umbrella license covering practice in three distinct service areas: hairdressing, manicuring and skin care. The cosmetologist should be fully competent in all three practice areas and the training and examination procedures for the cosmetologist should reflect this expectation. The manicurist and esthetician licenses enable a practitioner to engage in a sub part of the more encompassing cosmetology practice. The manicurist can engage in those services related to the nails and the esthetician can engage in those services related to skin care.

4 MCAR Section 10.101 Transfer of License Prohibited

The purpose of licensing at all is to assure that any individual or facility which is offering cosmetology services to the public is qualified to do so and is doing so within a framework of required procedures and operational methodologies. It is therefore necessary to restrict the use of a license to the individual or facility to which it was originally granted.

4 MCAR Section 10.102 Requirements For Individual Licenses

Subdivision A of this rule sets out six requirements which would have to be met by any individual seeking cosmetology licensing in the State of Minnesota, regardless of license type.

Paragraph 1. Applications are to be made in writing so that the office will have a permanent record of the applicant's credentials. This document becomes the base document in a file which will be established and into which all documents relating to that individual licensee will be inserted.

Paragraph 2 requires either a high school education or General Educational Development certificate. The intent of this provision is to ensure that the applicant is competent to grasp the complex physiological and technical materials which he/she will have to learn in the cosmetology education and that he/she will be able to read, to comprehend, and to follow complex directions and cautionary information regarding highly caustic chemical materials. This basic educational requirement was strongly recommended by the MCAC and by the industry Cosmetology

Council. The variety and complexity of professional chemical cosmetology products is so great that it is essential that some minimum competency level be established.

Paragraph 3 is intended to assure that the applicant has been given a thorough health check by a physician and that he/she is free from any communicable disease or parasite which might be transmitted to cosmetology consumers or other practitioners in the salon. The Minnesota Department of Health has expressed concern to the Director of Consumer Services that the office should establish a firm health standard. This is particularly important in view of the current prevalence of communicable diseases such as herpes, which can be transmitted through contact with portions of the head and scalp with which the cosmetologist would be quite apt to come in contact. This requirement is clearly consistent with the statutory mandate to protect the health and safety of consumers and indeed of the practitioners themselves.

Paragraph 4 requires that regardless of license type, the applicant must successfully pass a written examination covering the basic content material and applicable laws and rules for the license being sought. While the majority of applicants will have graduated from a licensed Minnesota cosmetology school, this is not the case in all instances. The intent of the rule is to ensure that at the point that an applicant embarks on a professional career, he/she does have a basic grasp of the content area and of the requirements and rules related to that daily practice. The specific examination the applicant will be required to take will vary according to the license for which the applicant is applying.

Paragraph 5 requires a photograph which can be retained in the office records, as a means of identification of the individual to whom a license is issued. There is a parallel requirement, which follows, to the effect that a photograph also

be displayed with the individual's license at his/her place of work. The purpose of this requirement is to assure identification of the individual to whom the license is issued.

Paragraph 6 requires that the applicant pay fees to cover the examination and for the license itself. In addition, for those individuals who will require additional administrative time to verify information contained in their application, there is a processing fee to cover those costs. A more specific discussion of the fee structure may be found under the discussion of rule 4 MCAR Section 10.140 Fee Schedule.

Subdivision B addresses additional requirements, beyond the basic requirements of Subdivision A, which must be met by a cosmetologist, manicurist or esthetician seeking licensure in Minnesota. The individual applicant must provide documentation of one of three forms of professional training or experience which he/she has acquired within three years prior to the application. The three year limit is intended to assure that the skill and knowledge demonstrated by the credentials are current and appropriate to licensure at the time of application.

Paragraph 1 provides for licensure on the basis of completion of training in a licensed cosmetology school in Minnesota. The prescribed course of training is set at 1550 hours for a cosmetologist, 350 hours for a manicurist and 600 hours for an esthetician. A full discussion of the basis for this hour requirement may be found in the discussion of school curricula, 4 MCAR Section 10. 133. The intent of requiring documentation of a certification of skills is to assure that the applicant has not merely attended school for the requisite number of hours, but that he/she has in fact successfully mastered the skills related to the various services he/she will perform as a licensed practitioner.

Paragraph 2 provides for licensure of an individual who has received his/her training or a portion thereof in a school outside the state of Minnesota. In this mobile society it is

desirable to credit an individual for training received under another licensing jurisdiction. The intent of this provision is to recognize out-of-state training but to assure that, regardless of where the training was received, the individual will meet the requirements of licensure in Minnesota through completion of the same number of hours of training and a certification of skill competencies.

Paragraph 3 provides for licensure on the basis, in effect, of reciprocity, or current licensure from another state or other licensing jurisdiction. This is in recognition of the fact that there are currently some foreign countries which do not license cosmetologists. In addition, it recognizes the possibility that there may be in the future some states which do not license cosmetologists. In the situation where there is not a licensing jurisdiction, the applicant is still required to provide documentation that he/she does have actual cosmetology experience and that the experience was gained within whatever legal parameters or restrictions were applicable in the jurisdiction.

This section also addresses a problem that has occurred in the past wherein applicants provided documentation from a foreign country which was not in English and which was therefore nearly impossible to verify.

Concern that individuals coming from a jurisdiction which does not have a licensed cosmetology practice should be ameliorated by the fact that these individuals will be required to take the written test covering the content knowledge of the license sought and applicable statutes and rules in Minnesota.

The proposed rules do not include the requirement of a hands-on practical examination for cosmetologists, manicurists and estheticians. There are a number of fiscal, policy, and reality factors which led to this decision:

a. There is no statutory requirement that a practical examination be given. Individuals who were active in the passage of Minnesota Statutes 155A have informed the office that this was a purposeful omission in the statute. It was not the lobbyists' or statutory drafters intent that there be a practical examination.

b. The Office of Consumer Services Cosmetology Unit has not been allocated sufficient funding to conduct practical examinations. The financing for Office of Consumer Services regulation of the cosmetology industry, as passed by the Legislature, included a minimal amount for office oversight of practical examinations which were to be conducted in the schools during the transition period. There was no permanent funding for the continuation of state practical examinations. As part of its budget request for the forthcoming biennium, the office submitted to the Governor's Office a "change level" request to finance state administered practical examinations during the next biennium. Because of the state's fiscal priorities, this request was not granted.

c. The cosmetology schools have cooperated with the Office of Consumer Services in providing space for the practical examinations and use of their senior instructors as examiners during the transition/rule formulation period. However, schools have recently informed the office that they no longer are willing to bear the staff, materials, and fiscal costs of this voluntary program. They have also expressed genuine concern as to their liability should any untoward event occur during an examination. In point of fact, within the last month, one of the models used in a practical examination had a heart attack within the school facility. In view of this type of potential situation, the school's position is not an unreasonable one in the view of the office.

d. In meetings and conversations with salon owners over the course of the past approximately year and a half, it has become apparent that no matter what system of practical examinations has been used, the practical examination has not, in the view of the salon owners, been an effective screening device for determining which applicants are in fact ready to practice cosmetology

services at the salon level. It is the position of the office that the level-of-preparation concern expressed by salon owners can be addressed better by the establishment of a minimum quota of services during the school period and a skill certification at the time of school completion than it can through the continued practice of attempting to improve the practical examination.

e. The office has received substantial comment in conversations and meetings with members of the cosmetology profession to the effect that the practical examination is not valid because it does not relate very directly to the conditions of actual salon practice because of the artificiality of the setting. A correlary concern is that the examination is not reliable. The fact that the office, over the course of the last year, has had to rely upon a number of volunteer examiners has also led to criticisms on the basis of reliability. The office does not have at the present time, and does not anticipate receiving, the type of financial resources which it would require to hire a permanent examination staff to ensure uniformity.

g. Over the course of the last year, the practical examination has taken approximately sixty percent (60%) of the combined staff effort of the Cosmetology Unit. This in turn has made it impossible for the unit to perform legislatively mandated duties such as the annual salon inspections. Elimination of the practical examination would free the staff to devote more energy and attention to enforcement efforts and complaint resolution, thereby addressing more promptly and effectively actual problems which most directly affect the consumer public.

In view of all of these considerations, the office strongly supports the absence of a proposed rule requiring a practical examination of applicants for cosmetologist, manicurist and esthetician licenses.

Subdivision C requires that an applicant for a manager license, either of a salon or of a school, have 2700 hours or approximately a year and a half of licensed practice under the supervision of a licensed manager in a licensed salon. This is an increase of half a year over the experience level previously

required of managers. This recommendation is based upon considerable input from experienced practitioners in the field who have indicated to the office and to the Advisory Council that they believe the one-year requirement was not sufficient to provide a new cosmetologist with the kind of experience necessary to professionally and competently handle the responsibility of salon management. The whole scheme of these rules places significant responsibility upon the manager for the compliance of the salon or school itself and of all licensees practicing therein with Minnesota statute and rules.

The manager is also the person to whom less experienced practitioners will turn in the event of questions or any emergency or problem in the clinical situation. It is therefore extremely important that the manager have the kind of experiential resources which will enable him/her to deal competently, professionally and quickly with any problem which may arise.

Both salon and school managers will be required to take a written test dealing with operational matters and with state law and rule requirements. School managers will have to take this basic manager exam because of the clinical practice salon within schools. In addition, the school manager applicant will also have to take an examination to assure the office that the individual has a thorough knowledge of those laws and rules which relate specifically to cosmetology schools. There are a number of specific requirements on which it would not be appropriate to examine of the salon manager but which certainly will be critical knowledge for the school manager.

Because of the verification procedures necessary to assure that the 2700 hours of licensed practice have been accurately documented, the applicant for manager license for either salon or school,, is required to pay the processing fee to cover administrative costs.

Subdivision D addresses the requirements for cosmetology instructors. Because of the administrative verification necessary, instructor applicants are required to pay a processing fee to cover those costs. In addition, the instructor applicant will have to complete both a practical examination and a written examination. The practical examination will address not only the technical performance of cosmetology services, but also the applicant's ability to convey instructional material in an organized, comprehensible and professional manner. Under the old rules for instructor licensing, there was no requirement either that the individual have obtained any training in instruction or that the individual have had any experience actually practicing in a salon. The intent of the proposed rule is to require that in addition to whatever excellence he/she may possess as a practitioner, the successful applicant for an instructor's license must be able to demonstrate proficiency as an educator.

The requirement of 48 hours of training was reached after extensive deliberation with office staff, members of the Cosmetology Advisory Council and individuals in the area of cosmetology school management. At the present time vocational/technical instructors are required to have a minimum of 30 class hours of instruction before they are able to teach in the cosmetology program of a vocational/technical institute. The basic course which they are required to take is open to any individual and would be available, with some frequency and throughout the state, for individuals wishing to teach in private cosmetology schools. In addition to that 30-hour course, the proposed rule requires an additional 18 hours. This is to assure that the individual learns not only basic concepts of instruction, but specific training in teaching the particular skills necessary to practice cosmetology services. At the present time the office is aware of at least one 48-hour training program for cosmetology instructors, offered under the auspices of the Minnesota Association of Private Postsecondary Schools (MAPPS). An individual wishing to take that course would have the option of taking the 30-hour TVI preparatory course with only an 18-hour mini-session from the MAPPS program. An individual

license applicant might also choose to enroll in a combination of shorter courses available from either the public or private school sector.

The other new proposal in these rules is that the applicant have 1800 hours of actual experience as a practitioner in a salon. Both from members of the profession and from students in cosmetology schools, the Office of Consumer Services has received comment to the effect that the lack of salon experience currently prevalent among cosmetology instructors makes it very difficult for them to successfully teach students the kinds of skills they will be required to have in dealing with the public and in actual salon operations and management. The comment has been made by a number of salon owners that students graduating from cosmetology schools appear to have little "real world" comprehension of the way things actually operate in a salon on a day-to-day basis. In addition, they frequently have unrealistic expectations as to the type of working conditions and salary they can expect to find in the salon. The comment has been made that this may be due in large part to the fact that at the present time an individual who graduates from a cosmetology school can become a junior instructor the next day, without having any experience whatsoever in cosmetology outside of the school in which he/she was trained.

The intent of Subsection 4 is to allow an individual to become an instructor even though he may have experience and training only as a manicurist or an esthetician. In point of fact, it appears that relatively few licensed cosmetologists choose to specialize in the areas of skin or nail care. It is therefore proposed that individuals who have chosen to specialize in those areas should be allowed to become instructors, so long as they do not instruct outside their area of specialty.

Subdivision E provides for reactivation of license for an individual either who has an inactive license or whose most recent active license expired more than three years previously. This section was necessary in view of the fact that rule 4 MCAR Section 10.106 (Lapsed Practitioner License) provides for the

first time for an inactive license. The retraining required by Subdivision E is intended to assure that the practitioner's skills are brought up to date and that the practitioner becomes familiarized with recent developments which may have occurred within the period of his/her inactivity. This is particularly important in the area of new chemical products and services.

4 MCAR Section 10.103 Requirements For Obtaining a License on the Basis of Reciprocity

This short rule compliments the provisions of 4 MCAR Section 10.102 allowing for licensure in Minnesota on the basis of current licensure or practice in another jurisdiction. The reciprocity applicant will be required to meet the same requirements as the Minnesota applicant in terms of education, evidence of good health, successful passage of the written examination, submission of a photograph, and payment of the exam and license fees. In addition, the reciprocity applicant will be required to document at least 1800 hours of experience as a practitioner at the same level for which he/she is seeking a Minnesota license. The applicant for an instructors license will have to meet the 48 hours of training requirement and the 1800 hours of salon experience requirement as would a Minnesota applicant. This requirement of at least the same number of hours of training and experience is particularly important as there are a number of other states which, as Minnesota did in the past, do not require any specific training as an educator or salon experience for their instructor's license.

4 MCAR Section 10.10 Requirements for Maintenance of Individual License

This rule contains the general responsibilities which the licensee will have on an ongoing basis in order to maintain his/her license. Most of these requirements are self-evident:

- a. Complying with applicable laws and rules.
- b. Remaining free from communicable diseases and parasites.
- c. Informing the office of change in name or address.

There is a new provision in this section, which is that the information on change of name or address must be provided to the office within 30 days. Previously the licensee was able to wait to inform the office of such changes until the time of license renewal. This has caused an administrative burden at renewal time, which is already the busiest time of the year for the office staff. Having to input new data into the computer record for the individual slows down significantly the flow of the licensing process. It is therefore very desirable administratively to have information on a more current basis, at times other than during the renewal cycle. There are also occasions on which renewal notices or other mailings to licensees have been misdirected because the licensee has failed to provide the office with an up-to-date name or address. It is intended that providing the office with this information on a more current basis will eliminate many administrative problems which have occurred as a result of the past practice.

- d. The license must be renewed.
- e. The licensee must display it at his/her place of work in accordance with other sections of these rules.

- f. This section imposes specific responsibility on the school or salon manager for ensuring that the facility itself complies with applicable statutes and rules such as those relating to physical requirements, supply standards, and operational procedures; and that the personnel working within that facility also comply with applicable statutes and rules. The situation has occurred in the past wherein a given salon might have several manager/ operators, no one of which was clearly in

charge and had responsibility for the overall operation of the licensed facility. The intent of these rules as a whole and of this Section in particular is that there be a specific individual, the named salon manager, who will be responsible both for the facility and for the compliance of individuals working therein.

g. This section requires that the school instructor follow a specific curriculum for the school as it has been approved by the office. It has sometimes appeared during school inspections in the past that the students were not receiving a carefully thought-out lesson plan or segment of a specified curriculum. The intent of this provision is to make it incumbent upon the instructor, himself/herself, to assure that there is a clear plan for the teaching going on at the school and that it is followed in accordance with the format as it was submitted to the office for approval.

4 MCAR Section 10.105 License Renewal for Individuals.

This rule as a whole deals with the procedures to be followed at the end of the three year period for renewal of individual cosmetology licenses.

Subdivision A make explicit in rules what has been a matter of policy in the past. This is that it is the responsibility of the licensee himself/herself to renew his/her license on a timely basis. It is apparent that many licensees have believed that they had no responsibility to renew their license unless they received a written reminder and renewal notice from the office. However, because the licensee frequently failed to notify the office of changes in name or address, very often no renewal notice was received. The intent of this rule is to make it clearly the licensee's own responsibility as a professional individual to assure that his/her license is renewed upon-or prior to-its expiration.

Subdivision B is intended to insure that the licensee has current knowledge and skills before his/her license will be renewed. In the past an individual wishing to renew his/her license had only to pay the license fee and a new license would be issued. Information given to the office from several sources suggests that there may be as many as 8,000 to 10,000 licensees who are not in fact currently practicing cosmetology and who may not have practiced for a number of years, but who continue to renew their license. Technically these individuals would be able to resume practice and the provision of even the most complex chemical procedures without any additional training whatsoever. The intent of this rule is to assure that the individual who is being issued a renewal license has in fact kept up his/her skills or has taken a refresher course to bring those skills up to date.

