NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 29, 1994 **Draft 11/23/09**
TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 1 – DEFINITIONS

ADEQUATE refers to both quantity, quality and equivalent to sufficient.

ACCEPTABLE shall mean fulfilling the needs and requirements.

APPROVED shall mean accepted by the Board.

ASSISTANT INSTRUCTOR shall mean a teacher of the practice of barbering licensed as an assistant instructor, under the supervision of a registered barber instructor, as required by the Barber Act.

BARBER shall mean any person duly licensed as required by the Barber Act, who engages in the practice of any or all acts of barbering.

BARBER ACT shall mean §§ Neb. Rev. Stat. 71-201 through 71-248.

BARBER SHOP shall mean an establishment or place of business properly licensed as required by the Barber Act, where one or more persons properly licensed is engaged in the practice of barbering~~.~~, but shall not include barber schools or colleges.

BARBER SCHOOL OR COLLEGE shall mean an establishment properly licensed and operated for the teaching and training of all practices of barbering to students.

BOARD shall mean the Board of Barber Examiners.

BOOTH shall mean that portion of a barber shop rented or proposed to be rented to a person who is or will be practicing barbering under a booth rental permit. A booth may be either a station in an open shop area or an enclosed suite.

BOOTH RENTAL PERMIT shall mean authorization issued by the Board to engage in the practice of barbering as an independent contractor or self-employed person in a space rented on the premises of a licensed barber shop.

BUSINESS HOURS shall mean the office hours of the Board, Monday through Friday, from 8:00 to 5:00, exclusive of state holidays, for purposes of conducting business with the Board or meeting time requirements set by these regulations. For purposes of inspection, business hours include office hours of the Board and those hours stated as shop or booth hours on the application by the licensee or permittee.

CHANGE OF LOCATION shall mean relocation into new surroundings not currently registered with the Board office as a barber shop, booth, or school.

CLEAN shall mean the absence of soil or dirt or the removal of soil or dirt by washing, sweeping, clearing away or any other method.

COMMON AREAS shall mean ~~an area~~ those portions of a shop premises which all barbers performing services in the shop, or operating under a booth rental permit, use, ~~including~~ which may include but are not limited to: reception area, dispensing area, sinks, shampoo bowls, hair dryers and employee lounges.

DISINFECT shall mean to use a process to destroy harmful bacteria.

EFFECTIVE DATE shall mean the date a rule or disciplinary decision goes into effect.

ENCLOSURE shall mean a cabinet, drawer or container.

HAIR INDUSTRY means individuals licensed as a barber or barber instructor, or in states issuing a combination form of licensure, individuals licensed as a barber-cosmetologist or a barber-cosmetology instructor.

INCOMPETENCE shall mean lack of knowledge or skills in discharging professional obligations.

INDEPENDENT CONTRACTOR shall mean a self-employed person who performs work for another but is subject to that person's control only as to the result of the work, and not as to the methods or means used.

INSTRUCTOR shall mean a teacher of the practice of barbering as provided in the Barber Act.

LICENSE shall mean a certificate of registration issued by the Board.

MANAGER shall mean a registered barber who oversees, directs or is in charge of the activities or the flow of business in a barber shop and the persons working or employed therein.

NEW BARBER SHOP shall mean an application has been made to the Board office requesting an inspection and approval of the premises for licensing.

PERMIT shall mean a booth rental permit issued by the Board.

PRACTICAL WORK AREA shall mean the act of performing barbering services.

PREMISES shall mean the entire area of the shop or school which the Board has licensed and designated as a shop or school.

PROPERLY shall mean requisite standard of competence and validity.

REGISTERED BARBER shall mean a person who has completed the requirements to receive a certificate as a barber and to whom a certificate has been issued.

RESTORATION FEE shall mean the annual fee assessment for an inactive license or registration.

REVOKED shall mean the license is cancelled, voided, annulled, rescinded. The right to practice barbering is ended.

RULES AND REGULATIONS shall mean any rules authorized to be made by the Board which have been promulgated and filed, as provided in Chapter 84, Article 9, of the Nebraska Revised Statutes.

SANITARY shall mean free from agents of infection, disease or ~~infection~~ infestation by insects and vermin and free of soil, dust or foreign materials.

SANITIZED shall mean rendered free of soil, dust, foreign materials and agents of disease or ~~infection~~ infestation by insects or vermin through the use of effective cleaning and disinfecting processes.

SANITIZER shall mean a container holding a sanitizing agent which is large and deep enough to submerge tools or implements, or portions thereof, which are to be disinfected.

SECRETARY TO THE BOARD shall mean the Director appointed by the Board who shall keep a record of the proceedings of the Board.

SELF-EMPLOYED PERSON shall mean an individual who is a sole proprietor, an independent contractor, a member of a partnership, or someone who is otherwise in business for him or herself.

SOILED shall mean an article which has been used and has not been cleaned or sanitized.

STATION shall include, but not be limited to: barber chair, back bar with cabinet storage, linen enclosure, mirror and container for the disposal of soiled towels.

STUDENT shall mean a person attending an approved, licensed barber school and duly registered with the Board as a student engaged in the learning and acquiring of any and all of the practices of barbering and, while learning, performs and assists in any and all of the practices of barbering in a school registered and approved by the Board.

SUSPENSION shall mean the licensee is prohibited from practicing for a specific period of time.

THEORY shall mean the written knowledge applicable to approved principles of barber science and practices, including demonstrations and lecturing.

TRANSFER OR CHANGE OF OWNERSHIP shall mean the conveyance of title or property from one person to another.

VERIFICATION OF INCORPORATION shall consist of articles of incorporation or good standing certificate or annual tax report.

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TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 2 - LICENSES AND PERMITS OF INDIVIDUALS

001 ~~LICENSE~~ FORM: Every license or permit issued shall be in the form of a certificate which shall have thereon:

001.01 The name of the applicant.
001.02 The class of license or permit.
001.03 The date on which issued.
001.04 The official name of the Board together with its seal.
001.05 The signatures of the members of the Board and the Director.

