

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Board of Cosmetologist
Examiner's Proposed Permanent Rules
Governing Advanced Practice Estheticians

**CHIEF ADMINISTRATIVE LAW
JUDGE'S ORDER ON REVIEW
OF RULES UNDER MINN. STAT.
§ 14.16, SUBD. 1 AND MINN. R.
1400.2240, SUBP. 5.**

This matter came on for review by the Chief Administrative Law Judge pursuant to Minn. Stat. § 14.16, subd. 1 (2018) and Minn. R. 1400.2240, subp. 5 (2017).

Procedural History

In a report dated June 28, 2018, Administrative Law Judge Eric L. Lipman approved a set of amendments proposed by the Minnesota Board of Cosmetologist Examiners (Board) to Minn. R. Parts 2105 and 2110. These amendments included revisions to the scopes of practice for Advanced Practice Estheticians, Salon Operators and Salon Managers. The changes were discussed at a public hearing on May 7, 2018.

Importantly, the notice for the hearing included the following statements:

The proposed new rules, rules amendments, and repeals of rules are about the licensure, practice, grandfathering, curriculum, application requirements, and . . . *scope of practice for all practitioners* . . . *The proposed changes will affect all licensees* . . . and instructors, salons offering advanced practice esthetic services, schools, and individuals advertising regulated services.¹

On August 9, 2018, the Board requested that the Chief Administrative Law Judge review additional modifications to the proposed rules other than those approved by Judge Lipman. These modifications fall into two categories: (1) minor edits and corrections to the proposed rules approved by Judge Lipman; and (2) incorporation of rule amendments relating to eyelash technician practice that were reviewed and approved in a separate rulemaking proceeding (the R-4479 proceeding²) and which also modify the text of Minn. R. Parts 2105 and 2110.³

¹ See 42 State Register 1100 (March 19, 2018) (emphasis added).

² Eleven comments from the public were received during the course of the R-4479 rulemaking. See REQUEST FOR LEGAL REVIEW, Attachment E, Revisor R-4479 (October 20, 2017).

³ See ORDER ADOPTING RULES, *In the Matter of the Expedited Rules Relating to Eyelash Extension Licenses*, OAH Docket No. 82-9013-34525 (November 3, 2017) (Revisor R-4479).

In an effort to collect all of the proposed modifications to Parts 2105 and 2110 into a single writing, the Board seeks review of its proposal to update Revisor Draft R-4342 with the regulatory changes that it made during the earlier R-4479 proceeding. Mindful that it may not make any change to the R-4342 draft that would render it “substantially different” from the proposals that were described to the public on March 19, 2018,⁴ the Board seeks a review of this consolidated draft.

Based upon a review of the Board’s August 9, 2018 submissions and the complete rulemaking docket,

IT IS HEREBY DETERMINED THAT:

1. The modifications to the proposed rules from the R-4342 proceeding reflect minor stylistic edits and corrections that are a logical outgrowth of the rulemaking matter noticed on March 19, 2018.

2. The rule changes approved in the earlier R-4479 proceeding are within the scope of the matter announced in the March 19, 2018 notice of hearing for the R-4342 proceeding, and are in character with the issues raised in that notice.

3. Addition of the rule changes from the R-4479 proceeding are a logical outgrowth of the contents of the March 19, 2018 notice of hearing, and the comments submitted in response to that notice.

4. The March 19, 2018 notice of hearing provided fair warning that the outcome of that proceeding could be changes to the practice of eyelash technicians, including the changes that were approved in the R-4479 proceeding. The Chief Administrative Law Judge finds that the final proposed rules are not substantially different from those published in the *State Register* on March 19, 2018, and proposed at the public hearing.

Based upon these determinations, the Chief Administrative Law Judge issues the following:

ORDER

The proposed rules, Revisor Draft R-4342, dated August 8, 2018, are approved as to legality.

Dated: August 20, 2018



TAMMY L. PUST
Chief Administrative Law Judge

⁴ See Minn. Stat. § 14.16, subd. 2 (2018).