During the rule-making process numerous comments were received from individuals and organizations to the effect that the office should require some form of continuing education as a condition of license renewal. This rule in effect recognizes on-going practice as a form of continuing education, and requires that if the on-going practice has not occurred, then indeed an educational course of 40 hours must be completed. This proposed rule does not include a mandatory continuing education provision for all cosmetologists, manicurists and estheticians for a number of reasons.

The primary reason is that, in the view of the office, mandatory continuing education has a questionable cost/benefit ratio for the profession as a whole. Proponents of mandatory continuing education say that it is necessary to impose the formal educational requirement on all licensees in order to insure that a minority, who do not keep current on their own, will be forced to do so. In the view of the office, the financial, time, and effort burden which this mandate places on all members of the profession in order to achieve the questionable result of effecting positively the practice of a few is not warranted. In fact, at the present time there do not exist

sufficient schools or courses to conceivably meet the requirements of continuing education for some 28,000 licensees. In reality, the single greatest impact on the profession might be realized in the pockets of those entrepreneurs who jumped into the business of providing continuing education courses. The captive market would be a ripe field for guaranteed profits.

Another real problem with the many supportive comments made regarding continuing education lies in the fact that there was no consistent definition or expectation as to what the parameters of the continuing education should be. Over 650 individuals signed a petition saying they supported continuing education, but the petition itself gave no indication as to what type of requirements there should be. Conversation with supporters of continuing education suggests that many of them believe attendance at trade conventions, product manufacturer trade shows, association meetings, workshops put on by recognized stylists, and, other similar events should qualify for continuing education credits.

In the view of the office, in order for the state to mandate a continuing education requirement, far more stringent requirements would have to be met. Any required course mandated by the state would have to relate directly to the health and safety of consumers or practitioners and would have to have a clear standard for successful completion. Any such course would in fact have to meet the basic criteria required for the refresher course as spelled out at 4 MCAR Section 10.133 Subdivision E, in the School Curriculum rule.

Another problem with continuing education as a mandatory requirement is that attendance itself does not guarantee learning, and even learning does not guarantee implementation of the material or practices learned.

Real Estate and Securities Commissioner Mary Alice Brophy has become so disenchanted with the continuing education requirement for real estate brokers and salespeople that she herself has proposed abolition of the requirement.

Another reality factor is that the Office of Consumer Services does not have the administrative staff which would be necessary to manage the controls and to evaluate and monitor a mandatory program on the scale necessary to accommodate 28,000 licensees.

In his book, **Occupational Licensing: A Public Prospective**, Benjamin Shimberg, who has been called the "guru of occupational licensing" cites many of the problems he has observed with obligatory continuing education programs:

"Proponents of mandatory continuing education often pressed for the requirement without at the same time seeking the funds needed to implement sound programs. . . perhaps they really thought that the work involved in managing continuing education could be absorbed by existing board staffs without additional funding, or they may have deliberately neglected to point out the administrative costs that mandatory continuing education would entail, because to have done so might have made it harder to get their programs adopted . . . One often finds that those responsible for implementing mandatory continuing education requirements are often lacking in personnel and resources sufficient to do the job. . . While one can be reasonably sure that the requisite number of hours of instruction were provided and that the individual in question was physically present, there is no way of being sure that learning actually occurred. . . There is no way of knowing what efforts, if any, the provider made to evaluate the given course or program. . . The record of anyone who participated--or was physically present--would show the same number of CEU's (continuing education units)...Another weakness of mandatory continuing education is the lack of evidence that continuing education is necessarily related to competence."

While continuing education is not mandated for the practicing cosmetologist, manicurist or esthetician, Subsection 2 does require it for the instructor. The reason for this is that the basic 48 hour-instruction required to obtain an initial instructor's license can not possibly constitute a full program in how to be an effective educator. The intent of the continuing education mandate for instructors is to ensure that they increase their skills as conveyors of educational material and that they keep current with recent developments in chemical products which will be used by the students whom they are instructing. The rule requires that the continuing education include both instruction in education techniques and instruction in the use or nature of professional clinical products. The core curriculum offered throughout the state for vocational education teachers could be used towards the requirement of teaching-related education, and it is very likely that manufacturers or cosmetology schools would be able to develop small up-date mini courses related to new types of chemical products and services. The number of instructors, approximately 300, is such that a continuing education requirement for this group is administratively feasible and can be monitored to assure quality control of the courses themselves.

Subsections 3 and 4 require that managers of both salons and schools pass a written examination prior to renewal of their license, covering applicable Minnesota laws and rules. This is deemed to be essential in view of the rapidity with which state law may change. It is also likely, because these rules as a whole are a completely new package, that there will be found to be some needs for revision in future years. An example of the need to assure currency of familiarity with applicable state laws may be found in the recent passage of the Vulnerable Adults Act (Minnesota Statutes Section 626.557). This act required that cosmetologists identify and report cases of suspected abuse of "vulnerable adults" to responsible authorities. The fact that this law had been passed and that this mandate had been placed upon them was not known to the vast majority of practicing cosmetologists and salon managers. As a matter of fact, about a

year later the law in this area was changed again. A separate area in which there are frequent revisions is that of minimum wage law and workers compensation, both of which the salon manager needs to be very familiar with. In addition, at the present time there is contemplation within the industry of working towards passage of a law related to the distribution of professional cosmetology products. All of these examples indicate why it is reasonable and necessary that managers, who are responsible for the compliance of their facility and the people working therein with applicable laws and rules, should be required to demonstrate current knowledge of existing laws and rules before they are granted a renewal license.

The requirement of Subdivision D that the licensee provide evidence from a physician that he/she is free from communicable diseases and parasites is a new one. In the past the only health certificate any applicant was required to provide was upon enrollment in a school of cosmetology. This appeared to be inconsistent with the statutory mandate to protect the health and safety both of practitioners and of the consumers they serve. For this reason, it is important that the office obtain a report from a qualified medical individual that the applicant is indeed in a healthy state.

Subdivision E, setting the postmark date as the effective date of a renewal request, is in keeping with traditional office policy. This simply encodes that policy into the actual rule, where it will be a clearly-known standard familiar to all affected parties.

Subdivision F is a new provision based upon extensive requests from members of the cosmetology profession and a recommendation from the MCAC. There are many individuals who have been licensed in the past and who continue to renew their license, but who are not actively practicing cosmetology. In some cases their continuing renewal is a matter of professional pride. In other cases, it is because current licensure is a requirement for maintenance of health insurance and life insurance

policies which the individual may have originally purchased many years earlier. This is particularly the case with individuals who have been members of the Minnesota chapter of the National Hairdressers and Cosmetology Association. The maintenance of insurance at reduced rates through the professional association is contingent upon current licensure, whether or not the individual is actively practicing in the profession. For this reason and on the basis of other requests, the office has proposed that an inactive license status be established. Those individuals who, at some time in the future, wish to reactivate their license would have to do so under the provisions of 4 MCAR 10.102 Subdivision E. All inactive licenses would be so identified conspicuously on their face. The inactive license would not authorize the individual licensee to engage in the provision of any cosmetology services whatsoever.

4 MCAR Section 10.106 Lapsed Practitioner License.

This rule deals with the situation of a licensee who has failed to renew his/her license prior to its expiration date in accordance with the provisions of the rule 4 MCAR 10.105. Subdivision A establishes a 30-day grace period during which the applicant may renew his/her license upon payment of the original license fee and an additional late penalty fee. The previous practice of the Board of Cosmetology Examiners was to give individuals a 90-day grace period. The view of the office, of the Advisory Council, and of the industry Cosmetology Council is that 90 days is an excessively long period of time. License renewal notices are sent out approximately 6 weeks prior to expiration date of the license. A thirty-day grace period would thereby give the individual approximately 2 and 1/2 months in which to renew his license. This should provide ample time to deal with any unusual situation which might arise. If more than 30 days had elapsed since expiration of the license, the individual would no longer be able to practice cosmetology, as he/she would not have a valid license. In this instance the

individual would have to apply for a new license in accordance with the application procedures of 4 MCAR 10.102. The office does not believe that a responsible professional person would be unable to comply with renewal procedures before expiration of the 30-day grace period.

Subdivision B recognizes that an individual may choose not to renew his/her license because he/she does not anticipate actively practicing cosmetology. Should that anticipation be incorrect and the individual wish to resume the practice of cosmetology within 3 years, he/she may do so upon payment of the license fee and processing fee. The processing fee is necessary to cover the administrative cost of verifying the statement which the individual would be asked to submit attesting to the fact that he/she has not practiced cosmetology during the intervening period since the expiration date of the license. An individual in this category would have to meet the experience or refresher course requirements generally applicable for any renewal. If more than 3 years have elapsed, the applicant would be put into the same category as an individual wishing to reactivate an inactive license, and would have to meet the reactivation provisions of 4 MCAR 10.102 Subdivision E.

Subdivision C is a new rule requiring that the manager of a salon or school in which a licensee has continued to practice past the expiration date of his/her license must pay a penalty of \$25 for each individual in violation. The basis of this penalty is the fact that it is specifically the managers responsibility to assure that licensees in the facility are in full compliance with Minnesota statutes and rules. It is therefore the manager's responsibility to assure that all individuals practicing in the salon or school do renew their license in a timely fashion. Possession of a current license is probably the single most basic requirement for compliance with Minnesota statute and rules in the cosmetology area.

4 MCAR 10.107 Retail Sales.

This rule deals with the common practice, primarily in department stores, of personnel employed in the sales force of the store demonstrating to potential purchasers the use and application of retail cosmetic products. It has been the long-standing position of the state that this practice constitutes the practice of cosmetology and that the sales personnel should be licensed. Efforts at enforcement of this position have been sporadic and minimal in recent years. On the other hand, the retail community has taken the position that because its employees are paid a salary or commission for the sale of products, to which the demonstration of their use and application is incidental, and because the consumer does not pay directly for the application, the cosmetology statutes do not apply. In an effort to resolve these two conflicting positions, the office staff, the members of the Minnesota Cosmetology Advisory Council, and representatives of the retail community held several meetings to arrive at a compromise rule which would be satisfactory to all parties. The proposed rule achieves this balance.

The rule allows retail personnel to demonstrate the application of a narrow range of products primarily used for color enhancement of the individual purchaser, as opposed to skin care products, which it would prohibit. The rule provides that before any clerical personnel can demonstrate the application of these color products, he/she must receive at least 16 hours of training regarding safety, application, and sanitation procedures to be used in such demonstrations. The store is required to maintain documentation of this training. The rule also spells out specific sanitation procedures which are to be followed. These procedures are similar to the kinds of procedures which would be followed in a cosmetology salon for the application of make-up. There is a significant distinguishing feature, however, and that is that the retail personnel may not have any direct skin contact with the purchaser. Should direct application to a

living person be contemplated, it would have to be to a model who is also employed as a part of the sales process, rather than to the customer.

The intent of this rule is to recognize a practice which is a long-standing one in the retail community, particularly in the sale of better-quality cosmetics. The consumers who are prospective purchasers for these products often request assistance from the sales personnel in their proper use and application. To prohibit entirely any efforts by the retail personnel to comply with this request would be a disservice to the consumer. The intent of this rule is to structure the conditions under which such demonstrations may be made so as to assure that the safety of the consumer will be maintained.

4 MCAR 10.108 Examination Administration.

This rule addresses the situations under which license examinations will be conducted. As noted in a previous section, the examinations to be administered will primarily be of a written nature. It is anticipated that the cosmetology schools will continue to provide examination space for a written exam. Examination dates and locations would be established to minimize, to the greatest extent possible, the necessity for applicants to travel great distances in order to sit for the written examination. It is anticipated that an exam schedule could be made up approximately 6 months in advance, so that schools would have adequate time to make whatever adjustments might be necessary in order to provide the requisite amount of space.

The only situation in which a school would be required to relinquish its clinic floor space for the conduct of examinations would be in the case of the senior instructor examination. These are held only approximately four times a year. The office has

reason to believe that it will be possible to obtain clinic exam space for the instructor examinations on a volunteer basis from the schools.

As has been the practice in the past, the rule makes it the responsibility of the examinee to provide his/her own model for the practical examination for instructors. The models must be at least 16 years of age and they may not be a licensed cosmetologist or cosmetology student. The reason for this, obviously, is to prevent any possibility of coaching on the part of the model. The purpose of the waiver to be signed by the models is to relieve the host school, which has volunteered its facility, from liability in the event of a mishap at the examination.

Subdivision D establishes for the first time a limit on the number of times which an individual applicant may retake the examination in a period of 12 months, and it also limits the validity of any score on a portion of the exam to a 12 month period. As an example of the need for this kind of limitation, at the present time there is a license applicant who has retaken the written exam 10 times. It is not infrequent that an individual may wish to take it three or four times before being able to pass it. There is an individual who passed the state laws section of the test in 1978 and who has still not passed the balance of the written portion. Under present rules, without the proposed change to a limit, the office has no authority to invalidate the four-year-old state laws exam, even though it is no longer current or at all representative of the present situation. A limit to the number of times which an examinee can retake the exam during the course of a year will also eliminate the problem of not having enough space at the exam for current graduates because of people wishing to sit for retakes. It is also intended that in some circumstances the limit will act as an incentive for genuinely unqualified applicants to obtain additional training rather than to simply continue retaking the exam in the hopes that they will eventually pass it.

An additional reason for saying that no passing score shall be valid for more than 12 months is that until a licensee has successfully completed all portions of the exam process, he/she will not be able to practice. Inasmuch as this individual is unlicensed and has never practice outside of the school setting, there becomes a point at which the applicant must either brush-up his skills or actually become licensed and practice on an ongoing professional basis.

Subdivision E, requiring that exams be administered and conducted in English and that the examinee not have an interpreter, is a new rule specifically designed to counter a policy established by the previous Board of Cosmetology Examiners. The rule of the old Board was that if a licensee could not in fact speak English or read English, he/she could have an interpreter at the exam. That exam score was then considered a valid basis for licensing. It is the position of the office that this practice is clearly contrary to the policy and intent of the legislation in Chapter 155A, which is to protect the health, sanitation, and general welfare of the consumer, and, indeed, of the practitioner himself/herself. Practitioners in the field of cosmetology deal on a daily basis with highly complex chemical products. Not only must a licensee be able to read and comprehend clearly the instructions for use of a product, but must be able to understand and comprehend the contra-indications for use of that product as well as the precautions and steps which should be taken in the event that the consumer is not able to tolerate the product. This requirement is clearly inconsistent with granting a license to an individual who cannot read English.

It is also true that there are so many different kinds of products which a cosmetologist might use that familiarity with a particular brand, for example, of permanent or hair relaxer, does not mean that the same rote memorized procedures would be applicable to a different brand or type of permanent or hair relaxer. Nor can it be assumed that the non-English speaking individual would always have the instructions read to him/her by a co-worker in the salon. Even if he/she were to have them read

it would have to be done on a step-by-step basis, as it is not likely that a complex sequence of events could be read once with any certainty that the listener would be able to follow the procedure correctly. It is the firm position of the office that the applicant must be able to read and comprehend product materials himself/herself.

The office has discussed with a distributor of cosmetology products the availability of chemical products with instructions in any language other than English. The office has been informed that in the Minnesota area the availability of such products is zero. Even if it were possible that products might be available in a specific foreign language, certainly they would not be available in all of the languages which a potential licensee might speak or read.

Apart from these considerations, the office has a difficult time understanding how it could be possible for an examination applicant who could not read and understand English sufficiently to take the written exam in English, to successfully complete a cosmetology education. That education is supposed to include theoretical knowledge gleaned from reading in the subjects of chemistry, physiology, physics and related fields. It is difficult to conceive that any student could successfully have mastered the information contained in a cosmetology curriculum without having a sufficient grasp of the English language to pass the examination in that language.

4 MCAR 10.109 Reinstatement After Denial, Suspension, Revocation of License.

The intent of this section is to provide a means by which an individual who has been denied a license or whose license has been suspended or revoked as a result of a disciplinary action may be reinstated to lawful practice of cosmetology. The intent is that the individual document, to the extent possible, that

whatever the grounds were for denial, suspension or revocation, they have been eliminated or corrected so that the applicant is currently qualified. In addition to that, the applicant would then have to meet the requirements of any other licensee, including, in the event that his/her license had expired during the disciplinary period, the requirements for license renewal, or, in some cases, for a new license.