002 CHANGE OF ADDRESS AND/OR NAME:

002.01 Any ~~certificate holder~~ licensed barber who changes his or her name and/or address must notify the Board office within thirty (30) days of the change.

002.02 Any holder of a booth rental permit shall provide the Board with ten days' written notice before changing his or her work address.

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003 LATE FEE - BARBER, INSTRUCTOR, ASSISTANT INSTRUCTOR, BARBER SHOP, BARBER SCHOOL: A licensee or booth rental permit holder eligible for renewal of an expired license or permit, pursuant to the Barber Act, may renew such license or permit by payment of the renewal fee and a late fee on or before the 60th day after its expiration date.

004 INACTIVE FEE - BARBER, INSTRUCTOR: A licensee eligible for restoration of an inactive license, pursuant to the Barber Act, may restore such license within five (5) years of its expiration date by payment of the renewal fee and a restoration fee.

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TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 3 - LICENSING AND ISSUANCE OF PERMITS ~~OF NEW BARBER SHOPS OR CHANGE OF LOCATION~~

001 LICENSING OF NEW BARBER SHOPS OR CHANGE OF LOCATION

001.01 Application. Before any person or persons may open a new barber shop or change the location of an existing barber shop, an application shall be made requesting an inspection and approval of the premises at least fifteen days in advance of the opening of that shop.

~~002 CONTENTS OF APPLICATION~~

001.02 Contents of Application. Each application shall be made on a form provided by the Board and submitted with the fee set pursuant to the Barber Act, and shall provide the following:

001.02A **~~002.01~~** Barber shop name.

001.02B **~~002.02~~** Barber shop address.

001.02C **~~002.03~~** Barber shop owner.

001.02D **~~002.04~~** Owner's notarized signature and Social Security number.

001.02E **~~002.05~~** Verification of incorporation if applicable.

001.02F Booth Rental Information.

001.02F1 Rental Agreement. If the applicant proposes to lease any portion of the shop to any independent contractor or self-employed person under a booth rental permit, applicant shall have available for inspection the proposed rental agreement, which shall:

001.02F1a contain notice that under Nebraska law no person shall lease space on the premises of the barber shop to engage in the practice of barbering as an independent contractor or self-employed person without obtaining and maintaining a booth permit as provided under the laws regulating practice of barbering.

001.02F1b identify the respective responsibilities of the shop owner and booth rental permit holder with regard to the booth and any common areas or other shop premises available to the booth rental permit holder consistent with the laws and rules and regulations governing requirements for barber

shops; and

001.02F1c require that a key to a rental booth that is an enclosed suite be readily available to inspectors at any time during business hours as defined in these regulations, whether or not the permit holder is present or the booth is open for operation during such hours.

001.02F2 Status of Barbers. Applicant shall identify all barbers who will provide services in the shop as employees and those who will operate in the shop under a booth rental permit. Applicant shall provide proof of employment for all barber employees and, upon request, shall make available for inspection all rental agreements for those who will operate under booth permits.

001.02G ~~**002.06**~~ **Description of the Premises**. The application shall describe the physical characteristics of the shop, including the information set forth below. If any portion of the shop is to be leased as a booth, the applicant shall identify those portions of the shop to be leased and shall provide the physical characteristics and other information required with respect to each booth.

001.02G1 ~~**002.06**~~ Room size.
001.02G2 ~~**002.07**~~ Type of floor.
001.02G3 ~~**002.08**~~ Type of wall
001.02G4 ~~**002.09**~~ Type of ceiling.
001.02G5 ~~**002.10**~~ Type of lighting.
001.02G6 ~~**002.11**~~ Methods of ventilation.
001.02G7 ~~**002.12**~~ ~~Toilet~~ Restroom facilities.
001.02G8 ~~**002.13**~~ Other rooms available and their usages, if applicable.
001.02G9 ~~**002.14**~~ Water supplies.
001.02G10 ~~**002.15**~~ Waste disposal.
001.02G11 ~~**002.16**~~ Hot water capacity/recovery rate.
001.02G12 ~~**002.17**~~ Number of barber chairs.
001.02G13 ~~**002.18**~~ Number of shampoo bowls.
001.02G14 ~~**002.19**~~ Number and description of immersion sterilizers.
001.02G15 ~~**002.20**~~ Trade names of germicidal solutions.
001.02G16 ~~**002.21**~~ Proposed opening date.
001.02G17 ~~**002.22**~~ Any other information the Board deems necessary.

002 BOOTH RENTAL PERMITS

002.01 Application Required. No person shall lease space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person

without obtaining a booth rental permit.

002.02 Contents of Application. An application for a booth rental permit shall be made on a form provided by the Board and submitted with the fee set pursuant to 71-219. The application shall include, but not be limited to:

002.02A Applicant's full name.
002.02B Barber license number.
002.02C Telephone, including work and any cell number.
002.02D Work address, including suite or booth number.
002.02E Whether the applicant is an independent contractor or a self-employed person.
002.02F Shop name for the booth, if different from that of the shop owner.
002.02G Days and hours of operation.
002.02H A description of where and/or with whom a key to the booth is to be found and made readily available to the inspector.
002.02I Such other information as the Board may require.

003 LIMITATION ON LOCATION AND USE OF ROOMS USED AS A BARBER SHOP.

003.01 A barber shop in a place where food is prepared and served must be separated by a partition, ceiling height, of lath and plaster, glass or other solid material. If a door is cut through, it shall be hung with spring hinges or other self-closing appliances. If confectionery is sold in a barber shop, it must be in sealed packages.

003.02 No room or rooms licensed as a barber shop shall be used as a sleeping room.

003.03 A barber shop shall be a fixed, permanent structure or a part of one.

003.04 In ~~B~~barber shop/cosmetology salons that occupy the same location, the barber practical work area shall be visually distinct from the other and shall be clearly identified as such to the public by a sign.

