

PROPOSED RULEMAKING

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

Application Fees

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) by revising certain application fees to read as set forth in Annex A.

A. Effective Date

The proposed amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

B. Statutory Authority

The proposed amendment is authorized under section 16 of the Beauty Culture Law (law) (63 P. S. § 522).

C. Background and Purpose

The law requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs (Bureau), the fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{array}{r} \text{number of minutes to perform the function} \\ \times \\ \text{pay rate for the classification of personnel performing the} \\ \text{function} \\ + \\ \text{a proportionate share of administrative overhead} \end{array}$$

Administrative Overhead

During reviews of other Bureau proposed fee regulations, the Independent Regulatory Review Commission (IRRC) requested that the Bureau and the boards: (1) itemize the overhead cost to be recouped by the fees; and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau's method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the boards' enabling statutes.

In computing overhead charges, the boards and the Bureau include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific board. Once determined, the Bureau's total administrative charge is apportioned to

each board based upon that board's share of the total active licensee population. In turn, the board's administrative charge is divided by the number of active licensees to calculate a "per application" charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the Senate and House Standing Committees and IRRC as reasonable and consistent with the legislative intent of statutory provisions which require the Board to establish fees which meet or exceed expenses.

IRRC suggested that within each board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay one-half as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology the Bureau and the boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead charges obtained by applying IRRC suggested time factor versus the current method.

This review of Board operations showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each Board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the boards note that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these five biennial cycles, the experience of both the boards and the Bureau has been that established and verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors. This method has provided a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the boards over an extended period. Similarly, accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for "rounding up" the actual costs to establish a fee.

This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

For these reasons, the boards have not made changes in the method by which it allocates administrative expenditures and the resulting fees will remain as proposed.

The analysis, with regard to the Board, determined that the fees for eight services do not accurately reflect the actual cost of providing those services: licensure of cosmetologist, manicurist or cosmetician; licensure of cosmetology, manicurist or cosmetician shop; licensure of cosmetology school; licensure by reciprocity; registration of cosmetology apprentice; approval of cosmetology school supervisor; change in cosmetology shop (inspection required); and reinspection of cosmetology shop. No fee is in place for verification of license, registration, permit or approval; certification of student or apprentice training; or reinspection of cosmetology school.

In this proposal, fees for the services identified above would be adjusted to allocate costs to those who use the service or make application. The Board would continue to apportion enforcement and operating costs to the general licensing population by means of its license renewal fee through the biennial reconciliation of revenue and expenditures.

The fee for certification of licensure would be deleted as it was, in actuality, a verification rather than a certification and is covered under the new "verification of license, registration permit or approval" fee.

D. Description of Services

Professional licensing boards other than the Board have also been proposing revisions to nonrenewal fees. Review of the proposed new fee regulations by the legislative committees indicated that certain explanations of the services for which fees are charged would be helpful for an understanding of the need to set appropriate fees.

Certification of Student or Apprentice Training Hours

This service is necessary if a student is changing schools prior to completion of a program or to document training hours completed in this Commonwealth for another state board. The new fee will to recoup the cost of time required to research quarterly reports which are made by all schools for their students. The Board employs a manual reporting system with records maintained on microfilm and on paper. Because reporting is done quarterly, it is necessary to research numerous reports to ensure that all hours credited by schools are reported. See section 6 of the law (63 P. S. § 512(a)).

Certification and Verification Fees

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally, the state of original licensure is the only source of the score of the licensee, as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction at the time of original licensure. For this reason, these

states require that the Board and other State boards certify the examination score the applicant achieved on the licensure examination.

The difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. States request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau has been able to create two documents from its records that will meet all of the needs of the requesting state. The licensee, when the licensee applies to the other state, receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee.

In the case of a verification, the staff produces the requested documentation by a letter, usually computer-generated, which contains the license number, date of original issuance and current expiration date, and status of the license. The letters are printed for the Bureau's central computer records and sent to the Board staff responsible for handling the licensee's application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes.

The Bureau uses the term "certification fee" to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries or for employment or training in another state. A certification document contains information specific to the individual requestor. It may include dates or locations where examinations were taken, or scores achieved or hours and location of training. The information is entered onto a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The Board staff then seals and issues this document.

E. Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendment the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

F. Fiscal Impact and Paperwork Requirements

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The proposed amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

G. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 21, 2000, the Board submitted a copy of this proposed rulemaking to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee.

In addition to submitting the final-form regulation, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Board, the General Assembly and the Governor of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Sara Sulpizio, Administrative Assistant, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-458 (Application Fees), when submitting comments.

CAROL M. THOMPSON,
Chairperson

Fiscal Note: 16A-458. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY FEES

§ 7.2. Fees.

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(c) Other fees charged by the Board:

Licensure of cosmetologist, manicurist or cosmetician.....	\$[5] 10
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Licensure of cosmetology shop, manicurist shop or cosmetician shop.....	\$[35] 55
Licensure of cosmetology school.....	\$[95] 160
Licensure by reciprocity.....	\$[25] 20
Registration of cosmetology apprentice.....	\$[35] 70
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Approval of cosmetology school supervisor..	\$[10] 20
Change in cosmetology, cosmetician or manicurist shop (inspection required).....	\$[35] 55
Change in cosmetology, cosmetician or manicurist shop (no inspection required).....	\$15
Reinspection of cosmetology, cosmetician or manicurist shop or cosmetology school.....	\$[15] 40
[Certification of licensure.....	\$10]
Certification of student or apprentice training hours.....	\$30
Verification of license, registration, permit or approval.....	\$15

[Pa.B. Doc. No. 00-1128. Filed for public inspection June 30, 2000, 9:00 a.m.]