4 MCAR 10.110 General Salon Requirements.

Subdivision A, B and C generally reiterate the statutory mandate that the practice of cosmetology is to be performed by licensed individuals in licensed facilities. Subsection D states that the license for a salon will terminate upon a change in ownership or location. This is because a license is granted to a specific individual or individuals for a facility at a specific location, which has met certain physical requirements. Should either of these factors change, the terms upon which the original license was conditioned are no longer in effect and it is therefore necessary for a new license to be issued. Subdivision E requires that the office be notified within 30 days of a change of name for the salon. This would not require an entire new license, but reissuance of the license in the new name. The processing fee is required in order to absorb the administrative costs of changing all of the records related to the salon.

4 MCAR 10.111 Requirements for Salon Licensure.

Subdivision A enumerates all of the specific rules which will apply before a salon can be issued a license. It provides for issuance of a provisional license until such time as one of the state shop inspectors is able to complete an on-site inspection. Under the previous Board rules, a salon was required to wait six weeks before it could open for business. During

these six weeks, one of the shop inspectors would conduct an inspection. In the event that an inspection was not completed within six weeks, the shop was able to open for business anyway. The previous Board of Cosmetology had seven salon inspectors. As part of a staff reduction pursuant to the legislation transferring authority from the old Board to the Office of Consumer Services, three shop inspector positions were eliminated. As a practical matter, it is impossible for the office to inspect new salons within a six-week period. However, the application materials which the salon is required to submit include a detailed floor plan and listing of all required furniture and equipment. It is, therefore, possible to do a paper "inspection" to assure that all of these physical requirements have been met, almost as efficiently as could be done by an on-sight inspection prior to the salon's opening for operation. It is the position of the office, therefore, that the granting of a provisional license will not in any way reduce the standards which must be met before the salon can open for business. At the point at which office staff is able to in fact make an on-sight inspection, it will be more valuable and useful in that the inspector will be able to assess operational and procedural matters as well as the physical factors which would be the only ones possible to check prior to actual operation. Issuance of a provisional license makes more efficient use of limited manpower and enables the remaining shop inspectors to plot their inspection routes on a logical continuous route, rather than having to move from one part of the state to another and to backtrack just to cover a new salon.

Subdivision B enumerates the items of information to be included in the written salon application. This document becomes the basis of the permanent salon record and provides documentation that the salon has all of the requirements and credentials necessary for issuance of a provisional license and for on-going operation. Items 1, 2, 3, 4 and 6 are consistent with requirements previously in effect.

Item 5 requires that the name of the licensed manager who will be employed to manage the salon be included in application materials. It should be noted that no salon license will be granted unless there is a licensed manager who has been employed.

At the present time, there are numerous instances in which an individual who is not licensed will apply for a salon license and say that once the salon has a license, space will be rented to licensed individuals who hold a manager-operator license. The argument is thus made that it is not necessary to have a salon manager per se prior to the issuance of the salon license. It is the position of the office that this does not provide for the role which is intended in the requirement that there be a licensed manager for the salon. There must be an individual who is responsible specifically for the physical condition of the salon, for the maintenance of proper supplies and inventory and for the compliance of all persons working in the salon with the state rules and statutes. The fact that a pool of people who may be licensed as managers rent space in a salon is not the same thing as having a specified individual who is responsible for all of the activity and for the physical facility of the salon itself.

Subdivision C sets the limit of the liability insurance which is required by Minnesota Statute Chapter 155A.08 (2)(d). The dollar limit established was arrived at after consultation with a number of insurance companies. It represents the basic minimum coverage which is generally available for professional liability insurance coverage of a cosmetology salon.

Subdivision D requiring evidence of compliance with Minnesota Statute 176.182 is pursuant to the mandate of that statute.

Subdivision E requires the payment of a license and processing fee for administrative review of the license application.

4 MCAR 10.112 Applicability of Requirements for Salon License.

The intent of this brief rule is to identify those rules which do not apply to manicure salons. The vast majority of salon rules would be applicable either to a cosmetology or to a manicure salon. However, there are some requirements which relate specifically to hairdressing or to esthetician services and the purpose of this rule is to identify those sections and to exempt manicure salons from their coverage.

4 MCAR 10.113 Physical Requirements.

The intent of this rule as a whole is to insure that each salon has adequate size, facilities and cleanliness within which to safely and professionally conduct the performance of cosmetology services in a manner which will maintain the safety and health both of the practitioner and of his/her customers.

Subdivision A relates to the minimum space requirement for a salon. The old Board rules had a minimum square footage of 120 feet per residential salon. They did not, however, have any provision which related to non-residential salons. This has been the source of some confusion in the past and of inequitable demands placed upon the residential vis-a-vis the commercial salons. The mandated square footage is reduced for each additional licensee, on the assumption that an additional person will not necessarily require additional spacetaking appliances such as floor hair dryers or shampoo bowls. The specific square footage recommendations were arrived at by the Minnesota Cosmetology Advisory Council and they have been reviewed by the industry Cosmetology Council as well.

The provision that the supply area not be accessible to the public is based upon the fact that that area will frequently contain chemical products which might be injurious to a consumer not knowledgeable in their appropriate use and handling.

Subdivisions B, C and D are all intended to assure that the salon will be safe and that it will be maintained in a clean and sanitary condition.

The requirement of Subdivision E that there be at least one electrical outlet in each work station is intended to eliminate the necessity of running extension cords across the salon work area. This is the current situation in a number of salons and presents an obvious safety hazard as customers and practitioners traverse the work area. It also significantly increases the likelihood of a fire hazard due to overloading the circuitry. The requirement of one electrical outlet is minimal, inasmuch as the modern practice of cosmetology seems to very often involve a number of different electrical appliances at each work station.

Subdivision F is intended to assure that plumbing is properly installed and does not involve such things as garden hoses used for drain pipe, as was found in a recent shop inspection. Subsection 3 in the plumbing section specifically requires that the toilet facilities of the salon not be used for any other purpose. Shop inspectors have frequently found that toilet facilities are used for the storage of professional products, including, in many instances, chemical products. A professional salon should have adequate storage and work space outside of the toilet facility.

Subdivision G states that window ventilation will not be acceptable as a means of meeting the requirements of the state building code for adequate ventilation. It seems obvious that in Minnesota winters it is highly unlikely that a window will be open in order to assure adequate ventilation.

The provisions of this rule set out minimum equipment standards and ratios for the professional cosmetology salon. The recommended standards are based upon the recommendations of the Minnesota Cosmetology Council, the industry Advisory Council and individual salon owners who were asked to comment on particular segments. The intent of the rule is to ensure that there will be adequate equipment to carry out the work of the salon in a professional, sanitary and safe manner. Most of the items included in this rule are consistent with the old rules promulgated under the Board of Cosmetology Examiners.

Subdivision D requiring that the wet disinfectant be non-porous is a new requirement. In the past, shop inspectors have found that plastic utensils or serving bowls were being used for chemical disinfection. Because these materials were porous, they became stained and possibly could hold germs or other undesirable matter embedded in their surface. Any disinfectant used should be large enough and filled to a level sufficient to completely immerse items which are placed in it for disinfection.

Subdivision F has a new requirement in that it mandates a covered metal container to be used for soiled towels and linen. This is contrary of the current practice prevalent in many cosmetology salons, wherein used towels are thrown into an open container, or sometimes an open cloth bag in which they are held until collection by a linen service. The basis of this new requirement is a safety alert received by this office and other segments of the cosmetology profession from the insurance industry. Because of the nature of the chemicals used in cosmetology services, there is a possibility of spontaneous combustion of these towels if they are not properly stored in a covered metal container.

The same concern is the basis for the requirement that garbage and other refuse be kept in a closed metal container.

The requirements of Subdivision I, J, and K for readily accessible first aid kits, fire extinguisher and posting of emergency numbers are also new rules proposed at the suggestion of the Cosmetology Advisory Council, to increase the probability that emergency situations can be dealt with as expediently and effectively as possible.

4 MCAR 10.115 Supplies and Materials.

This brief rule incorporates two recommendations made to the office by the Minnesota Cosmetology Advisory Council. The prohibition of brush rollers is based on the fact that they are extremely difficult to clean adequately and to remove hair from. The requirement of two dozen clean towels per day per operator is based upon the estimate of the number of towels minimally necessary to assure that clean towels will be available as required in procedural section of the rules. The need to establish some base minimum is demonstrated by a recent shop inspection in which the salon being inspected had run out of clean towels before noon on the day of inspection.

4 MCAR 10.116 Operational Requirements for Salons.

Subdivision A deals with general operational requirements and imposes upon the manager of the salon and upon each individual operator the responsibility to assure compliance with the requirements of these rules. In general, these requirements are essentially unchanged from previous sanitation and safety requirements established in the past through the Board of Cosmetology Examiners. The goal of all the subsections in the "Operational Requirements" section is to assure the safe and sanitary provision of services to consumers and the protection of the cosmetologist himself/herself. In most cases the difference

from previous Board policy or rules is that there is greater specificity in the proposed rules, so that the licensee will have a clearer understanding of the expectations placed upon him/her. A second difference is that matters which previously were unwritten policy have now been made concrete, again for the purpose of providing the licensee with a clear standard against which to measure his/her own performance and compliance. These subsections will be addressed in summary fashion by number.

1. The requirement of an adequate supply of clean combs and brushes is not new, However, in order to give some definition to the term "adequate", a minimum standard of 12 combs and 12 brushes has been established.

2. Unchanged.

3. Current rule would suggest that all materials included in 3 should be cleaned and disinfected after each use. In point of fact, this is an unenforceable rule and a more reasonable enforceable standard would be once per week.

4. Unchanged. Perhaps more explicit.

5. Unchanged.

6. New Rule specifically requiring labeling of all contents. Previous practice was consistent with this.

7. Unchanged.

8. New Rule allowing for use of just one heavy-duty extension cord, when necessary for an appliance actually in use. The intent is that extension cords not be used on an ongoing basis, and that they be used only when necessary and under the condition that they not extend beyond the immediate work area of the practitioner using the implement. The 6-foot limit on the length of the extension cord is intended to ensure that the cord will not extend beyond the area of the work station.

9. Unchanged.

10. Basic policy is unchanged. Greater specificity is incorporated in the standard of the water temperature of at least 160 degrees Fahrenheit to insure proper laundering of linens and similar materials. The requirement that soiled towels be

contained in a covered metal receptacle is new, as previously discussed in relation to the potential for spontaneous combustion because of chemicals absorbed by the towels.

11. The disinfection procedures have been significantly enlarged upon in the proposed rules. Specific standards for disinfectant concentration have been established. The previous Board rules provided either for dry or wet sanitation. The primary vehicle for dry sanitation has traditionally been formeldahyde tablets. The Office of Consumer Services received comment from union representatives of cosmetologists and from the Minnesota Department of Health with regard to the danger of formaldehyde fumes, particularly for the practitioner exposed to them all day on a repetitive basis. The Health Department also advised the office that the tablets were not in fact an effective method of sanitization. For this reason, the office has advised all cosmetology salons to discontinue the use of formaldehyde tablets as a disinfection procedure.

The procedures outlined in Number 11 provide for wet disinfection and provide an option of three different disinfection solutions at the discretion of the salon. Salon inspectors will be supplied with test kits to ensure adequate strength of the solutions used. Metal implements and tools can be disinfected in either of two different alcohol based solutions. The procedures for storage of disinfected materials are unchanged.

12. Relates to proper handling of wigs and is a new element in these proposed rules. It is based upon a recommendation of the salon subcommittee of the Minnesota Cosmetology Advisory Council.

13. Is intended to assure that each licensee on duty has a specific area in which to perform his/her duties and in which to maintain his/her own supplies.

14. Unchanged.

15. Is consistent with previous Board policy related to safety and sanitation procedures to be used by the individual licensee.

16. Is intended to ensure that the licensee is himself/herself clean and sanitary during the performance of cosmetology services so as to reduce the possibilities of transmitting any communicable disease to the consumer upon whom services are being performed.

17. Acknowledges that a licensee may not be aware of the fact that he/she has some communicable condition or disease, but is intended to assure that he/she will not perform services if he/she is aware of any such condition.

18. Enlarges upon the past rule requiring that salon personnel post their licenses in the salon where they will be readily observable by the consumer. The proposed rule specifically states that the license is to be posted at approximately eye level either in the reception area, where all personnel might have their licenses displayed as a group, or individually in the work station. The rule provides that the individual licensee's street address may be obliterated, because of a concern expressed by some young women that they felt uncomfortable having their home address displayed to individuals who might wish to note it down. This appeared to be a reasonable request.

The photograph specified by the rule must be taken alone and must be current. Frequently present photographs appear to include pets, loved ones, and other miscellany, making it difficult to recognize the licensee himself/herself. The intent of the proposed rule is to assure that a clear, unobstructed, identifiable photograph will be attached to the license.

Even if personnel licenses themselves are grouped at the reception area, the individual licensee's name and the type of license which he/she holds must be made known, through posting, to the consumer at the work station.

In addition to current personnel licenses, the shop license itself and a copy of the salon's most recent inspection report must be posted at the reception area. The rationale for requiring a copy of the salon's most recent inspection report to be posted is largely one of enforcement. The expectation of the office is that knowledge that violations will be conspicuously posted where consumers will be able to observe them will provide an incentive

to the salon to maintain compliance with statute and these rules at all times. The salon would, of course, also, if it so desired, be allowed to post documentation that any unsatisfactory items in the inspection report had been corrected.

19. Is a new rule prohibiting the presence of animals and wild life in the salon with the exception of guide dogs. The reason for this is that such animals might be carriers of disease or infection and they might, in some situations, also present a safety hazard if wandering unchecked through the facility.

20. Is a new proposed rule intended to address a problem which occurs most frequently in residential salons, where the practitioner provides baby-sitting services in addition to cosmetology services. The intent of the rule is to assure that the licensee will give exclusive attention either to child care or to the provision of cosmetology services and will not attempt to do both at the same time. If the cosmetology practitioner or salon has a regular baby-sitting or child-care service, this service should take place outside the area of the salon proper. Any individual who is hired to attend to children should do so exclusively. It is the position of the office that the combination of small children and the types of chemical and electrical materials present in a cosmetology salon do not make a good combination, and that for the safety of the children and the good management of the salon they should be kept separate.

Subdivision B discusses the salon supervision which is the responsibility of the designated salon manager. It should be noted that there is not a requirement, as is presently the case under the old rules, that the manager be on duty at all times. He/she is, however, responsible at all times for what transpires in the licensed salon. When he/she is not physically present, it is possible that another individual be specified as the responsible party in his/her absence. The prohibition on a manager being responsible for more than one salon is based upon the premise that salon management is essentially a full-time position, even though the individual is not required to be present on the premises at all times. It is recognized that the

manager may have duties which will take him/her out of the salon, such as lease negotiations, banking, trips to the supply house, etc.

In addition to assuring compliance of the facility and individuals therein with the specific cosmetology statute and rules, it is also the responsibility of the manager to assure compliance with the minimum wage and workers compensation laws and to maintain the employee records necessary to document such compliance. It is also the manager's responsibility to assure that the equipment required by the rules is not only present but is operational and clean and that sufficient supplies are available at all times.

4 MCAR 10.117 Additional Requirements for Specific Types of Salon Licenses.

The salon rules previously addressed have general applicability. This rule is designed to address specific problems or situations which occur on a more limited basis. Subdivision A addresses the situation of a beauty salon operated in conjunction with a barber shop and is consistent with old rule relating to such operations. The beauty salon operation should be in a physically separate area so that it can be assured that it is operated in compliance with the requirements for a beauty salon. The consumer should be aware of whether he/she is receiving services from the beauty salon or the barber shop portion of the facility.

Subdivision B relates to esthetician services and is consistent with the fact that Chapter 155A does not provide any basis upon which esthetician services can be provided outside of a licensed cosmetology salon.

Subdivision C prohibits mobile salons, for the reason that a salon license is granted to a specific facility in a specific location. If the salon moves from place to place, there is no way the office can assure that at its various locations it will be at all times in compliance with the requirements of these rules, particularly as they relate to plumbing facilities. In addition, it would be impossible to inspect a mobile salon on any regular basis if the office didn't know where it was because it had moved.

Subdivision D addresses licensed health care facilities. It is intended to deal with a situation that occurs most frequently in nursing homes, but also to some extent in hospitals. A current problem which arises is that a nursing home has, in the past, applied for and obtained a salon license for a salon on its premises. However, the nursing home does not hire, and has no intention of hiring, a manager to run that salon. The salon facilities are there and are used by licensed practitioners operating with a manager/operator's license or an operator's license. Because the nursing home facility is a licensed salon, no unlicensed individual such as volunteer workers or staff of the nursing home can use its facilities.

The proposed rule suggests that a better way to deal with the situation is for the licensed health care facility either to have a full-fledged licensed salon, in which case it would be required to have a full-time manager for that salon, or to operate without a formal salon and instead to depend for professional cosmetology services upon licensed individuals operating with a certificate of identification. Because of the unique situation of health care facilities, the rule as proposed does allow volunteers or employees of the facility to wash, set or trim residents' hair. However, such unlicensed personnel would not, under the proposed rules, be allowed to perform any type of chemical services. The facility would be required to bring in a licensed cosmetologist with a certificate of identification to perform any chemical service or other service beyond the basics involved with a wash, set, or trim. It is the position of this

office that the proposed rule is a rational way of meeting the needs of the health care facility and of providing a uniform application of these rules.