003.05 A barber shop located in any private dwelling shall permit patrons to enter the shop directly from a public thoroughfare without passing through any other portion of the building. The barber shop area shall be separated from the living area by walls extending from floor to ceiling, except that there may be one connecting door to the private dwelling which shall be kept closed/locked while the

shop is in actual operation, and shall not be for use by the general public. Such door into the private dwelling shall only be permitted where a toilet facility exists in that portion of the private dwelling

licensed as a barber shop. Both the residence and the barber shop may be serviced by the same electric, gas, water and sewer facilities.

003.06 An application for a barber shop in a private dwelling in any village or city must be accompanied by a document from that government body stating that the new owner has complied with all laws, regulations and codes for that particular location.

004 FIXTURES REQUIRED (MINIMUM)

004.01 In general. The minimum fixtures required for every barber shop are as follows:

004.01A Barber pole or barber sign.

004.01B ~~**004.02**~~ Barber chair.

004.01C ~~**004.03**~~ Back bar.

004.01D ~~**004.04**~~ One shampoo bowl for every five stations.

004.01E ~~**004.05**~~ Mirror.

004.01F ~~**004.06**~~ Enclosure for clean towels and implements.

004.01G ~~**004.07**~~ Containers for disposal of soiled towels and other waste materials.

004.01H ~~**004.08**~~ Hot water system.

004.01I ~~**004.09**~~ ~~Toilet~~ Restroom facilities.

004.01J ~~**004.10**~~ Immersion sterilizer.

004.01K ~~**004.11**~~ Approved germicidal solution.

004.02 Rental booths

004.02A Enclosed Suites. Each booth rented by a barber shop that is an enclosed suite shall contain the minimum fixtures of 004.01, except that:

004.02A1 One barber pole or barber sign is sufficient for the shop as a whole.

004.02A2 Every suite shall contain at least one shampoo bowl.

004.02A3 Separate toilet facilities for each suite are not required, provided that access is available to facilities as provided by section 005.07 of these regulations.

004.02B Booths in Open Shops. When rental booths are not enclosed suites, the minimum fixtures described in 004.01 shall be available without obstruction.

005 PROPER QUARTERS

005.01 All fixtures and equipment, including those in the waiting area, shall be kept in a clean, orderly and sanitary condition.
005.02 Sanitized tools and implements shall be stored separately from all others.
005.03 Storage drawers for sanitized tools and implements shall be clean, free of hair and used only for the sanitized tools and implements.
005.04 All soiled tools and implements shall be deposited in a separate receptacle. Nail care and waxing implements that come into direct contact with a client and are not capable of being sanitized in accordance with Rule 8 shall be disposed of in a waste receptacle immediately after use. i.e., emery boards, spatulas, wax and waxing strips.
005.05 Shampoo bowls located in common areas shall have access without obstruction.
005.06 Each barber chair must be in good condition, mechanically sound and with acceptable covering of a material capable of being sanitized and free of tears. Barber chairs shall be placed at least four and one-half feet apart, center to center, and each chair must occupy not less than thirty-five square feet of floor space.
005.07 A barber shop shall have toilet facilities which shall be located on shop premises, except for a barber shop located in a commercial building in which public toilet facilities are available and reasonably accessible directly from the public thoroughfare. All toilet facilities located on the shop premises shall be kept clean, sanitary and in working order at all times. Toilet facilities shall not be required in barber shops holding a valid barber shop license March 25, 1989.
005.08 Floor surfaces in the work area of a shop shall be of washable, non-absorbent material and shall be kept clean and in good condition. Plastic floor mats or runners are required in shops with carpeted floor covering in the work area, holding a valid barber shop license prior to the effective date of this rule. Wooden floors may be acceptable if they have a water-proof finish.
005.09 Tanning areas, including tanning devices and equipment located on the licensed premises, shall be maintained in a clean and sanitary condition and operated in accordance with the manufacturer's instructions. Owners' request the manufacturer include in the purchasing agreement that their equipment, materials and advertising are in compliance with FDA laws and regulations. Tanning equipment shall be sanitized after each use, a sanitary towel provided to each client, a receptacle available for the disposal of all soiled towels and the client furnished with protective eye wear.

006 INSPECTION

006.01 An inspection of the new barber shop shall be conducted to determine compliance with

sanitary requirements. The inspector shall file a report of his inspection. No barber shop license shall be issued until the shop has been inspected and deemed satisfactory.

006.02 Every barber shop licensed by the Board is subject to entry for inspection at least once during each licensing period, at any time during business hours as defined in these regulations, to be eligible for renewal of certification or registration.

006.02A **Responsibilities of Shop and Booth Rental Permit Holders**. For purposes of inspection and compliance with laws and regulations, when a barber shop leases booths for practice of barbering by independent contractors or self-employed persons:

006.02A1 The shop owner shall be responsible for compliance with all laws and regulations governing barber shops, except that the holder of a booth rental permit shall meet all sanitary and infection control requirements with respect to the premises covered under the booth permit and for his or her use of the premises consistent with the laws and regulations governing barber shops;

006.02A2 It shall be the responsibility of both the shop owner and permit holder to insure that a key to the booth is readily available to inspectors at any time during business hours as defined in these regulations, whether or not the permit holder is present or the booth is open for operation during such hours.

007 CLOSING A SHOP

007.01 Shop owners closing their shop shall inform the Board office within thirty (30) days of closure. If the same owner re-opens the shop while the license is still current, the Board office must be notified prior to the opening.

TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 4 - CHANGE OF OWNERSHIP, BARBER SHOP

001 APPLICATION REQUIRED

001.01 Each license issued shall be in effect solely for the owner or owners named therein. Application for a transfer or change of ownership of a barber shop license shall be filed with the Board within thirty (30) days of completion of the business transaction.

001.02 A fee shall be collected in the amount set by the Board, but no fee shall be collected if the ownership results merely from a current license holder incorporating his or her business. Verification of incorporation shall be submitted with the application if applicable.