Subdivision E relates to salons in private residences. Such salons will continue to be allowed and new licenses will be granted for them, under the conditions cited herein. Essentially these conditions are the same as previously existed under the old rules. It appears, however, that in some instances the rules have been honored more in the breach than in the practice. This is particularly true with regard to the old rule requiring that the residential salon be separate from the living quarters. In many cases there has been only a rudimentary partition, certainly not one going from floor to ceiling. In order to accomplish the separation which the office believes is desirable between residential and professional facilities, a permanent solid partition is required in the proposed rule. There may, for purposes of convenience and access, however, be a door in that partition. The other aspects of this subdivision are further designed to assure that the residential area will be separate from the professional salon area.

4 MCAR 10. 118 Requirements for Booth License.

This rule applies to the increasingly prevalent situation in which a licensee who holds a manager license may wish to lease work space in another licensed salon, rather than to open his/her own separate salon. For reasons of economics, this appears to be an increasingly popular option in cosmetology in Minnesota. The practice has, however, raised certain recurrent questions in the Cosmetology Unit. Because the individual is essentially operating his own area within another salon, he/she is required to be a manager in order to obtain a booth license. However, the licensed salon from which the space is rented must also have a licensed manager on duty before renting that space. It is the position of the office that there must be a licensed salon

manager in the salon prior to the execution of any arrangements for leased space. This is to assure that there will be a licensed manager responsible for the entire physical facility and for the compliance of that facility and any licensees operating therein.

The proposed rule requires that the lease arrangement between the parties address specifically questions such as record keeping, number of hours to be worked, maintenance responsibilities of the booth licensee vis-a-vis the common areas of the salon, use of salon equipment, purchase of supplies, professional liability insurance, and other agreements which may be reached between the parties. The intent is to provide a clear agreement between the parties so that disputes will not arise over these issues at some point down the road after the lease arrangement has been going on for some time. It will be to the benefit of both parties to have clear expectations and assignment of responsibility and liabilities. The office is not so concerned about the precise nature of the agreement reached, but rather that the agreement itself be made and that the two parties share mutual understandings and expectations.

4 MCAR 10. 119 Requirements for Maintaining a Salon or Booth License.

This rule summarizes ongoing maintenance responsibilities which are not new. The only new requirement is a specific one that the manager advise the office of any change of the name of the salon, in writing, within 30 days of such a change. This is so that the office will be able to inform the inspector whose job it is to inspect that salon and also to have accurate records in the office with regard to licensees. It will also facilitate mailing of renewal notices.

4 MCAR 10.120 Salon License Renewal.

This rule spells out the procedures to be followed in requirements for renewal of a salon license. As is the case with individual licenses, it places responsibility for renewal upon the licensee, regardless of whether or not a renewal notice is received from the Office of Consumer Services. It is the position of the office that a professional facility, managed by a professional licensee, should be responsible for assuring that its license is current at all times.

The licensee must also maintain proper insurance coverage and must comply with other applicable statutes such as workers compensation.

At the time of any renewal the name and license number of the salon manager must be provided, so that the office can be assured that there is indeed a licensed manager responsible for the salon.

4 MCAR 10.121 Delinquent Salon Licenses.

This rule provides a 30-day grace period within which the salon license may be renewed upon payment of a late penalty. Should the salon license not be renewed within 30 days, the facility will be considered to be operating without a valid license. In this instance a salon will have to apply for a new salon license and may not provide cosmetology services until a provisional license has been issued. It is the position of the office that there is no valid reason why a professional facility, with a licensed manager whose clear responsibility it is to assure compliance with these rules, cannot properly renew its license within the 30-day grace period. Until such time as the salon is able to fully comply with these rules, it should not be providing services to the public.

4 MCAR 10.122 Unlicensed Services.

The intent of this rule is to assure that the consumer of cosmetology services and the student attending a cosmetology school will be fully informed as to whether a given service which they may be offered or taught is indeed a part of the licensed practice of cosmetology. There has been some concern, particularly around the addition to the cosmetology statute of the esthetician license, (Minnesota Statutes Section 155A.07 (1)), that somehow the field of cosmetology has been expanded to cover such hitherto excluded services as massage parlors, tanning booths, body wraps, ear piercing, and related services of that nature. Additional confusion in this area has been generated by the fact that a number of licensed cosmetology salons have in fact begun to offer some of these ancillary services.

In view of this concern, the office communicated with Representative Arlene Lehto, chief House author of Minnesota Statute Chapter 155A. In a letter signed by herself and four other House authors, Representative Lehto replied that: "It was not the intent of this legislation to include anything new in the esthetician's practice that is not now being done by a licensed cosmetologist as part of the practice of cosmetology. Since the legislation provided for the transfer of all rules and regulations to the department in an on-going manner, it was understood that there would be no expansion of any license authority to practice beyond the limits that are currently part of the rules and regulations." (letter dated March 8, 1982).

Subdivision A relates to disclosure that services are unlicensed at the point where they would be offered within a salon or school clinic. It requires that they be identified as unlicensed services and listed on a sign visible to the consumer. The reason for this requirement, and the problem it is intended to avoid, is the situation where a consumer would go to a

cosmetology salon and would make an assumption, because the salon is licensed by the state of Minnesota, that all of the activities taking place therein were also licensed activities. The same concern would apply to the clinic portion of a school, where the consumer would be able to obtain services. The intent of this provision is to assure that the consumer is adequately informed as to the fact that certain services which may be offered within a licensed facility are not themselves licensed services, and, therefore, that the state has not in any manner endorsed the practitioners' qualifications or skill level in performance of those services. It is felt that this is a necessary disclosure because of the fact that the majority of consumers are aware that salons and schools are licensed by the state, and, indeed, the state license is required to be posted in the reception area of the salon or school clinic.

Subdivision D relates to identification of courses covering unlicensed services in the cosmetology school setting. Because there are a number of these services which are tangentially related to the traditional practice of cosmetology, a number of the cosmetology schools have begun instructing their students in the proper techniques for performance of the services. However, because those services are not part of the licensed practice of cosmetology, the hours which a student spends in learning or practicing those services will not count toward the minimum number of hours of training which the student is required to obtain. It is therefore important to the student that he/she be aware of which courses, offered by the school, do not relate specifically to the license which he/she is there to obtain. Because the minimum number of hours required for the different license types has been based upon a careful assessment of the necessary time to cover those services on a theoretical and practical experiential basis, it is not possible to fit courses relating to unlicensed services into the minimum number of hours of schooling required without slighting mandatory services which in fact are licensed activities in which the student is required to acquire competency.

4 MCAR 10.123 Advertising

The advertising rule was developed because advertising in fact can play an important role both in the recruitment of students to a particular school of cosmetology and in the solicitation of customers for cosmetology salons and for the clinic portion of cosmetology schools. It was therefore deemed desirable to assure that any advertising pursuant to these goals be clear, straight-forward, and not misleading with regard to its content and nature.

Subdivision A requires that all advertising comply with the general Consumer Fraud Statutes for the state of Minnesota (Minnesota Statutes Section 325F.68-.70), which prohibit advertising which is false, deceptive, or misleading. It also refers to related rules which have been developed by the Office of Consumer Services and which deal specifically with the advertising areas of availability of advertised merchandise or services, use of the word "free" in advertising, and price-comparison advertising. The purpose of this section is to assure that advertising is in fact non-deceptive in nature and to promote consumer protection. A deceptive ad of the type intended to be prohibited stated that students of a particular school had won "First Place in National Competition". The clear inference was that the student had won a nationwide competition. In fact, the student had won a Minnesota contest sponsored by National Beauty Supply.

Subdivision B prohibits the statement or implication that the Office of Consumer Services looks favorably upon any particular advertiser beyond the fact that it has granted a license to the advertiser. An example of the type of advertising which this rule is intended to address is an advertisement run by a particular cosmetology school which states that the Office of Consumer Services has selected that school as an examination site. This statement is both misleading and a false implication

of special recognition by the Office of Consumer Services, inasmuch as virtually every cosmetology school in the state has been used as an examination site at one time or another. The selection of schools as exam sites is based primarily upon their location and capacity, not on any other particularly favorable qualities.

Subdivision C requires that if a salon or school chooses to advertise that it is licensed by the state of Minnesota, it shall also indicate what type of license is held and the license number. This is intended to give the reader of the advertisement some clearer understanding of the nature of the qualifications of the advertiser.

Subdivision D prohibits reference to an unlicensed service in any advertisement which makes a point of stating that the facility is licensed by the state of Minnesota. An example of the kind of advertising this is intended to prohibit is an advertisement recently run by a cosmetology salon in Minneapolis, which advertises prominently a hair restoration service. To the unwary reader it would appear that hair restoration is a service which this salon has been licensed to perform. That is not the case.

Subdivision E requires that school advertisements for their clinical services to the public should state clearly and in bold-face type that all services will be performed by students. The intent of this provision to make it clear to the reader that any reduction in prices is because of the fact that unlicensed students will be providing the services. The requirement that this disclosure be made in bold-faced type of the most-used type size in the ad is intended to assure that it will be conspicuous to the reader. The disclosure of student work is also specifically mandated by Chapter 155A.

Subdivision F is intended to prevent misleading advertising as to the type of income which a student might earn while attending a cosmetology school. An example of the type of

advertisement intended to be prohibited by the rule is one run by a cosmetology school which states: "Earn while you learn". The inference might reasonably be made that the student would earn some kind of remuneration for the provision of cosmetology services while a student. In fact, because the student is unlicensed, the student cannot receive remuneration for cosmetology services. The earnings in fact available to students at the school in question were for the provision of janitorial services.

4 MCAR 10.124 Inspections

The intent of this rule is to codify the procedures which the Office of Consumer Services has developed for salon and school inspections over the course of the last year and a half. Inspections will be made by employees of the office. Advance notice of inspection shall not be given. The purpose of this prohibition is that the goal of an inspection is to observe the facility in its everyday working procedures and condition. To provide advance warning of an inspection would obviate this possibility.

Subdivision B relates to the system which will be used in grading the salon and/or school at the time of inspection. It was the previous practice under the Board of Cosmetology Examiners to give the facility a letter grade for each of a number of specified items which were checked during the inspection. The inspector also gave the facility an over-all letter grade reflective of the summation or general character of the items checked during the inspection. This procedure is changed in the proposed rule in several regards.

First of all, individual items to be inspected will be given one of two scores'. An " S" indicative of compliance and a " U" indicative of noncompliance with statutes or rules. This will

reduce, it is hoped, the opportunity for arbitrary judgment which was involved in the assignment of a letter grade of A, B, C, D, or F. As indicated in the discussion of general themes throughout the rules, every effort has been made in these rules to provide clear standards so that both the inspector and the licensee himself/herself will have a clear understanding of the nature of the assessment to be made and the requirement with which a particular item is or is not in compliance.

The inspectors will no longer give an overall grade to the facility. The problem with an overall grade is that very few facilities are, in fact, satisfactory on every single item to be checked. It then becomes an extremely arbitrary matter to decide how many "U" grades would justify an overall "U" grade for the salon. There would also be a problem in determining whether certain items to be graded should be given greater weight than other items. The intent of the inspection is to give this office and the licensee a clear understanding of how well the licensee is doing in meeting the varied requirements of statutes and rules. What the licensee and the office needs to know is that there is compliance or non-compliance with specific individual items. An overall grade is not particularly useful either to the office or to the individual licensee in achieving this goal. A single overall grade might also be misleading.

The rule further provides that the licensee will be given 10 days in which to correct items graded "U" for non-compliance with a particular statutory provision or rule. The licensee is to notify the office of the nature of the correction which has been made within the 10-day period. To the extent possible, the licensee should document the correction with purchase orders, repair orders, cancelled checks, copies of letters, etc.; any material which might be useful in establishing that the problem noted has been corrected.

Should the licensee fail to correct an area of non-compliance, the Office of Consumer Services will evaluate the problem and notify the licensee if there is a reasonable basis

upon which to begin proceedings for suspension or revocation of license. In the case of persistent non-compliance, the licensed facility itself, the manager, or the individual licensee in whose area of responsibility the problem lies, might be the subject of disciplinary action.

The requirements of Subdivision C are intended to enhance the likelihood that the salon inspector will find the salon open for business when he/she appears to conduct an inspection. It is frequently a problem with rural residential salons that they are open by appointment only, perhaps to a few hours per week. Even though licensees may be at home, there have been occasions when they have refused to answer the door to allow for an inspection. Sometimes the shop inspectors have reported that clearly there was someone present in the home, but that they refused to answer the door. The intent of this rule is that the salon owner must designate a specific half day at least, on a monthly basis, when he/she will be available for a salon inspection. The rule does not require necessarily that a salon inspection would in fact be conducted on that designated half day of the month, but at least it could be guaranteed that there would be someone there at the specified time. There would be some remaining element of surprise, if the inspection were conducted during the specified period, as the licensee would not have any way of predicting during which month the inspection would be made.

Another problem which frequently occurs for the shop inspectors is difficulty in locating residential rural salons. The intent of requiring a detailed map is to provide clear direction for the inspector in locating the salons. The salision D relates to the statutory provision of Minnesota Statutes Chapter 155A.08 and .09 that salons and schools be inspected annually.

Subdivision 7 gives the Director specific authority to assess the cost of inspection to schools. The office is proposing in the rule that the basic license fee include the cost of one inspection per year, but any reinspections necessary to

confirm that unsatisfactory items have been corrected should be assessed to the school.

Subdivision E provides that, at the conclusion of an inspection, the inspector is to discuss with the salon or school owner/manager, or a responsible person designated by the manager, the results of the inspection. In addition, a written report shall either be given at the time of the concluding discussion or sent to the manager of the facility. This is to provide the facility with a clear record of the inspection results and to provide management of the facility with an opportunity to ask any questions they may have with regard to the desired procedures they might undertake in order to correct any items of non-compliance.

4 MCAR 10.125 General Requirements for Schools

This rule is a broad one which encompasses and makes somewhat more specific several provisions of Minnesota Statute Chapter 155A.

Subdivisions A and B relate to Chapter 155A.09 Subdivision 1, which requires that any person establishing or conducting a cosmetology school in Minnesota must be licensed.

Subdivision C relates to 155A.09 Subdivision 3F.

Subdivision D states that change of ownership or location will cause termination of a school license. The reason for this is that a license is issued to specific individuals for a school located at a particular location where it is known that all of the physical space and equipment standards of the rules have been met.

Subdivision E requires that the school owner or manager inform the office of any change of name of the school 30 days

before the effective date of the change. The office maintains records on each individual student enrolled in a school. It is important that those records accurately reflect the name of the school in which the student is being educated. It is also important that other office records related to the school be accurate and up-to-date at all times.

Subdivision F makes more specific the requirement for separation of school and professional departments which is found in Chapter 155A.09 Subdivision 9.

During discussions of the proposed rules at meetings of the Minnesota Cosmetology Advisory Council and with the industry Cosmetology Council, there was a considerable amount of discussion related to the fact that it is common practice for schools with related salons to pull practitioners, not licensed as instructors, in from the salon to work on the school clinic floor or in its classrooms. In addition, complaints have been received to the effect that school instructors are themselves performing salon services on clients in the school clinics. The thrust both of the statute and of these rules is to clearly prohibit such interchange activities.

Subdivision G prohibits use of school facilities for residential purposes. Such a practice would not be consistent with the educational nature of a school.

4 MCAR 10.126 Requirements for School Licensure

Subdivision A specifies those items of information which are to be contained in the school application. A number of these items are specifically required by Minnesota Statutes Section 155A.09: 1, 7, 9, 10, 12, 16, 17. Notarized signatures of owners, controlling officers and managers are required because those individuals are themselves required to provide documentation that certain educational requirements for students

have been met. The office needs to have a notarized copy of their signatures on hand in order to verify the authenticity of statements regarding student progress.

The days of the week and the hours the school will be open, and the daily and weekly class schedule are requested so that the office can compare this information as necessary against student records of hours submitted to the office. In addition, this will facilitate evaluation of the school curricula and will give the office staff a clear expectation of what they might expect to find on the occasion of a school inspection.

Because there are local fire, zoning, health and building codes or corresponding state codes, it seems redundant to develop a separate set of requirements in these areas for the schools. Therefore the requirement is simply that the schools comply with those codes as they exist under the jurisdiction and authority of other agencies.

Because the school manager will be responsible for all activities in the school and for compliance of the school and its employees with Chapter 155A and these rules, the application should include the name and license number of the manager.

The school diagram is to be provided so that the office can readily evaluate the square footage which has been dedicated to the several mandatory space allocations and so that it can check that the required equipment has been obtained and properly located within the facility.

The detailed outline of the courses of training is necessary in order to be assured that the school curriculum will provide the required education to the students enrolled. One of the complaints which has been received about schools is that sometimes they lack a definitive course structure and lesson plan. It is the position of the office that a licensed educational facility should have a clear educational plan which it will follow to assure that complete coverage of required subjects

is given to students and that the requisite material is provided in an organized and a professional manner.

Copies of financial aid and refund policies, student rules, disciplinary policies and enrollment contracts are required so that the office can evaluate these documents from a consumer protection standpoint. A number of complaints have been received from students with regard to failure on the part of the school to provide them with clear information regarding some of these policies. In other cases students have filed complaints concerning what they regard as unfair provisions of the policies.

Subdivision B sets the professional liability insurance levels for school coverage, as required by Minnesota Statutes Section 155A.09 (5)(f). The level of insurance required was determined after consultation with members of the insurance industry.

Subdivision C requires evidence of workers compensation insurance, as mandated by Minnesota statutes.

Subdivision D requires that the applicant file a continuous corporate surety bond with the Office of Consumer Services. The basis for this requirement is the statutory mandate in Chapter 155A.09, Subdivision 5(2), that the Director not issue a license without first determining that the applicant. . .

"has a sound financial condition with sufficient resources available to meet the schools financial obligations; to refund all tuition and other charges, within a reasonable period of time, in the event of dissolution of the school or in the event of any justifiable claims for refund against the school; to provide adequate service to its students and prospective students; and for the proper use and support of the school to be maintained;".

The requirement of the rules that this assurance be guaranteed by a surety bond is consistent with the mandatory provision of such a bond for other private vocational trade

schools. (Minnesota Chapter 141.25 Subdivision 5 Bond). An example of the necessity for such a requirement is the situation within the past several months in which a private medical technology school went bankrupt, suddenly closed its doors and left its students with no recourse for refund of their tuition.

It is customary practice among the private cosmetology schools to require either the full tuition in advance or a substantial portion of it in advance. It is therefore the position of the office that there must be a guarantee, in the event of dissolution of the school, that the students will be able to obtain a refund for whatever portion of their training remains incomplete. By requiring that the bond be set at the level of the aggregate tuition of all students, it is anticipated that there would be sufficient funds for full student refunds plus some additional balance to meet the other financial obligations listed in the statutory requirement.

Subdivision E requires that the applicant pay the school license fee and the school application fee to cover the verification of information provided in the application.

4 MCAR 10.127 Facilities Requirement for Licensure

This brief rule simply enumerates all of the rules the conditions of which apply and must be met prior to issuing of a school license. Listing the rules in this fashion provides the school license applicant with a checklist against which to evaluate his/her preparedness for licensure.

4 MCAR 10.128 Physical Requirements

Subdivision A stipulates the minimum square footage per enrollee to be accommodated in the school. The standard of 25

square feet per enrollee to be accommodated on the school premises at any one time in combined clinic and classroom size is consistent with past policy under the Board of Cosmetology Examiners.

This subdivision also requires that supplies and materials be stored in a space inaccessible to the public, as a matter of public protection inasmuch as many of those materials are caustic or chemical products which could present substantial danger to the public. The same is true of the dispensary area where chemical disinfection is apt to be taking place and where various supplies may also be stored.

The requirement of a student lounge is new in these rules. One of the complaints voiced by students in cosmetology schools is that they frequently have no space which is "their own" to which they can repair for privacy apart from the school staff. It is the position of the office that is a reasonable expectation of students that they be provided with an area of their own in which they can spend free time between classes, over lunch hours, etc. In addition, it is likewise reasonable to expect that the instructors themselves will have some separate staff facilities where they can rest and recuperate apart from the student population.

Subdivision B requires that there be at least 2 entrance/exit points consistent with code requirements. It also prohibits use of a window as an exit point. In view of the fact that schools may have a number of individuals on the premise at any one time, it is not reasonable to suppose that orderly exit through a window could be expected in the event of an emergency.

Subdivision C requires that classrooms be clearly lit and have at least 2 electrical outlets. This is consistent with the current practice in cosmetology of utilization of a number of electrical appliances. Because of the fact that a number of individuals may be in the classroom space, it would not be appropriate to allow the use of extension cords which might

present a safety hazard or tripping hazard in the classrooms.

Subdivision D requires toilet facilities which are separate for men and women and which meet essentially the same requirements as those for toilet facilities in salons. This is a continuation of past Board policy and rule.

Subdivision E requires that the school meet a number of the physical specifications required for salons, and is an abbreviated method of avoiding unnecessary duplication in enumeration of requirements.

4 MCAR 10.129 Fixtures, Furniture and Equipment

The provisions of this rule spell out the minimum types and numbers of furniture and fixtures which a school should have in place prior to opening. The specific ratio of equipment to students was based upon recommendations of the chairman of the Minnesota Cosmetology Advisory Council, who is himself a school owner, deliberations within the council, and comments from other school owners and the industry Cosmetology Council.

Subdivision A requires that there be a complete work station for each student who is assigned to the clinic floor. This is so that each student will have all of the necessary equipment and adequate work space in which to properly learn professional services.

Subdivision B requires at least one hairdryer, clean and in good repair, for each 6 work stations. It should be noted that this requirement does not specify that the dryer must be a floor model; it could be a hand-held hairdryer.

Subdivision C requires that there be at least 1 facial chair per each 6 enrollees. It is not necessary that this be a chair specifically designed for use in the provision of facials.

It may be a regular work station chair, so long as it has a reclining back and some kind of a head rest for the consumer receiving the service. Because it allows for a dual purpose work station chair, the requirement should not place any significant additional burden on the school. It is particularly necessary that there be sufficient facial chairs in-as-much as the school curricula section does require that each esthetician and cosmetologist student perform a specified number of facial exercises.

Subdivision D requires a manicure table for each 10 enrollees. This manicure table could also double as a classroom table.

Subdivision E requires at least 1 heat cap so the student can be instructed in its use for hair and scaop conditioning treatments.

Subdivision F requires either that there be actual skin care machines or that there be models and diagrams which have sufficient detail for an instructor to be able to demonstrate or teach to students how such a machine would be used. The reason that there is not a specific requirement that each school actually have skin care machines is that these machines are primarily used in advanced skin care services. A school which did not intend to specialize particularly in preparation of students for the esthetician license might not find it necessary to have such a machine in order to provide the basic knowledge which a cosmetologist would have to have.

Subdivision G requires that the classroom area contain an adult-sized desk or table and chair for each enrollee to be accommodated. Inspectors from this office, within the last year, visited one school which appeared to have obtained its classroom desks and chairs from a grade school.

Subdivision H requires a time clock for use by the students when they check in and out of school at the beginning and end of

the day and before and after lunch. The reason for this is to provide a clear, consistent record of the students' hours.

Subdivision I incorporates for schools some of the furniture, fixture and supply requirements applicable to salon, inasmuch as the school clinic is in most cases very similar to a salon.

Subdivision J requires that there be locker space for students requesting it. The office has received complaints from students who have lost or had stolen some of their supplies or personal property. The student is required to maintain all supplies and equipment on the school premises. Therefore, it appears reasonable that each student should have some area in which to secure his/her personal possessions and the professional equipment which he/she is required to purchase.

4 MCAR 10.130 Supplies and Materials

Subdivision A deals with basic supplies which the school must provide to the student or make available for the use of the student.

Number 1 deals with the professional kit which contains the basic professional supplies and equipment which the student will need to have in order to facilitate his/her learning experience in the school. The position of the office is that the cost of that kit should specifically be made known to the student whether or not it is included in the basic tuition fee. Some schools have a basic tuition which includes it; others charge for it separately. Whatever the situation, the student should be informed of the price he/she is paying for the kit.

Subdivision 2 requires that the school have adequate supplies and materials necessary for the performance of clinical services and classroom exercises. It is the position of the

office that it is the responsibility of the school to provide those supplies. In some instances the office has been informed, for instance, that students have to buy their own nail polish for practicing manicures. The tuition charged students is sufficient that it should be expected to cover basic supplies such as shampoo, cotton balls, clean towels and other items of this nature.

Subdivision 3 requires that each cosmetology student be provided with a mannequin which has hair on it and that the esthetician enrollees be given a mannequin without hair. Each student should have his/her own mannequin on which to practice cosmetology services in the classroom situation. This is particularly important in light of the rule requiring that each student perform a minimum number of specified services. It may very well be that the school will not have sufficient public customers coming in and requesting those services to accommodate the minimum quota for all enrollees. It is therefore exceedingly important that the student have a mannequin on which he/she can perform those services.

Subdivision B provides a minimum number of towels per enrollee which should be available to students. In some cases of school inspections during the last year it has appeared that the towels in use by students were essentially rags. They were sometimes found to be very badly stained and torn. The school clinic situation is supposed to emulate the salon conditions under which a professional cosmetologist would be employed. It is therefore the position of the office that the school has a responsibility to provide decent professional-appearing supplies for the students to work with.

Subdivision C covers instructional materials. It specifically requires that any workbooks associated with the text should become the property of the student. The office has received complaints from some students that the school they attend gives them a workbook to look at, but that they are not allowed to write in it. It is a generally-recognized under-

standing that the purpose of a workbook is to provide an actual opportunity for the student to work out problems and exercises. Therefore such a workbook should become the student's property so that he/she can perform the exercises included in it. Any separate fee for instructional materials should be clearly indicated to the students.

Subdivision D requires certain basic instructional aids, including a bulletin board located in the student lounge for posting of communications to students from the office. It is also required that the bulletin board be used for posting copies of any student rules and disciplinary policies. There is a requirement that each classroom have a blackboard which can be used for diagraming or other instructional purposes. Such equipment is standard in most educational facilities.

Subdivision E lists certain basic reference books which should be available to students in a school library. This is to provide the student with access to materials in greater depth or to supplement the basic texts. The students would have access to the resource materials rather than having to make additional purchases themselves.

4 MCAR 10.131 General Operational Requirements for Schools

This broad rule specifies the expected procedural and operational requirements generally applicable to the cosmetology schools.

Subdivision A requires a continuation of the previous Board rule that schools clearly identify themselves as schools so that the public will be able to distinguish them from professional cosmetology salons.

Subdivision B identifies the responsibilities of the school manager. As with the case in salons, the manager is responsible

for the school at all times, whether or not he/she is physically on the premises during all hours of operation. The manager may not be concurrently responsible for more than one school or for a school and a salon. The reason for this is that management of a cosmetology school is a heavy responsibility which the office believes can only be accomplished with essentially the full-time responsibility and attention of the individual. When the manager is not on duty at the school, another responsible person should be specified in his/her absence. It is the manager's responsibility to assure that personnel and students comply with the requirements of statute and these rules and to ensure that all of the equipment required by the rules is maintained, cleaned, and in proper operating condition; that proper supplies for the carrying out of educational purposes and clinic services are in readily available stock; and that in general all of the safety, sanitation, operational and health requirements of the rules are met by the school, its personnel, and its physical premises.

Subdivision C relates to the requirements placed upon the school regarding professional instructors. The requirement that there be a minimum of 2 licensed instructors per school is a new one. This is based upon several factors. First, this will more readily assure that there will always be at least one licensed instructor on the premises, for example when the other is on vacation, out sick, or absent for purposes of attending continuing education or other related professional functions. Second, most schools have both pre-clinical and clinical students in attendance at the same time. It is the position of the office that an instructor must be present with the pre-clinical students at all times in order to assure that they receive the proper required training. In addition, it is also the position of the office that work of students on the clinic floor should be at all times under the very close scrutiny and supervision of an instructor. The instructor needs to be in constant motion through the clinic floor, checking the procedures which each student on the floor is using as he/she practices his/her clinical skills with the public. It clearly is not possible for a

single instructor to maintain the kind of constant supervision which is necessary in the classroom and on the clinic floor at the same time.

Recognizing that there are legitimate reasons why a school may have only one licensed instructor present under certain limited circumstances, the rules do provide that the school may operate for 30 days per year with an unlicensed substitute for one of the two licensed instructors minimally required. The previous Board rules had limited the time which a school could operate without the full instructional quota to 12 days. This period has been extended in recognition of the fact that it may be difficult for a school outside of the metropolitan area to recruit a second instructor in less than a 30 day period, should one of its instructors resign or have to leave practice with short notice.

A school is required to notify the office within 3 days of each occasion on which it falls below the required minimum of 2 instructors for the first 1 to 20 students and an additional licensed instructor for each 1 to 20 students to be accommodated. If a school is not in compliance with the quota required for instructors, students in the school will be notified by the Office of Consumer Services that any hours they attend at the school during that period will not be accepted as valid hours towards their minimum requirements for licensure.

The rule provides also that instructors must devote their time to training and instructional duties and that they should not be given additional non-instructional duties or responsibilities during the hours when they are scheduled as instructors. Non-instructional duties would be considered to include such things as making trips to a supply house, re-arranging the stock room, doing the laundry, interviewing janitorial applicants, or other such duties which would fall more properly under the responsibility of the manager or school owner.

The rules provide that all instructors must wear identification badges of a specified color and size. This is to inform customers of the school clinic as to the status of school personnel and also to provide for instant identification of instructors in the event of school inspections. One of the problems which has arisen on past inspections is that when the school is first entered, it is frequently impossible to tell whether or not the individuals present, particularly in the clinic, are students or instructors. There is a parallel requirement that students wear colored identification badges.

Subdivision D relates to the enrollment contracts between student and school. As a consumer protection measure, the school is required to provide a fully executed copy to the student or his/her parent or guardian at the time the contract is signed. The rules also provide that students who have not enrolled for the full course of training, but have enrolled because they want additional or refresher training upon failure of the state examination, or reciprocity applicants who may wish to take some kind of a brush-up course, should be enrolled under the terms of a specific contract. The office has in the past received complaints from individuals who signed up for a refresher course at a school and later complained to the office that the refresher period during which they attended the school was not spent in the manner which the student had anticipated. For instance, a student may have expected private tutoring or specific coaching in some content area and may instead have been placed in a general classroom situation or simply placed on the clinic floor to perform a variety of services. The intent of this provision is to assure that whatever the nature of the agreement between the school and the student, it should be clearly specified in a written agreement so that there are no possibilities for differing expectations as to what will transpire during the enrollment period.

Subdivision E requires that each school have a specific written refund policy which is made known to the student. There are minimum provisions which the policy must contain.

Subsection 2 requires as a matter of consumer protection that students must be given a full refund if they are rejected by the school or if the potential student decides not to enroll and cancels the contract in writing within 3 business days of the date upon which it was signed, so long as that period is prior to the time the student would have entered classes. The Office of Consumer Services has received a number of complaints from students who enrolled in a school as long as a month or six weeks prior to the beginning of classes and then for one reason or another had to cancel their enrollment and were denied a full refund. It is the position of the office that students who provide written notice of cancellation promptly after entering a contract, before classes have begun, should be entitled to a full refund. This is consistent with the provisions of a number of consumer protection statutes which provide for a full refund if a contract is cancelled before the consumer has derived any of the benefits of the contact.

If a student waits more than three days after signing a contract and then has occasion to change his/her mind, but it is still within the period before classes have begun, the office believes it would be a reasonable practice to allow the school to keep up to a 15% registration or enrollment processing fee, vis-a-vis the total contract price.

Once classes have actually begun, the likelihood that the school will be able to recruit an additional student to replace a student who chooses to drop out is significantly diminished. For this reason the office recognizes as reasonable a provision that the school may keep a certain percentage of the tuition for the entire course.

Subsection C identifies the percentages of tuition which the school could retain, based upon the percentage of course hours which the student has attended. These percentages are the same as those recommended by the National Accrediting Commission of Cosmetology Arts and Sciences.

If the school tuition includes fees for a student kit, textbook and/or workbook which have been identified in advance, and if these items become the property of the student at the time he/she leaves the school, it would appear reasonable that the cost of these items should be deducted from the tuition figure before application of the percentages of refund.

Subdivision F requires that there be written student regulations which are known to the students and which are posted on the bulletin board in the student lounge, as well as given to each individual student. The office does not find it unreasonable for the school to have a dress code. The rule requires that before any change in the student rules takes effect, however, the student body must be given at least 10 days prior notice and each student should be given a copy of any proposed changes. The reason for this is to give the students a reasonable opportunity to comply with the provisions of whatever the new policy might be.

Subdivision G deals with a variety of student records which the school must compile and maintain. Subsection 1 says that all records must be maintained in an up-to-date fashion and that they must be kept on the school premises. A problem which has arisen in the past is that at the time of inspections, when there were particular factors which the inspectors wished to check, it has sometimes developed that all student records were kept somewhere other than on the premises of the school itself. If the owner of the school wishes to keep records at some other location, there must be a duplicate copy which is thoroughly legible and up-to-date available on the school premises itself. These records on the school premises must be made available to inspectors from the office during normal business hours of the school and they should be made available upon written request by mail.