002 CONTENTS OF APPLICATION

002.01 Name of applicant, i.e. the new owner or assignee.

002.02 Name of current owner.

002.03 Registration number and name of new managing barber if different than 002.01.

002.04 Name and number of shop as licensed.

002.05 New name of shop.

002.06 Notarized signature and Social Security number of new owner.

002.07 Notarized signature of current owner releasing the shop license number for transfer, or other legal documents verifying the transfer.

002.08 Identification of all barbers who will provide services in the shop as employees and those who will operate in the shop under a booth rental permit. Applicant shall provide proof of employment for all employees and shall make all rental agreements for those who will operate under booth permits available for inspection upon request.

002.09 ~~**002.08**~~ Any other information the Board deems necessary.

003 COMPLIANCE

003.01 A barber shop must be under the supervision and management of a registered barber. If all or some of the barbers practicing in any barber shop are leasing space under a booth rental permit, the shop owner or a designated registered barber, if different from the shop owner, shall manage the

overall shop premises.

003.02 If a shop changes its designated barber manager, it must notify the Board office within thirty days, giving the name and certificate number of the new designated barber manager.

003.03 If a shop changes its name, the licensee must notify the Board office within thirty (30) days.

CHAPTER 6 - INSPECTION PROCEDURES

001 All inspectors shall identify themselves to the personnel of the establishment to be inspected and shall be entitled to inspect the premises after such identification with no advance notice. Shop owners with irregular hours must contact the Board office and negotiate for inspection if, after one year, the Board has been unable to perform an inspection because the shop was closed.

001.01 Booths. Shops which rent booths that are enclosed suites shall either designate a person or persons in the establishment to whom inspectors may identify themselves during business hours to obtain keys, or shall supply the Board with a key to a lockbox on the premises containing keys to all rental booth suites.

002 ITEMS COVERED BY INSPECTION

002.01 The inspector shall examine the premises to ascertain whether there is compliance with the sanitation rules. Such sanitary requirements and inspections shall include all activities, in addition to barbering as defined in section 71-202, taking place on the licensed premises.

002.02 The inspector shall ascertain that all licenses, permits and necessary sanitation rules are posted conspicuously in full view of the general public. For good cause, a barber may request that the portion of his or her license that lists his or her address be omitted. The posting of a reproduction of any certificate or license is prohibited unless the Board has issued the reproduction/duplicate.

003 REPORTS

003.01 The inspector shall file a report in writing, on a form to be provided by the Board, setting out the results of the inspection and noting any comments he or she has, or violations which were issued.

TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 9 - EXAMINATIONS

001 APPLICATION REQUIRED FOR EXAMINATION: Any person desiring to take the examination for a license to practice barbering shall make application to the Board at least fifteen (15) days before the examination, on a form provided by the Board, and sworn to by the applicant. Such application shall be accompanied by the examination fee, license issuance fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination.

002 NOTICE OF EXAMINATION: The Board shall affix the dates of barber examinations to be given for a year in advance, and such list shall be obtainable at the Board office.

003 BOARD TO FIX TIME FOR EXAMINATION: The regular sessions for the purpose of giving examinations shall be held at such times and places as the Board may fix, such examinations shall be held not less than four (4) times per year, and any other times the Board deems necessary.

004 FORM OF APPLICATION: Application forms for examination to become registered as a barber, barber instructor or for registration as an assistant instructor shall show the following information where applicable:

004.01 Name.
004.02 Residence address.
004.03 Birth date.
004.04 Social Security number.
004.05 Photocopy of high school diploma or certification from high school, or certification of educational equivalency (GED).

004.06 Photocopy of barber school diploma.
004.07 Certification of student hour credit.
004.08 Certification of licensure in other state or country.
004.09 Certification of licensure as a Nebraska cosmetologist.
004.10 Two signed original portrait type photographs of the applicant of sufficient clarity and of

at least passport size, but not to exceed three by five inches.

004.11 Number of years as a licensed barber.

004.12 Certification of college or university record.

004.13 Any other information the Board deems necessary.

005 LIST OF ELIGIBLE APPLICANTS TO BE COMPILED PRIOR TO EACH EXAMINATION: The Board shall prepare a list of applicants who are eligible to take the examination and determine such eligibility by review of credentials.

005.01 An examination authorization/instructional form will be mailed to the address submitted on the application form notifying the applicant of the location, date and time to appear for the examination.

005.02 The applicant shall present to the examiner, the examination authorization/instructional form and an original photograph, or other photo identification, with his or her signature.

006 WRITTEN EXAMINATIONS: The following is a list of content areas to be covered, but not exclusively to:

006.01 Scientific Concepts.

006.01A Sanitation, safety precautions and first aid.

006.01B Hair, skin, scalp and nails.

006.01C Conditions and disorders.

006.02 Physical Services.

006.02A Shampoo and rinse.

006.02B Scalp and hair care.

006.02C Facials.

006.02D Client protection.

006.03 Chemical Services.

006.03A Hair coloring and lightening.

006.03B Chemical waving.

006.03C Chemical hair relaxing.

006.03D Safety precautions/measures.

006.04 Hair Designing.

006.04A Hair shaping.

006.04B Thermal techniques and braiding.

006.04C Shaving and styling beards and mustaches.

006.05 Laws relating to the Barber Act.

007 PRACTICAL EXAMINATION

007.01 The practical examination shall be conducted by at least two (2) of the Board members or their duly appointed agent, the Director. The Board shall inspect all models and shall have the right to reject any model not acceptable in fulfilling the needs and requirements of the examinees.

007.02 The practical examination shall consist of any number of the following procedures:

007.02A Tapered haircut.

007.02B Long style haircut.

007.02C Shave.

007.02D Shampoo.

007.02E Massage, face and head.

007.02F Perm rod rolling.

007.02G Hair coloring.

007.02H Hair bleaching.

007.02I Hair relaxing.

007.02J Sanitation procedures.