Subsection 2 requires that the school maintain complete detailed records of all financial transactions with the student.

This is particularly necessary in view of questions which may arise about the amount of refund due if the student leaves school. In addition, many students are attending school on the basis of some kind of scholarship and it is important that fiscal records related to that scholarship be maintained.

Subsection 3 requires that the school maintain daily and monthly records of all student hours, work progress, examination assessments, and daily clinical experience records for each student enrolled. It has been the past practice for the school to submit all clinical experience records for each student to the office on a monthly basis. This requirement is not continued. Instead, the school is required to provide only summary data to the office unless some particular question arises, at which time it would be possible for the office to request verification of the daily clinical experience records. This provision should cut down on the paperwork requirements placed upon the schools and should eliminate the necessity for them to make a duplicate set of all the daily records so that one can be provided to the office.

Subsection 4 requires that all student records be maintained by the school for at least 5 years following termination of the student from the school. In lieu of the full student record a transcript may be kept. It is important that the school maintain these educational records for several reasons. It is not uncommon for a student to drop out of school and then, 3 or 4 years later, decide to return and to complete his or her cosmetology education. It is therefore important that good records of the first educational experience be maintained. Second, very often when Minnesota licensees move to another state, that other state will require specific details about their educational experience. Another section of these rules provides that a student who has received a manicurist or an esthetician license may receive credit for the educational experience he/she received in regard to the first license should he/she at a later date wish to return to school for a second license. Therefore it is important that the educational records be kept.

Subsection 5 enumerates those educational reports which the school must submit to the office. The first of these is the student registration form, which becomes the basis of the student's record in the Office of Consumer Services. This should be accompanied by the processing fee to cover the office expense of keeping track of the progress of the student through his/her education to the point of licensing.

The second document is a physical examination report from a physician stating that at the time the student enters a school of cosmetology, he/she is free from communicable diseases or parasites.

The third document is the first in a series of "report cards" on the student. This document is to be submitted at the time the student completes the pre-clinical requirement, before beginning work on the clinic floor. Until this document has been received, no student may be permitted to perform clinical services in the school. The purpose of this is to assure that no student performs services on any member of the public until such time as he/she has received a thorough training in the theory and preparatory practice precedent to actual experience. It should be noted that the rule requires not just that the minimum pre-clinical hours have been spent in the classroom, but also that these hours have successfully been completed. This assumes that the school has examined the student on his/her knowledge and has made a positive assessment of his/her progress towards completion of the full course of study.

The fourth document is also a new requirement. It is that the school, at the time a student has completed 1/2 of the total hours required towards the license which the student seeks, must provide the student and this office with a written progress report as to how the student is moving forward towards fulfillment of all licensing requirements. If the student is substandard in any way, or there is any reason to suppose that the student will be unable to successfully complete the education

and licensing requirements, the office and the student should both be informed of this fact no later than at this mid-point report. In the view of the office it is an unconscionable trade practice for any school to continue to maintain a student in attendance who is not making satisfactory progress and who does not have a clear likelihood of successful completion of the license requirements. In the case of foreign language students, this would certainly be the last point at which it would be appropriate to note that the student had insufficient language skills to successfully complete the licensing requirements.

The fifth report is a certification from the school that the student has successfully completed the number of hours required preparatory to taking the written examination for licensing. Emphasis should be placed on interpretation of this section in the words "successfully completed". This means that the student should have passed whatever competence or written examinations are interjected into the training program by the school and that the student has demonstrated appropriate levels of clinical skill and theoretical knowledge for an individual at this level. This certification must be received before the student will be scheduled to take the written examination.

The sixth report is documentation that the student has successfully completed the full course of training for which he/she was enrolled. Very importantly, this documentation is to include, on a standard form, documentation that the student has successfully mastered the competencies and skills necessary for licensing. The document would include evidence both that the student had completed all of the minimum exercises required under the school curricula section for the license sought, and that the student had in fact mastered the competencies involved in performance of those clinical service exercises. The intent of this section is that the school, in providing documentation at this point, is saying to the professional salon owner that this student is ready for employment in a licensed cosmetology salon and has full capability to perform the variety of services expected of a licensee in that salon.

The final document required by the office from the school is a statement which is to be sent if for any reason the student withdraws, is suspended, or expelled from the school. This document should indicate the total number of hours which the student has successfully completed and an explanation of the training received during those hours, as well as an explanation of the reason of termination from the school. This should be provided within 10 days. The school is required to provide information as to the number of hours the student has completed to the office. This information will be used should the student at some future date wish to re-enroll in a cosmetology training program. Should he/she do so within the permissible time limit, he/she will receive credit for hours of training successfully completed in the first school.

Subdivision H deals with certification of school hours. The intent of this rule as a whole is to assure that the recording of the student's hours of training towards the required number for issuance of a license be accurately and fully completed. Items 1 through 4 are all intended to safeguard the veracity of the hour reports. Since the Office of Consumer Services assumed responsibility for regulation of the cosmetology industry in July of 1981, allegations have been made that school records are not always truthfully reflective of the actual training experience of the student. The first four points are an attempt to develop safeguards and checks and balances so that no individual will be able to tamper with or to create a dishonest assessment of the student's training experience. For this reason most of the records are required to be signed by more than one individual. The requirement that time cards be used is also an attempt to assure veracity of the hours reported. It is critical not only that the actual hours themselves be accurately reported, but that the record of clinical experiences also be accurate, because of the minimum requirements for experience in the full scope of professional services.

Subsection 5 again addresses the concern that students

receive credit only for hours in which they are learning the theory related to or performance of services which are actually licensed as a part of the practice of cosmetology. As discussed previously, it is not the intent of the office to allow a student to gain credit towards his degree for learning experiences related to unlicensed practices such as body wrapping, ear piercing, or tanning booths.

The 8-hour limit on training per calendar day specified in item 6 is intended to prevent a situation in which a student would try to rush through school and cram in more hours than those in which he/she can reasonably be expected to remain alert and receptive to new information. Eight hours is a traditional workday, and it appears appropriate that no individual should be expected to spend more time in the acquisition of new information or the practice of new skills than an employee familiar with his job would spend during a workday.

Item 7 is designed to assure that students will be given some breaks during the day and at the noon hour. The reason for this is that the office has received a number of complaints from students, particularly when they reach the advance period of their training, that they are directed immediately to the clinic floor in the morning and might be solidly booked with clients until as late as two in the afternoon. The office believes that it is a generally recognized principle that individuals can't sustain, or should not be expected to sustain, a full level of activity for that length of time without some relief breaks intermittent in the period.

Item 8 is intended to address complaints the office has received to the effect that students were not informed at the time that they enrolled in a school of cosmetology that they would be penalized if they failed to appear for Saturday or evening training. It is traditional, apparently, among cosmetology schools to be open on Saturday to service clients, as well as infrequently on Thursday or Friday evenings. This may be an acceptable practice, and one consistent with the avail-

ability of clients on whom the students can practice their clinical services; however, if it is the case, the student certainly is entitled to have this information prior to the time he/she has signed up for a program or finds himself/herself penalized in some fashion without having been informed that this was a basic requirement of the school.

It should be noted in this discussion of students' hours that it is the intent of the office that at no time should a student be penalized by means of having legitimate hours which he/she has attended and successfully completed removed or deducted from his/her attendance record. Complaints received by the office have alleged that various schools have used the reduction of earned hours as a sanction for failure to work on Saturday or for infractions of other student rules. It is the position of the office that this is not an appropriate form of discipline or enforcement of school standards.

The office has also been involved in complaints in which the withholding of reports of earned hours has been used as a tool by the school to enforce its contract provisions regarding financial obligations on the part of the student. The position of the office is and has been that a school has many recourses through which it can enforce its contractual rights, and that to withhold information or certification that a student has been in attendance and has successfully completed specified hours of training is not an appropriate enforcement tool in the case of contractual disputes. This has been a particularly thorny problem in instances where a student may have withdrawn from a school on the basis of complaints regarding its training program or application of school rules and has enrolled in another school to complete his/her training. The first school has in some instances refused to acknowledge the hours earned by the student and to report them to the office. It is the position of the office that the appropriate arena for settlement of contractual disputes rests with mediation or legal action, not with modifying the hours of training completed by the student.

Subdivision I establishes a maximum period of 5 years during which the student must complete his/her education and successfully pass the examination for licensing. This requirement is based upon the theme discussed previously which holds that knowledge and experience do become out-dated or are lost when they are not exercised on a continuing basis. This is particularly the case with students, who clearly have no opportunity to practice their skills on even a limited basis, because they are not properly licensed. The office receives periodic requests from individuals who enrolled in a school of cosmetology as long, in one instance, as even 30 years ago, and who dropped out before completion of their education and at this later date wish to resume it on the basis of receiving full credit for hours previously spent in school. The office cannot condone this practice and does not believe that it is appropriate to recognize school hours as valid after a period of more than 5 years have elapsed. While the 30-year example is extreme, frequent requests are received from periods of approximately 6, 7 or 8 years ago.

Subdivision J provides that the office will provide a second school to which a student transfers with a certified copy of the students hours and records from his/her attendance at a previous first school. In order to assure that credit from another school is valid, a student who transfers into a new school should not be credited with any hours by that school except on the basis of a certification from the Office of Consumer Services. In the event that the student is transferring from a school outside of Minnesota over which the office would have no licensing authority, the school into which the student transfers must receive a certification of hours from the licensing authority in that other state.

Subdivision K is intended to prevent, except under limited, expressly stated situations, the enrollment of an individual in a school of cosmetology for less than the full course of training. The reason for this is essentially the theory, long held, that "a little bit of knowledge can be dangerous". Because of the

chemical nature of the products used and the complex techniques which must be learned in order to become a professional cosmetologist, the office and the Minnesota Cosmetology Advisory Council have very serious concerns that individuals attempting to take just a short course "for their own benefit" would very likely gain no benefit, but rather in fact be a detriment to themselves and certainly to any other individual upon which they might attempt to practice their incomplete skills.

Subdivision L requires that licenses both for the instructional personnel of the school and for the school itself be conspicuously posted in the reception area. This is consistent with the requirements for salons and their personnel and is intended to assure that only licensed individuals are practicing in the salons. It serves to identify the licensees to the public as well as to inspectors from the Office of Consumer Services.

Subdivision M is essentially a consumer protection requirement intended to benefit the consumers of cosmetology educational services. This requirement is based largely upon complaints received in the Office of Consumer Services and the office's more general concern that no matter what the product or service, the consumer is entitled to full and complete information upon which to base his/her purchase decision. For this reason it is required that, at the time solicitation materials are given to a potential enrollee in a school of cosmetology those materials must include a statement regarding the minimum requirements for licensing in the field in which the student is interested and information regarding tuition, fees, the enrollment contract itself, refund policies, and student regulations.

The requirement that the minimum requirements for licensing be disclosed is of particular concern to the office. One major reason for this is the presence in some schools of foreign-born individuals who appear to lack even rudimentary communications skills in the English language. When asked questions by school inspectors in the course of an inspection, these individuals are

unable to grasp the content of the question being asked and are unable to respond in a coherent manner. In the view of the office, it is an absolutely unconscionable practice for such individuals to be enrolled in a school of cosmetology in the first place. In addition to the language requirement, the office also believes it important that all enrollees clearly understand the license requirement that they have a high school education or a GED certificate. It is unfortunately true that in the past cosmetology has been used by vocational counselors and others as a kind of "last resort" field for school drop-outs who have been unable to make it in any other endeavor. It is the belief of the office that this is no longer an accurate portrayal of the role for modern cosmetology. The procedures and the products used in this field are so sophisticated that it cannot any longer be a last resort field for the otherwise inadequately prepared person.

To enroll students in a school program without an honestly reasonable expectation that they will be successful in completing the program and in obtaining licensure at its completion, is, in the view of the office, to perpetrate a consumer fraud upon the individual enrolled. To prevent uninformed potential students from becoming the victims of such a practice, the office believes that it is essential to require this pre-enrollment disclosure as well as to perform periodic reviews of a substantive nature during the educational program to verify progress towards successful completion of licensing requirements.

4 MCAR 10.132 Operational Requirements for School Clinics

Because the school clinic is essentially a practice salon, many of the operational requirements applicable to salons, of course, do also apply to the school clinic. In addition to this, there are some further requirements unique to the school setting.

Subdivision A prohibits a new school from offering clinical services until its students, or at least some of them, have

completed the minimum number of hours required before the student can practice in a clinic. Obviously there is little point in a school offering clinical services if it does not have students minimally qualified by training to perform them.

Subdivision B prohibits a school from operating a student clinic at any location apart from the school proper. During the informational meetings which the office conducted around the state when it first assumed responsibility in the area of cosmetology, there was some discussion and concern that the new statute and the rules, as individuals believed they might be drawn, would allow a school to set up free-standing clinics which might have minimal supervision and which would be in direct competition with professional salons. In fact, since that time the office has received a written request from an individual for permission and licensing of a substantial number of free-standing student clinics. As the office indicated at the public meetings, it has never been its position that the statute allowed for, or that these rules would provide for, such an occurrence. The office was sufficiently concerned about this potential problem to contact Representative Lehto chief House author of the cosmetology statute, Chapter 155A. In response to a question regarding this matter, Representative Lehto sent a letter also signed by four of the other House authors. In this letter she states:

"It was not the intent of the Legislature nor of the author of the amendment pertaining to schools that they be able to establish any free standing clinics. There is now obviously some confusion about the possibility that schools would be able to establish free standing clinics allowing students to be in direct competition with licensed salons. The Legislature did not intend for that to occur and in fact would again refer to the rules and regulations as establishing clear limits on the licensing of any such facility."

Subdivision C is an informational disclosure reminding patrons that all services in a school clinic are performed by students.

Subdivision D prohibits the instructors in a school from performing cosmetology services on any client in a school clinic except to the extent necessary to actually demonstrate or to instruct in the practice of a service to observing students. As noted earlier, the office has received complaints that in some cases school instructors have actually performed services themselves upon patrons in the school clinic. The purpose of the school clinic is to provide an opportunity for the students to perform the services under supervision by their instructors. It may, of course, be reasonable and necessary for the instructor to insert himself/herself into the provision of service in order to teach some specific point or to correct a possible or potential error on the part of the student. However, the clear intent is that it be the student who is performing the services in the clinic, not the instructor.

Subdivision E again reiterates that students may not perform in the school clinic until they have completed the required number of pre-clinical hours of training. This is to assure that those students who are practicing on the school clinic floor will have received complete preparatory training prior to their practicing of any service upon members of the public.

Subdivision F recognizes that the reason for having a school clinic at all is to provide a learning opportunity for the students. To this end, all work should be closely supervised by an instructor, who should be in contact with the student before, during, and at the conclusion of the performance of any service. It is important that the student and the instructor be agreed upon what is to be done and how, that the instructor check to make certain that satisfactory progress is being made during the performance of the service, and that the instructor check the service at its completion so as to provide the student with evaluation and feedback regarding how well the service was performed and whether there are areas which might need improvement.

Subdivision G requires that students wear identification badges which include their name, the license type for which they are preparing, and which indicate whether the student has or has not completed the pre-clinical training required before performance of cosmetology services on the clinic floor. The office is aware of allegations that students are sometimes asked to perform clinic services before they have completed the required number of hours of pre-clinical classroom training. At the time an inspection of the school is made, it is important for the inspector to be able to recognize immediately whether the individuals on the clinic floor are instructors, senior students, or pre-clinical trainees who should be performing exercises only in the classroom. In addition, requiring that the student status be indicated on the name tag will inform the consumer as to the role of any individual who may be performing or observing services.

Subdivisions H, I, J, and K all relate to matters of sanitation, safety, and health as they apply particularly in the school situation. Again, the intent is to assure the protection both of the practitioner personnel and of the consumers receiving services in the school clinic. The requirement is explicitly made that not only the student who is performing clinical services, but also the instructor who may have contact with the patron in the process of checking or instructing, should be careful to have properly cleansed his/her hands before any physical contact with the consumer.

Subdivision L allows the school, as is currently the case, to charge clients for the services performed by students in the clinic to the extent necessary to cover the cost of supplies and materials used and the general operational expenses of the school. The intent is that, because the school clinic is a necessary service in order to generate the patrons upon whom the students may practice their clinical skills, it is reasonable for the school to be able to cover the costs of providing this experiential opportunity to the students. The office also recognizes the fact that, because some income is generated by the

school clinic, there may be a slight offset to the tuition which would otherwise be charged to the student. As a consumer protection measure, whatever the prices for the school clinic are, they should be posted in the reception area where they will be clearly visible to the clinic patrons.