007.02K Personal appearance and cleanliness.

007.02L Any practices as described in 71-202.

008 STANDARDS FOR PASSING: When an applicant is graded less than 75% in either the written or practical examination, he or she shall be considered to have failed the examination and must meet the statutory requirements for re-examination.

009 FAILURE OF APPLICANT FROM FOREIGN COUNTRY OR ANOTHER STATE: Registered barbers from another state or country who fail to pass the examination shall be called for the next examination for registered barbers as specified by Section 71-212~~, RRS Neb. 2003~~.

010 NONDISCLOSURE OF IDENTITY OF EXAMINEE: In all examinations in theory of barber

practices, the identity of persons taking the same shall not be disclosed on the examination paper in such way as to enable the Board to know by whom it was written. In practical examinations, the identity of the candidate shall also be concealed as far as possible and the Board shall in every way endeavor to carry out the intent of these rules.

011 BOARD TO BE PRESENT AT EXAMINATION: The Board shall be represented at all examinations by members of the Board or its appointed agent, the Director. Such representatives shall look after the details connected therewith.

012 CERTIFICATION OF GRADES AND SETTLEMENT OF DISPUTES: In cases of dispute in grading, the majority of the members of the Board shall decide. After each examination, the Board shall certify the grades of the applicants to the Board Secretary. The Board Secretary shall make the required entry in the registry record.

013 FILING AND INSPECTION OF EXAMINATION PAPERS: All written papers connected with any examination for a license shall be filed with the Board and preserved for two years as a part of its records, during which time a copy of such papers of any applicant who has failed the written portion shall be open for review by the applicant or an appropriate representative, providing not less than the Director or one member of the Board is present at the review of examination papers. No materials made available for review may be copied in any manner by the applicant or his or her representative.

014 NOTIFICATION: All applicants who have taken an examination shall be notified of the results of such examination as soon as possible.

015 FAILURE OF EXAMINATION, PETITIONS FOR RECONSIDERATION: Any applicant who is notified that he or she has failed the examination may, within fifteen days of the notification, petition the Board for a hearing on reconsideration. The Board may, at its discretion, grant such hearing and reconsider the applicant's grades.23

016 LICENSURE WITHOUT EXAMINATION

016.01 When. In addition to issuance of licenses without examination by reciprocity as provided in section 71-242, the Board may issue a license to practice barbering or registration as a barber instructor without examination to a person licensed in a state, territory, or country with which the board has not entered into a reciprocal agreement under 71-239 as provided in this section.

016.02 Requirements. An applicant for licensure without examination under this section shall file with the Board (a) an application on a form provided by the Board, (b) a copy of the license issued by the state, territory, or country in which the applicant is licensed, (c) the applicant's social security number, (d) documents demonstrating that the requirements for licensure in such state, territory, or country are substantially equivalent to the requirements for licensure under the Barber Act, and (e) the fee required pursuant to section 71-219.

016.03 Restoration. An applicant licensed as a barber in this state within the previous five years may be licensed without examination upon payment of the required renewal fees and restoration fees under 71-216.

016.04 Nebraska Licensees-Barbers. Provided all other requirements for licensure under this section are met, the Board may consider the application of an applicant formerly licensed as a barber in good standing in this state and returning to this state to have satisfied the requirement for documentation of substantially equivalent standards. The Board may license such applicant without examination provided that:

016.04A Applicant is licensed as a barber in the jurisdiction from which applicant comes; or

016.04B Applicant is licensed in the hair industry in the jurisdiction from which applicant comes, and he or she

016.04B1 has been continuously licensed and in active practice in the hair industry prior to application; and

016.04B2 has been licensed as a barber at any time preceding application.

016.05 Applicants Licensed in Other Jurisdictions. Provided all other requirements for licensure without examination are met, including documentation of substantial equivalence, an applicant not a Nebraska licensee, but licensed in the hair industry in the state or jurisdiction from which he or she comes, may be considered for licensure without examination under this section if he or she:

016.05A has been continuously licensed and in active practice in the hair industry prior to application; and

016.05B has been licensed as a barber at any time preceding application.

016.06 Nebraska Licensees-Barber Instructors.

016.06A An applicant licensed as a barber instructor in this state within the previous five years may be licensed without examination upon payment of the required renewal fees and restoration fees under 71-208.07.

016.06B Provided all other requirements for licensure under this section are met, the Board may consider the application of an applicant licensed as a barber instructor in good standing in this state and returning to this state to have satisfied the requirement for documentation of substantially equivalent standards. The Board may license such

applicant without examination provided that:

016.06B1 Applicant is licensed as a barber instructor in the jurisdiction from which applicant comes; or

016.06B2 Applicant is currently licensed as an instructor in the hair industry in the jurisdiction from which he or she comes, and he or she

016.06B2a has been continuously licensed and in active practice as an instructor in a school of instruction in the hair industry prior to application; and

016.06B2b has been licensed as a barber instructor at any time preceding application.

016.06C Instructor License in Other Jurisdiction. Provided all other requirements for licensure without examination are met, including documentation of substantial equivalence, an applicant not a Nebraska licensee, but licensed as an instructor in the hair industry in the state or jurisdiction from which he or she comes, may be considered for licensure as a barber instructor without examination under this section if he or she:

016.06C1 has been continuously licensed and in active practice as an instructor in a school of instruction in the hair industry prior to application; and

016.06C2 has been licensed as a barber instructor at any time preceding application.

016.07 Board Review. The board shall review each application and the documents submitted under this section and determine within sixty (60) days after receiving such application and documentation whether to issue a license without examination to the applicant. The Board shall notify the applicant of its decision within ten (10) days after the date of making the decision. If the Board determines not to issue a license without examination to the applicant, he or she may appeal the decision of the Board and the appeal shall be in accordance with the Administrative Procedure Act.

CHAPTER 10 – ~~HEARINGS~~ COMPLAINTS AND REINSTATEMENT

~~001 HEARINGS REQUIRED~~

~~001.01~~ ~~A hearing, when requested by an applicant, an interested party or the Board, shall be held by the Board in all cases when:~~

~~001.01A~~ ~~An application for an individual license has been denied for reasons other than failure of the examination.~~

~~001.01B~~ ~~An application for a barber shop, or barber school has been denied.~~

~~001.01C~~ ~~An individual is charged with a violation by an inspector.~~

~~001.01D~~ ~~The Board, in any other case, is considering the suspension or revocation of a license issued under the Barber Act.~~

~~002 INFORMAL DISPOSITION:~~ ~~A hearing must be held in every contested case unless disposed of by settlement, stipulation, consent order or default.~~

~~003 NOTICE~~

~~003.01~~ ~~The Board shall fix a reasonable time for the hearing and shall notify all parties interested by sending a notice to each party at least twenty (20) days in advance of the hearing.~~

~~003.02~~ ~~Such notice shall be sent to the last registered or known address of the party by certified mail, with return receipt requested.~~

~~003.03~~ ~~Such notice shall state the time, date and issues involved.~~

~~003.04~~ ~~The Board shall give further notice by publication.~~

~~003.05~~ ~~All notices given shall comply with the requirements of Sections 71-218 Laws 1978, 71-234 Laws 1945 and 84-913 Laws 1969.~~

001 ~~004~~ VERIFICATION OF COMPLAINTS

~~004.01~~ **001.01** Complaints against persons licensed to barber or operate barber shops or schools shall be filed in writing with the Board, shall be verified and signed by the person making the complaint.

~~005 ATTORNEY GENERAL TO REPRESENT THE BOARD~~

~~005.01~~ ~~In all actions involving the suspension or revocation of a license or booth rental permit, the Board may request the Attorney General to file the petition against the licensee or applicant or~~

permit holder, or, at the discretion of the Board, a petition may be filed by the Director.

006 FORM FOR PETITION

006.01 The following rules shall govern the form of the petition in such cases:

006.01A The State shall be named as plaintiff and the licensee or permit holder as respondent.

006.01B The charges against the licensee or permit holder shall be stated with reasonable definiteness.

006.01C Amendments may be made as in ordinary actions in the district court.

006.01D All allegations shall be deemed to be denied, but the licensee or permit holder may plead thereto if he or she desires.

007 HEARING ON APPLICATIONS FOR BARBER SCHOOLS, SHOPS AND INDIVIDUALS

007.01 No petition under Chapter 10, 004 and 005 hereof need to be filed in the case of a hearing on an application for a barber school, shop, or individual license, booth rental permit, or for barber instructor course approval. The application shall constitute the petition in those cases.

007.02 The Board may request the Attorney General to take such part in these proceedings as the Board deems necessary.

008 HEARING PROCEDURE

008.01 The proceeding will be summary in nature. The admission of evidence, the right to cross examine and the notice of facts will be governed by the provisions of Section 84-914 RRS 1959 or amendments thereof.

008.02 The Board shall have the power to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of books, papers, accounts, documents and testimony, and cause depositions to be taken in the same manner and to the same extent as the district courts of this State.

008.03 Both parties shall be entitled to the use of subpoenas and depositions.

009 ORDER OF THE BOARD

009.01 After a hearing, the Board shall prepare an order which contains its findings of fact and conclusions of law, and the ruling made by the Board.

009.02 If the Board orders a suspension of a license, it shall be for a definite period of time, fixed in the order.

009.03 Any person aggrieved by a decision of the Board can appeal to the District Court of Lancaster County, as provided in Section 71-235.

~~**010 DEFAULT OF APPEARANCE OF LICENSEE**~~

~~**010.01** In case the licensee fails to appear either in person or by counsel, at the time and place designated in such notice, the Board, after receiving satisfactory evidence of truth of the charges, shall order the license revoked or suspended.~~

002 ~~**011**~~ **PAYMENT OF RENEWAL FEES FOR SUSPENSION OR REVOKED LICENSES**

002.01 ~~**011.01**~~ No license or permit suspended by order of the Board shall be reinstated unless all current renewal premiums from the time of reinstatement have been paid and other licensing requirements met.

002.02 ~~**011.02**~~ Any suspended license or permit shall be automatically reinstated at the end of the term of suspension if all renewal fees have been paid and other licensing or permit requirements are met.

~~**012 PROMULGATION, AMENDMENT OR REPEAL OF RULES: DECLARATORY RULINGS**~~

~~**012.01** Any interested person may petition the Board requesting the promulgation, amendment or repeal of any rule of the Board.~~

~~**012.02** Any interested person may petition the Board to issue a declaratory ruling with respect to the applicability to any person or state of facts or any rule or statute enforceable by the Board.~~

~~**012.03** Submission of petitions shall be made to the Board in duplicate. The Board shall offer consideration of any petition submitted as set forth hereinabove, within a reasonable amount of time, at a public hearing before the Board. After consideration of any petition received by the Board, as set forth hereinabove, the Board shall dispose of the same by proper order of the Board.~~

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 29, 1994

TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 11 – ~~**DUPLICATE**~~ **ISSUANCE OF LICENSES, PERMITS AND CERTIFICATION**

001 BOARD TO ISSUE ~~DUPLICATE~~ LICENSES OR PERMITS: The Board shall ~~make available duplicates of~~ issue new licenses or permits ~~which are~~ for those lost or mutilated or for any just cause, for a fee to be set by the Board.

002 BOARD ~~TO CERTIFY~~ AFFIDAVIT OR CERTIFICATION OF RECORDS: The Board shall make available ~~the certification of records~~ an affidavit for purposes of reciprocity or for issuance of a certification of licensure for a fee to be set by the Board.