4 MCAR 10.133 School Curricula

This rule sets out the course content and instructional mode for each of the license types - cosmetologist, manicurist, esthetician. For each of these license types the rule specifies the minimum hours of training which is necessary. It identifies the minimum number of those hours which are to be devoted to pre-clinical instruction prior to the performance of any services by the student in the school clinic. It specifies what areas of instruction are to be covered and outlines the minimum number of different services which are to be performed as a part of the clinical exercises. The office does recognize that in some instances there may not be sufficient consumer patrons coming to the school and requesting a particular service to meet the minimum service quotas for all of the students enrolled. For this reason, the office will accept some of those services, particularly in areas such as hair coloring or chemical relaxing where there is not a large consumer demand, on the basis of clinical classroom experience performed on a model, another student, or, in some cases, a mannequin.

An additional required area for instruction in each of the license categories is that of business practices in general and the particular Minnesota laws and rules regulating the operation of the cosmetology industry, including some areas of labor relations such as minimum wage law and workers' compensation law. A frequent criticism made by salon owners is that new graduates of cosmetology schools tend to have a very limited understanding of the actual working conditions and business practices which they will encounter in the salon arena when they begin their

actual professional careers. Because a significant percentage of cosmetology graduates will either become salon owners on their own, or will become managers of booth rental space, the office believes that it is very important that all cosmetology students be exposed in their school curriculum to information related to business management and the laws in accordance with which a licensed facility will be expected to perform its services.

The specific recommendations for training in each of the license areas were based upon recommendations made to the office by members of the Minnesota Cosmetology Advisory Council. The Council established a school subcommittee to particularly address the curriculum issue. This subcommittee met many times and included representatives of the private cosmetology schools, the public vocational technical institutes, consumers, and salon owners. The recommendations which came from this subcommittee to the Council as a whole were discussed and revised over several Council meetings. They are indeed a consensus of those basic skills and knowledge areas necessary for satisfactory professional performance. In addition to the input from the Council, these curriculum requirements have been reviewed by the cosmetology school owners and by members of the industry Cosmetology Council. They have also been discussed by the Professional Salon Owners Forum and officers of the Minnesota Hairdressers and Cosmetologists Association.

Because of its importance, two summary pages from the report of the school subcommittee are included here verbatim. The two pages are the Curriculum Breakdown and the Curriculum Course Content pages. These two documents illustrate the inter-relationship between the skills necessary and the different levels of license types. They also reiterate and make clear the Council and the office's position that the esthetician and manicurist curriculum and license types are specific sub-parts of the cosmetologist's curriculum and license, and that the cosmetologist should have the full level of training required both for the esthetician and the manicurist. It is the strong position of the office that as long as the statute is structured

as it presently exists and the cosmetologist is licensed to perform services in the area of skin care and nail care, the cosmetologist should receive no less training in those areas than should the individual who chooses to restrict his/her professional practice only to skin care or nail care.

CURRICULUM BREAKDOWN

(Total Hours of Training, Pre-clinic, Percentage of Hours per Unit and Skill Quotas)

The state is charged with the duty to guarantee to consumers the minimum standards in competency for the protection of the public's health, safety and sanitation.

Total and Pre-Clinical Hours of Training

- A) Cosmetologist - 1550 hours, of which 240 are pre-clinical
- B) Esthetician - 600 hours, of which 120 are pre-clinical
- C) Manicurist - 350 hours, of which 50 are pre-clinical

Applied Science and Practice
The A-B-C's of Cosmetology

| | | Average Time to Teach Minimum Requirements | | |
|----|---|---|----------------|--------|
| | | Skill Hours | % of Course | Quotas |
| A. | Hair care specialist is called a Cosmetologist, which encompasses A-B-C | | | |
| | 1. Shampoo | 50 | 3.22% | 300 |
| | 2. Scalp and Hair Conditioning | 80 | 5.16% | 150 |
| | 3. Hair design shaping (Cutting) | 150 | 9.6% | 75 |
| | 4. Chemical hair control | 200 | 12.9 % | 60 |
| | 5. Hair coloring | 100 | 6.4 % | 50 |
| | 6. Hair styling | 200 | 12.9 % | 300 |
| B. | Skin Care Specialist is called an Esthetician (No A or C required) | 200 | 12.93% | 60 |
| C. | Nail Care Specialist is called a Manicurist (No A or B required) | 150 | 9.6 % | 50 |
| | Applied Science and Practice Total | 1130 | 72.0 % | |
| | Related Sciences Total | 420 | 28.0 % | |
| | Grand Total | 1550 | 100.0 % | |

CURRICULUM BREAKDOWN (Continued)

| | | | |
|---|--|-------------|---|
| Esthetician (B) | Skills | 200 | 60 |
| | Related Science | <u>400</u> | |
| | Total | <u>600</u> | |
| Manicurist (C) | Skills | 150 | |
| | Related Science | <u>200</u> | |
| | Total | <u>350</u> | |
| Esthetician (B) to become Cosmetologist (A) | | | |
| | Review Related Science (Emphasis on hair and nail care) | 70 | |
| | Hair Care Skills | 780 | |
| | Manicure Skills | <u>150</u> | |
| | Total | <u>1000</u> | , in addition to Esthetician's beginning course |
| | Grand Total | | 1600 hours |
| Manicurist (C) to become Cosmetologist (A) | | | |
| | Related Science (Emphasis on hair and skin care) | 270 | |
| | Hair Care Skills | 780 | |
| | Skin Care Skills | <u>200</u> | |
| | Total | <u>1250</u> | , in addition to Mani- curist Beginning Course |
| | Grand Total | | 1600 hours |
| Esthetician (B) to become Manicurist (C) | | | |
| | Related Science | 200 | (Emphasis on nail care) |
| | Manicuring Skills | <u>150</u> | |
| | Total | <u>350</u> | |
| Manicurist (C) to become Esthetician (B) | | | |
| | Related Science | 200 | (Emphasis on skin care) |
| | Facial and Make-Up Skills | <u>200</u> | |
| | Total | <u>400</u> | |

CURRICULUM COURSE CONTENT

A. COSMETOLOGIST (Care of Hair, Skin and Nails)

1. Knowledge (Related Sciences)

Cosmetology (history, laws, practices)
Electricity (nature, conduct, effects)
Chemistry (compositions, transformations, synthesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary, conversation, communication)

2. Skills

Shampoo and Rinses
Scalp and Hair Treatments
Hairshaping
Chemical Hair Control
Hair Color
Hair Styling
Facials and Make-up
Manicuring

B. ESTHETICIAN (Care of Skin)

1. Knowledge (Related Sciences)

Cosmetology (history, law and practices)
Electricity (nature, conduct and effect)
Chemistry (compositions, transformations and synthesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary)

2. Skills (Facials and Make-up)

Clean
Condition
Shape
Reinforce
Color
Enhance

CURRICULUM COURSE CONTENT (continued)

C. MANICURIST (Care of Nails)

1. Knowledge (Related Sciences)

Cosmetology (history, laws, practices)
Electricity (nature, conduct, effects)
Chemistry (compositions, transformations, synthesis)
Life (anatomy, physiology, bacteriology)
Sterilization (methods, uses, effects)
Language (vocabulary, conversation, communication)

2. Skills (Manicuring)

Clean
Condition
Shape
Reinforce
Color
Enhance

In addition to the preparatory course for the cosmetologist, manicurist, and esthetician's licenses, this rule provides for the refresher course which would be required of any individual wishing to renew a license under the provisions of rule 10.105B who has not practiced the minimum 1800 hours during the preceding 3 years. The rule provides that the refresher course must be taught by a licensed instructor, but it could be sponsored by a school, a salon, or a professional association. The rule requires that the course content be focused upon chemical services, which are those areas of professional practice most apt to involve the health and safety of the consumer or the practitioner and which are the areas in which significant change in product type or use will be the most critical for safe continued practice. The rule requires that the refresher course include actual hands-on experience by the student, so as to assure that the student's learning experience incorporates the actual procedures which must be followed for safe performance of the service. The refresher course must conclude with a final examination which will provide the student with an opportunity to demonstrate that the material has in fact been learned.

So that the Office of Consumer Services may be assured that any refresher course meets these criteria, potential sponsors will have to apply to the office at least 45 days prior to the date on which they intend to conduct the course. They will have to provide the office with the name of the licensed instructor who will conduct the course and to describe the specific skills and information to be imparted, along with the teaching method they intend to use. The sponsor will be required to pay the processing fee to cover the cost of office evaluation and approval of the course. At the conclusion of the course, the sponsor will have to provide the office with information concerning the name and license number of all of the individuals who successfully passed the final course examination. This information will then be used to verify information obtained from the individual licensee on his/her renewal application.

Finally, Subdivision F of the curriculum rule provides that an individual who has received training either as an esthetician or as a manicurist may build upon that beginning professional degree to obtain either the other sub-license type or the full cosmetology license. Because the licensee has completed an approved course and has been duly licensed on that basis by the State of Minnesota, it is the position of the office that the education received in preparation for the first license should be at least in part credited towards the number of hours necessary for the second license. The curriculum breakdown, previously included, specifies further information regarding the transfer of knowledge and hours from one license type to another.

4 MCAR 10.134 Requirements for Maintaining a School License

Subdivision A requires that specified documents be conspicuously displayed in the school reception area. These documents are to be displayed as a matter of consumer information to potential customers with regard to the licenses of the school and its personnel and also as a source of information for the office upon the event of a school inspection. Both the school license and the personnel licenses are to be displayed and the individual's photographs are to be included on the personnel licenses.

Subdivision B provides that the school must notify the office upon specified changes in the information currently on file in the office. Of particular importance is informing the office in the event of any change in the managerial or instructional staff roster of the school. As noted in the section regarding instructors, the school must notify the office of such changes within 3 business days of the effective day of the change.

Because of the consumer protection and information implications of materials used to solicit prospective students,

any changes in this material must also be submitted to the office.

Should the school change its educational curriculum or the nature of the courses of training offered, information regarding these changes must be submitted to the office. These rules require that the office approve school curriculum and it is therefore important that the office be informed of any changes in that curriculum, including the clinical experience portion thereof.

Because the rules specify minimum physical requirements for the schools, any remodeling or alteration in the physical plant of the school itself should also be the subject of notification to the office, so that it may be assured that minimal requirements will still be met.

In order that the Director may be assured of the continuing sound financial condition of the school, a current balance sheet, income statement, or evidence of financial worth must be submitted to the office on January 1 of each year. A copy of the bond required by rule 4 MCAR 10.126D will suffice for this purpose.

Subdivision C requires that the school maintain copies of all advertisements for clinic services for a period of 3 years. There are occasionally complaints made to the office concerning such advertisements. The office does not require that copies of all ads be approved in advance or sent to the office on a routine basis; however, it does request that the school maintain copies of those ads so that they will be available for review in the event of any complaints concerning their content.

4 MCAR 10.135 School License Renewal

As is the case with individual and salon licenses,

responsibility is placed upon the licensee for timely and proper renewal of the school license. Assuring that this renewal is made in the proper fashion will be the responsibility of the school manager or owner. At the time the school license is renewed, specified information must be updated to assure conformity with the requirements of Chapter 155A and these rules. This updated information includes evidence of the required professional liability insurance and coverage for workers' compensation. No school license will be renewed until all items graded "unsatisfactory" on inspection reports have been corrected. The school shall provide current and complete information regarding all instructors and their schedules and the manager's license number and its expiration date as well. These licensees are key individuals in enabling the school to meet its educational responsibilities. It is therefore essential that the office have current information regarding their identification and assurance of their qualifications. The surety bond required by 4 MCAR 10.126 D must be current and in place at the time of school renewal. The school shall also, at the time of renewal, pay the license fee. As is the case with individual and salon licenses, the postmark date on the transmittal envelope will be considered determinative in ascertaining whether or not the application was received by the deadline.

4 MCAR 10.136 Delinquent School License

This rule provides the school with a 30-day grace period after expiration in which to renew its license upon payment of the license fee and a late penalty. Should the school fail to renew its license within 30 days, it must reapply for a new school license and no training provided to students during the period while the school does not have a valid license will be recognized. The students will be so notified by the office. Because the role of the school is so critical in preparing the individual for cosmetology licensing, there is no basis upon which any school should be recognized if it is not in full

conformance with the requirements of statute and these rules.

4 MCAR 10.137 Advanced Training and Demonstrations

This brief rule provides two instances in which instruction in the content area of cosmetology may take place outside of a licensed school. The first situation is that of an advanced training class or demonstration for individuals who are already licensed, provided that the class or demonstration does not include provision of services to the public. The reason for this exception is that all of the individuals attending the class would be licensed individuals. They would therefore have the necessary professional skills and expertise to properly evaluate and incorporate the information being imparted. It is not infrequently the case that manufacturers of cosmetology products will wish to conduct informational classes for licensed individuals in order to acquaint them with new products or lines. The office does not believe that it would be reasonable to require all individuals conducting such classes or demonstrations to be licensed or that the class or demonstration be conducted within a school setting.

The second exception to the requirement that cosmetology instruction must be offered in a licensed school is in the event of community education classes which would impart cosmetic information to individuals on a very limited short-term basis for their own personal enhancement. A provision for such classes is specifically made at Minnesota Statutes Chapter 155A.03 Subdivision 8.

4 MCAR 10.138 Certificate of Identification

This rule is a continuation of past practices. It is based upon the recognition that there may be individuals who desire

cosmetology services but who are themselves unable to reach a cosmetology salon in order to obtain those services. In recognition of this fact, the rule provides that, under limited circumstances, a licensed individual operating out of a licensed cosmetology salon may travel to the patron to perform those services. The rule limits such out-of-the-salon practice to the provision of care in a licensed health care facility or in the residence of home-bound individuals. It is not the intention of this rule to provide for the routine practice of mobile cosmetology. The office believes that the health and safety interests of the public can best be assured by limiting practice to a licensed facility under the conditions specified by these rules wherever possible. It is only when the needs of the individual patron cannot be met within the confines of the licensed salon that practice should be allowed elsewhere. It is the responsibility of the salon manager to assure that licensees operating from the salon perform such services in conformance with these rules. Insofar as is at all practicable, the licensee operating out of the salon in a licensed health care facility or a residence should make every effort to observe the sanitary and safety procedures otherwise provided for in these rules.

4 MCAR 10.139 Fee Adjustments

This rule recognizes certain limited situations in which equity suggests that it would be reasonable to make a refund to license applicants. It sometimes occurs that an individual will inadvertently pay either too much or more than one time for his/her license fee. In this situation the office will make a refund of the overpayment. Another situation which, tragically, sometimes occurs, is that an individual who has applied for a license renewal may either die or become incapacitated before the effective date of the renewal. In this instance the office believes it would be reasonable to refund the license fee, inasmuch as the individual will never utilize the license.

A third situation in which the office deems it reasonable to provide a refund occurs when an individual has paid the full fee and/or processing fee for a license and then is found to be ineligible for the license. Where there are separate license and processing fees, the processing fee will be retained and the license fee will be refunded. In the event that only a license fee has been paid, and it is then found that the individual is ineligible for the license, the license fee minus the amount of the processing fee will be refunded. This is to cover the office cost in determining that the individual was ineligible.

In a number of instances an individual who has one type of license wishes to acquire a license in a different category and requests that part of the license fee for the first license be credited towards the second license. This is most often the case concerning a cosmetologist who wishes to obtain a manager's license. The proposed rule does not provide for a refund or credit in this situation. The reason for this is that the acquisition of another license is entirely a discretionary matter on the part of the licensee. In addition, there are office administrative costs involved in checking license issuance dates and calculating and actually make refund arrangements. In the view of the office, it is not unreasonable to require that an individual pay the full cost of any license which he/she seeks.

4 MCAR 10.140 Fee Schedule

This rule sets out the specific fees which will be charged for licenses, for penalties, and for administrative fees to cover the cost of administering these rules. Every effort has been made insofar as possible to relate the specific dollar fee to the cost of the service or item which it is intended to cover, with the exception of the penalty fees, which are determined on the basis of an enforcement incentive, as well as to some extent the covering of specific related costs.

In particular, an effort has been made to keep the license fees themselves at a minimal level. It will be noted that the license cost on an annualized basis for the cosmetologist, manicurist, and esthetician has not been increased.