NEBRASKA ADMINISTRATIVE CODE

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TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 12 - MINIMUM CURRICULUM AND REQUIREMENTS FOR APPROVED SCHOOLS OF BARBERING

001 MINIMUM HOURS FOR DIPLOMA, DURATION OF COURSE, GRADUATION FROM OTHER SCHOOLS, HOURS IN WORKING DAY, NUMBER OF INSTRUCTORS

001.01 Each Nebraska school of barbering approved by the Board shall conduct a course of study of at least twenty-one hundred (2100) hours, to be equally divided over a one (1) year period.

001.02 No school of barbering shall require, as a prerequisite for admission, attendance at or graduation from any other school or institution, except that all examination applicants eligible for licensure are required to be high school graduates, or its equivalent prior to license issuance.

001.03 Period of daily classes shall be at the discretion of the faculty of the school.

001.04 No student shall exceed ten (10) hours in any one (1) working day.

001.05 Said course shall be under the tutelage of a registered barber instructor and assistant instructor.

001.06 Each barber school shall be permitted, on a working ratio of two assistant instructors for every registered barber instructor.

001.07 There shall be one (1) registered instructor or assistant instructor for each fifteen (15) students, or fraction thereof, enrolled in school.

002 ORIENTATION PERIOD, BARBER COURSE 300 HOURS - THEORY AND SUPERVISED PRACTICES ON STUDENTS AND MANNEQUINS shall include, but not be restricted exclusively to:

002.01 Laws and rules and regulations for barbering.

002.02 History of barbering.

002.03 Barber equipment and product knowledge, its uses and safety precautions.

002.04 Sanitation, sterilization, hygiene and first aid.

002.05 Haircutting, long and tapered styles, haircutting techniques and braiding.

002.06 Shaving, honing and stropping.

002.07 Scalp care, treatments and shampooing.

002.08 Facials, massages and packs.

002.09 Coloring, bleaching and rinsing.
002.10 Chemical waving and relaxing.
002.11 Natural and artificial nail care.
002.12 Waxing.
002.13 Cosmetologists licensed, or eligible for licensure, in the State of Nebraska, attending a school of barbering, shall be required no fewer than eighty (80) hours in the orientation period. The contents of these eighty (80) hours shall be at the discretion of the instructor, based upon the knowledge and experience of the student.
002.14 No student shall be permitted to render practical services on members of the public until such student has completed the orientation period, except that the Board may establish guidelines by which it may approve such practical services as part of the orientation period.

003 MINIMUM NUMBER OF REQUIRED SERVICES: Following are the services and the number of each that are to be performed by each student during his or her tenure in school. These services are to be performed in the clinic area. Services performed during the student's orientation period are not to be counted. These are the minimum number of services to be performed on members of the public, spread out over the entire course, not condensed into a small period of time:

	BARBER	BARBER/COS
003.01 Haircut, taper	75	75
003.02 Haircut, long style	75	50
003.03 Shampoo	75	50
003.04 Shave	10	10
003.05 Beard trim	10	10

003.06 Facial	24	12
003.07 Chemical waving	24	12
003.08 Perm rod rolling and braiding (mannequin)	90/10	45/5
003.09 Hair coloring	20	10
003.10 Bleaching or highlighting	6	3

004 THEORY - DEMONSTRATIONS AND LECTURES shall include the following, but not be restricted exclusively to:

004.01 Laws, rules and regulations for barbering.
004.02 Barber equipment and product knowledge, its uses and safety precautions.
004.03 Barber shop management, ethics and economics.
004.04 Sanitation, sterilization, personal hygiene and first aid.
004.05 Bacteriology.
004.06 Applied electricity.
004.07 Hairpieces.

005 INSTRUCTORS AND ASSISTANT INSTRUCTORS: All Barber Instructors and Assistant Instructors must meet all the requirements set forth in Section 71-208.02 ~~RRS Neb. 2003~~**.**

005.01 A person shall be eligible for registration as a barber instructor if he or she has earned at least eighteen hours of college credit at or above the post-secondary level, including at least three (3) credits each in:

005.01A Methods of Teaching, 3 hours - Principles of teaching vocational subjects is designed to acquaint the teacher with various activities involved in the teaching of vocational education. Further, it will help the prospective teacher develop and perfect the methods, procedures and techniques which have been found to be most effective in successful teaching.

005.01B Curriculum Development, 3 hours - This is a professional vocational education course. It is designed to provide the opportunity to develop techniques and procedures in writing, selection and organization of subject matter for instructional purposes. The course has been organized into five major units of instruction as listed: (1) course planning and the lesson plan format (2) writing and classifying objectives (3) developing lesson plans (4) student evaluation and (5) texts and the instructional systems.

005.01C Special Vocational Needs, 3 hours - This course is designed to introduce the prospective vocational teacher to learners with special needs. Emphasis will be placed on (A) recognizing vocational special needs students as individuals with legitimate rights to respect and dignity (B) nurturing an appreciation for individual differences (C) changing negative attitudes, prejudice and bias toward vocational learners with special needs.

005.01D Educational Psychology, 3 hours - Explore psychological concepts as they relate to the developmental studies area. Topics covered include: the learning process, clarifying values and attitudes, problem solving, decision making, coping with stress and setting goals.

005.01E Speech Communication, 3 hours - Basic principals of effective communications, theory and practical, with emphasis on developing the preparation and delivery of effective oral communication skills.

005.01F Introduction to Business, 3 hours - Basic factors of organization, operations, business control and procedures effecting each. Broad look at interrelated roles of operating a small business.

005.02 A person shall be eligible for registration as a assistant barber instructor if he or she has completed application and paid the fee prescribed by section 71-219, has been a licensed and actively practicing barber for one year, and is currently enrolled or will enroll at the first regular college enrollment date after registration in an educational program leading to the completion of the hours required under subsection (2) (a) of 71-208.02. Applicants for registration as an assistant barber instructor must provide the Board with evidence of enrollment or acceptance into the educational program for at least one course resulting in credit for one of the requirements of 71-208.02 (2) (a).