It is possible that these proposed fees, taken together, will generate to the state treasury an excess over the appropriation to the Office of Consumer Services for administration of the cosmetology licensing and regulatory program. It is therefore very possible that in the future some of these fees may be reduced. At the present time, there is no valid basis for predicting with any surety the revenue which will be generated by this fee schedule. The reason for this is that it is generally acknowledged that there are a significant number of currently-licensed individuals who are not actually practicing cosmetology. There is no way of predicting how these individuals will react to the various provisions of these proposed new rules. It may be that a considerable portion of them will decide not to continue renewing their license, in which case all of the fees associated therewith would be lost to the state. On the other hand, it is possible that they may choose to renew their license on an inactive basis, in which case their fees would continue. It is the position of the office at this time that the fees should be based on the assumption that there will be some attrition in the number of licensees. The state is mandated to recover all costs of the regulatory and licensing program through the fee schedule. For this reason the office believes that the most reasonable policy is to keep the proposed fee schedule in effect for several years, at which time a thorough evaluation can be made to ascertain whether or not adjustments are necessary to keep revenues approximately in line with appropriations.

There is one significant difference in the format of the proposed fee schedule as opposed to the old schedule. The old fee schedule had a different fee for initial licensure vis-a-vis renewal licensure. The reason for this was to incorporate the costs of original licensing, processing, evaluation, and administration into the therefore higher fee for the initial

license. The position which has been taken in the proposed fee schedule is that the license fee itself should always be the same, whether it is for an initial or a renewal license. Where there are additional costs related to evaluation of credentials, etc., for the initial license, or for the renewal license, those costs are picked up under the processing fee or other applicable administrative fees.

There has been a significant increase in the fees for school name change and school original application, based upon the fact that there are extensive administrative costs related to these two operations.

4 MCAR 10.141 Duplicate License

This rule provides for the event that an individual licensee has lost or for some reason has had his/her license destroyed. In this event a duplicate license will be issued. However, the requesting individual must provide the office with an affidavit indicating why the duplicate license is required. The purpose of this is to control the number of licenses issued and to prevent, to the greatest extent possible, the likelihood that licenses will fall into the hands of individuals other than those for whom they are intended.

4 MCAR 10.142 Intoxicants and Controlled Substances

It is the position of the office that the professional practice of cosmetology, particularly in view of the potentially dangerous chemical materials used, is inconsistent with the ingestion of intoxicants of any type, either by the individual performing the service or by the patron during the provision of the service. The office is aware of situations in which alcoholic beverages may be offered to customers of a cosmetology

salon. While this may be a gracious social offer, the office does not believe that it is appropriate in a professional business establishment. Should the salon wish to provide such amenities to its patrons, it is suggested that this be done on another occasion other than during the business hours of the salon.

4 MCAR 10.143 Compliance by Present Licensees and Students

The provisions of this rule are to allow for implementation of the whole package of proposed new rules without creating undue hardship on current licensees.

The various provisions of Subdivision A deal with each of the license types and the effect of the new proposals upon these licensees. In Subsection 1, cosmetologists', manicurists', and estheticians' licenses are addressed. All of these licenses will be valid until such time as they expire. After July 1, 1984, the individual wishing to renew one of these licenses will for the first time have to comply with the renewal provision requiring either 1800 hours of experience in the last 3 years or the 40-hour refresher course. Prior to that time, individuals will be able to renew these licenses on essentially the same basis as is currently the case.

Subdivision 2 deals with senior instructor licenses and has two separate provisions. The proposed rules, in accordance with Chapter 155A itself, do not distinguish between junior and senior instructors. The rules provide for just one single instructor license class. Those individuals currently licensed as senior instructors will be given until December 31, 1984, to meet the education requirement of 48 hours for initial licensure as an instructor. They will not be required to pick up the required hours of actual salon experience. Instructors who fail to obtain the 48 hours of training by December 31, 1984, will have their licenses revoked. This provides current instructors with a

two-year period in which to obtain the required training. The office is confident that such training will be available on a frequency and location distribution basis which will not create undue hardship for any currently licensed instructor.

The provisions relating to the renewal of the instructor license will not take effect until January 1, 1988. The reason for this is that during the initial period, the instructors will have to obtain the first 48 hours of training. They will then have until January of 1988 before they will have to have completed additional continuing education.

Subdivision 3 addresses those individuals currently licensed as junior instructors. These individuals will be given until December 31, 1983, approximately a full year, in which to complete the present old requirements for senior instructor. If they fail to do so, they will no longer be able to function as instructors of any kind in cosmetology schools. Once they have met the requirements of the old rules to become senior instructors, they will then be given the same length of time as the current senior instructors to comply with the full requirements for instructor license under the new rules.

Subsection 4 deals with salon managers and school managers. Current salon manager licenses will remain valid until they expire. Manager licenses expiring after July 1, 1984, cannot be renewed until the individual has taken the examination relating to Minnesota statutes and rules required for renewal. This gives all currently-licensed salon managers a minimum of a year and a half in which to familiarize themselves with the new rules and statute before the renewal examination requirement would become effective.

The situation is somewhat different for managers of schools, because of the important role the schools play in familiarizing students with the requirements of rules and statute and because the provisions relating to schools will take effect in July, 1983. It is therefore necessary that the school

managers rapidly familiarize themselves with the new requirements. For this reason all school managers will be required to pass a written examination relating to laws and rules governing cosmetology schools and related matters by December 31, 1983.

The provisions of Subsection 5 essentially alleviate salons and booths from undue hardship because of new physical requirements for licensure. The provisions of the subsection exempt existing salons entirely from a number of the requirements and give them an extensive lead time before other less-costly or physically-demanding requirements would take effect.

Subsection 6 deals with schools and again exempts currently licensed facilities from some of the physical requirements and provides them with a lead-in period before they will be required to meet other new requirements.

Subdivision B allows that foreign language students who are enrolled in schools of cosmetology at the time of the effective date of the rules may proceed with their education as is currently the case, which would allow them to use an interpreter at state examinations. However, these individuals will additionally be required to demonstrate to the office that they are able to read and to understand the directions and precautions on selected examples of cosmetology products.

IV ADDITIONAL CONSIDERATIONS

The Office of Consumer Services is aware of 2 proposals which will be presented at the public hearings and which the office wishes to commend to the attention of the Hearing Examiner and other participants at the hearings.

It is our understanding that a proposal will be made by one or more cosmetology instructors to the effect that the school should be given some discretion in specifying the ultimate numbers of hours a student is required to study prior to licensure. The rules as proposed provide that the student may take the written examination after completion of school hours somewhat less than the total maximum hours of required curriculum. The new proposal which we understand will be introduced is that if the school believes and certifies on the certification-of-skills form that the student has indeed successfully mastered all of the practical/clinical skills and the knowledge necessary for licensure at the same time that he/she has completed the hours necessary to take the written examination, the student should be granted a license upon passage of the written examination.

The office believes that this is a recommendation which merits consideration. The office does not see any likely basis upon which a school would be motivated to prematurely certify a student as ready for licensure. The last several months of a student's education are, in most cases, devoted almost entirely to work in the school clinic to sharpen the actual service skills. Indeed, the allegation has been made that an unscrupulous school might be motivated to withhold the certification of skills in order to keep an accomplished student in the school longer and thereby to garner additional revenues from the student's practice on the clinic floor.

If the school is in fact willing to certify in notarized form that the student has learned all of the required skills, and if the student has successfully passed the written examination,

the office sees no reason why that individual should not be licensed and be able to enter the productive world of employment. This would be to the benefit of the student, certainly. Such a practice would also, possibly, promote greater attention to full preparation and earlier preparation of students among the various schools. It would no doubt enhance the reputation of an individual school if its students were licensed on the basis of successful skills and passage of the examination at a level earlier than the basic proposal.

On the other hand, it would be of no benefit to a school to falsely assert that the student had mastered skills. The inaccuracy of any such certification would be readily apparent once the student entered salon employment, and would inevitably lead to filing of complaints against the school with the Office of Consumer Services. Such a practice would also certainly be contrary to the school's best interest in terms of its reputation among the salons which are potential employers of its graduates.

For these reasons, the Office of Consumer Services believes that the proposal is a reasonable one and does commend it to the attention of the Hearing Examiner as a positive amendment to the rules as proposed.

The second proposal for amendment which the Office of Consumer Services believes will be presented in public testimony is one which comes from the retail community with regard to the rule governing demonstrations of cosmetology coloring products in retail establishments. The proposed effective date in the rules for this particular rule is April 1, 1983. The retail community has expressed concern to the office that it would like to begin operating under the rule at an earlier date and is willing to cooperate with the office in disseminating information concerning the new rule to all applicable parties within the retail community. It is the understanding of the office that the recommendation will be made that the effective date for the retail sales rule be changed to 4 weeks after final approval of the rules. The office is pleased to concur with this suggestion and believes that it would be of benefit both to the retail

community and to the consuming public.

There is a very broad area of concern which is not addressed at all in the rules as proposed. This concern deals with the distribution of professional chemical cosmetology products. It was the strong desire of the Minnesota Cosmetology Advisory Council, of the office, of the Professional Salon Owners' Forum, as well as a number of other individuals that a rule be written which would prohibit the sale of such products to anyone other than a licensed cosmetologist or, in another version, a licensed cosmetology salon.

The impetus behind such proposals is at least two-fold. First, because of the nature of these professional chemical products, there is a very strong element of consumer protection and safety involved with their use. It is the position of the office that these products cannot assuredly be used with any safety by individuals who are not licensed, and indeed, their use should be restricted to licensed facilities with all of the proper equipment and under the supervision of a professional manager who will ensure that the products are properly applied. The second element is one of enforcement. So long as these professional products are available to individuals who are operating outside of a licensed salon, there is a significant enforcement problem in locating and establishing evidence that the individuals are operating illegally through their failure to obtain a license. Problems in enforcement activities against unlicensed facilities and operators create a great inequity for those conscientious professional individuals who have made an effort and have in fact incurred expenses in order to comply with the requirements of Minnesota statutes and rules.

Both for consumer protection and for reasons of equity and enforcement, it appears desirable that unlicensed individuals and facilities be restricted from purchasing professional chemical products. Their inability to purchase and perform services using these products would, it is believed, reduce the incentive for any individual to perform services outside of the proper licensed

arena.

Unfortunately, after careful review, it is the advice of legal counsel to the Office of Consumer Services that the present provisions of Minnesota Statutes Chapter 155A do not provide legal authority upon which the office can write such a rule prohibiting distribution of chemical products to unlicensed individuals or facilities. It is the belief of the office that individuals in the industry, acting either on their own or in a concerted group effort, will attempt to have statutory authority given to the Office of Consumer Services in this area during the next legislative session. Such a position would be supported by the Minnesota Cosmetology Advisory Council and by the office. However, until such time as statutory authority is established, the office cannot write rules governing the distribution of these products.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIRECTOR OF THE OFFICE OF CONSUMER SERVICES

In the Matter of the Proposed
Amendments to the Rules Proposed
for Adoption Relating to Minnesota
Statutes Chapter 155A (Cosmetology)

STATEMENT OF NEED
AND REASONABLENESS

Director of the Office of Consumer Services, Krista L. Sanda, ("Director"), presents herein her statement of the need for and the reasonableness of proposed amendments to the rules proposed for adoption relating to Minnesota Statutes Chapter 155A (1981).

The above-captioned rules are new rules and replace in its entirety the previous rules adopted by the former Board of Cosmetology examiners. On October 21, 1981, the Office caused to be published at 6 State Register 1172 a notice of intent to solicit outside opinions concerning changes in the cosmetology rules.

The general statutory authority to promulgate rules under Minnesota Statutes Chapter 155A is set forth at Minnesota Statutes Section 155A.05.

The Director has determined that the proposed adoption of these rules is reasonably necessary to carry out and to make effective the provisions and purposes of Minnesota Statutes Chapter 155A (1981).

On October 25, 1982 proposed rules were published at 7 State Register 625. The proposed amendments addressed herein are technical or housekeeping amendments to those proposed rules as published.

The need for and reasonableness of each of the proposed amendments to the proposed rules and the rationale and process through which they were developed is as follows:

Amendment 1: 4 MCAR § 10.103B. This amendment corrects an erroneous reference in the rule outlining licensing requirements

for reciprocity applicants. In the proposed rules as published in the State Register, Paragraph B erroneously includes a requirement (4 MCAR § 10.102 A.4) that the reciprocity applicant must take the written examination covering cosmetology skills and knowledge. The intent was to allow reciprocity applicants, who have demonstrated their skill and knowledge through licensing in another jurisdiction, to become licensed in Minnesota on the basis of an examination limited to knowledge of applicable Minnesota statutes and rules pertinent to the license which they are seeking.

Amendment 2: 4 MCAR § 10.107 5. Comment received by the Office of Consumer Services indicates that the language in the rule as published is not sufficiently clear and specific as to what is or is not allowed in connection with the demonstrated application of a beauty coloring product by a retail employee. The proposed amendment makes the prohibition on direct skin contact and the affirmative requirement that a brush or applicator be used more explicitly clear.

Amendments 3-4: 4 MCAR § 10.111 D. and 4 MCAR § 10.120 D. Comments received by the Office of Consumer Services indicate confusion on the part of licensees as to the possibility that all salons must have workers' compensation insurance coverage. Addition of the language "if applicable" should eliminate this erroneous interpretation.

Amendment 5: 4 MCAR 10.126 B. The proposed rule as published linked the level of liability insurance coverage for schools to the number of teaching stations in the school clinic. The Office of Consumer Services has received comment that this is not the basis upon which liability insurance coverage is sold for schools and that the proposed language might have been interpreted to waive a need for liability coverage on any portion of the school other than the clinic floor.

Amendment 6: 4 MCAR § 10.143 A. 4 a. In formulating the language of this "grandfather" section relating to salon managers, the drafters erroneously omitted reference to the requirement of 4 MCAR § 10.105 B. 1, that the applicant for renewal as a manager must have 1800 hours of experience in the last three years or a 40 hour refresher course.

Amendment 7: 4 MCAR § 10.143 B. The proposed rule with the proposed amendment reflects the current practice of the Office of Consumer Services in conformity with a temporary rule previously adopted. In drafting the examinations clause for foreign language students, the condition that they demonstrate knowledge of English as applicable to use of professional cosmetology products was erroneously omitted. The amendment conforms to the temporary rule and to the intent of the proposed rule, 4 MCAR § 10.108 E.

Amendment 8: Effective Dates. The effective date for rule 4 MCAR § 10.124 dealing with inspections was erroneously listed as July 1, 1983 rather than April 1, 1983, as intended.

PROPOSED AMENDMENTS TO THE PROPOSED RULES
OFFICE OF CONSUMER SERVICES

Amendment 1

4 MCAR § 10.103 B. Compliance with state rules. The applicant shall demonstrate compliance with 4 MCAR § 10.102 A. ~~2, 3, 5, 6~~ 2, 3, 5, 6 and shall successfully complete a written examination demonstrating knowledge of Minnesota statutes and rules pertinent to the practice of cosmetology at the level of the license sought.

Amendment 2

4 MCAR § 10.107 5. ~~no direct skin contact application of the product is performed on a purchaser or potential purchaser except by the purchaser.~~ the retail employee does not have direct skin contact with the purchaser or potential purchaser. The employee shall touch the customer only with a brush or other applicator.

Amendment 3

4 MCAR § 10.111 D. Evidence of worker's compensation insurance. If applicable, ~~the~~ applicant shall provide evidence of his or her compliance with Minnesota Statutes, section 176.182.

Amendment 4

4 MCAR § 10.120 D. Worker's compensation insurance coverage. If applicable, ~~the~~ licensee shall provide evidence of continued compliance with Minnesota Statutes, section 176.182.

Amendment 5

4 MCAR § 10.126 B. Evidence of liability insurance coverage. The applicant shall provide evidence of the school's coverage by professional liability insurance, of at least \$25,000 per incident and an accumulation of ~~\$75,000~~ 150,000 for each premium year. ~~for each teaching station in the clinical operation of the school.~~

Amendment 6

4 MCAR § 10.143 A. 4 a. Current salon manager licenses shall remain valid until expiration. Licenses expiring before July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A. and C.-F. Licenses expiring on or after July 1, 1984 shall be renewed upon compliance with the requirements of 4 MCAR § 10.105 A., B.1, B.3., and C.-F.

Amendment 7

4 MCAR § 10.143 B. Interpreter for certain students. Foreign language students whose enrollment registration is on file in the office on the effective date of these rules may use an interpreter at the examinations, provided that they have first demonstrated to the director that they have a sufficient grasp of the English language to read, comprehend and follow chemical product labels and instructions.

Amendment 8

Effective dates. Rules 4 MCAR §§ 10.106, 10.107, 10.110; 10.111; 10.112; 10.113; 10.114; 10.115; 10.116; 10.117; 10.118; 10.119; 10.120; 10.121; 10.124; 10.125; 10.126; 10.127; 10.128; 10.129; 10.130; 10.131; 10.132; 10.134; 10.135; 10.136; 10.137; 10.138; and 10.142, are effective April 1, 1983

Rules 4 MCAR §§ 10.102; 10.103; 10.104; 10.105; 10.108; A.-C.; 10.109; 10.122; 10.123; ~~10.124;~~ and 10.133, are effective July 1, 1983.