005.03 Courses required in Section 71-208.02 (2) (a) must be accredited by the Career College Institute, Higher Learning Commission of the North Central Association of Colleges and Schools or by a substantially equivalent accrediting agency as determined by the Board, <u>or be validated otherwise by the Board upon application on a form provided by the Board.</u> The Board or an individual approved by the Board must proctor all final course examinations<u>, including examinations for courses offered on-line.</u>

005.04 Each barber school shall be permitted, on a working ratio, two assistant instructors for every barber instructor who shall qualify for registration as set forth in Subsection 1 of Section 71-208.02 ~~RRS Neb. 2003.~~

005.05 Instructors and Assistant Instructors shall devote their entire time during school hours to instructing and supervising all student work and shall not apply their time to private or public

practice of barbering for any reason.

005.06 Supervision of Assistant Barber Instructors.

005.06A Direct Supervision. A person registered as an assistant barber instructor who is or will be enrolled in an educational program leading to completion of the hours required under 71-208.02(5)(a) shall serve under the *direct* supervision of the supervising Barber Instructor. For purposes of this section, "direct supervision" means the physical presence of the supervising barber instructor in the clinical area, practice lab or theory classroom to instruct, guide, direct, demonstrate, evaluate or supervise practice by an assistant barber instructor.

005.06B Indirect Supervision. "Indirect supervision" means the supervising barber instructor is present within the facility in which the assistant barber instructor is providing services, and is available to provide immediate face to face communication with the person being supervised. A person registered as an assistant barber instructor who has completed nine college credit hours as required by 71-208.02(5)(b) may serve under the *indirect* supervision of a barber instructor if he or she:

005.06C1 has completed one year of instructor training under direct in-house supervision of an active, full-time, registered barber instructor; or

005.06C2 has completed the requirements of a barber instructor course developed or approved by the Board.

005.07 General Requirements for Assistant Instructor Training. Training of an assistant barber instructor through either a Board-approved barber instructor course or a one-year training program under a barber instructor in a school must:

005.07A Provide a prospective barber instructor with practical, supervised opportunities to develop and to demonstrate that he or she:

005.07A1 Has a sound understanding of the subject matter he or she will teach;

005.07A2 Can manage the classroom and the conduct of the students effectively;

005.07A3 Understands how students learn and how they differ in their approaches to learning, and how to make the subject matter meaningful for students;

005.07A4 Can plan and carry out daily lessons to accomplish the course goals within the timelines for the course;

005.07A5 Creates learning experiences that support how students learn, work

together, and develop their performance skills;

005.07A6 Has the skills necessary to be a clear communicator orally and in demonstrating barbering techniques;

005.07A7 Understands and uses formal and informal assessment strategies to evaluate and ensure the continuous development of the students.

005.07B Have effective measures to assure and verify attendance and, in the case of an assistant instructor in a school, the hours of service;

005.07C Have effective evaluation mechanisms for assuring that the assistant instructor has satisfactorily attained the knowledge and skills to be an effective barber instructor.

005.08 Requirements for Direct Supervision in a School.

005.08A Plan. A barber instructor who is responsible for the direct supervision of an assistant barber instructor for one year of instructor training in a school shall develop and maintain a plan for the training of the assistant barber instructor that provides for specific, practical experience for the development of basic skills and for expansion of his or her instructional expertise and delivery strategies as skills are gained. The overall plan for the supervision period shall encompass the subjects for coursework required for a barber instructor by 71-208.02(2)(a) and shall meet the requirements of **005.07** of this chapter.

005.08B Evaluation. The barber instructor shall provide regular informal and formal review of the assistant barber instructor's performance. Formal review shall be made using specific assessment criteria through regular evaluations by the barber instructor with recommendations for continued growth and through:

005.08B1 An on-site evaluation visit or visits by a member of the Board of Barber Examiners, its Executive Director or other agent appointed by the Board; or

005.08B2 An onsite evaluation visit or visits by a guest barber instructor approved by the Board; or

005.08B3 A combination of the foregoing.

005.09 Application

005.09A One-Year Supervised Training under a Barber Instructor in a School. A barber school may apply for approval of one year of supervised training of an assistant barber instructor on a form provided by the Board. The application shall include the plan for training and the proposed tools for formal evaluation, and shall specify the method(s) of evaluation to be used as required by **005.08 of** this chapter.

005.09B Barber Instructor Course. The Board may develop a barber instructor course or courses to offer in lieu of one year of supervised training in a barber school. In addition, an educational institution or other entities may apply to the Board to approve a barber instructor course. Applications shall be made on a form provided by the Board and shall demonstrate how the course meets the requirements of section **005.07** of this chapter and provide such other information as the Board may require to assure that the proposed course will be offered by a qualified institution or entity.

005.10 Board Review. The Board shall review each application for approval and the documents submitted in support of the application and determine within ninety (90) days whether to approve the course or courses. If the Board determines not to approve a course, the applicant may appeal the decision of the Board in accordance with the Administrative Procedure Act.

005.11 List of Approved Courses. The Board shall maintain a list of barber instructor courses developed or approved by the Board for purposes of this section.

006 CLASS ROOMS

006.01 An approved school of barbering shall have two (2) rooms accessible.

006.02 One (1) to be used for class study, examinations and lectures.

006.03 One (1) to be used for practical demonstrations.

006.04 Rooms shall be fully equipped to comply in every way, and at all times, with the rules and regulations of the Board.

006.05 Class rooms shall meet inspection requirements set forth in sections of these rules.

006.06 Study and lecture room shall be used for the sole purpose of giving scientific instruction.

006.06A Blackboard and charts of skin, scalp, hair, nails and their disorders.

006.07 Schedules of classes shall be filed with the Board office.

007 SCHOOL EQUIPMENT shall consist of a minimum as follows:

007.01 One (1) barber chair for each two students enrolled.

007.02 One (1) shampoo bowl for every-five stations.

007.03 One (1) station for each two students enrolled.

007.04 One (1) immersion sterilizer for each student.

007.05 One (1) text book for each student and instructor.

007.06 Electrical equipment.

007.06A Vibrator.

007.07 Sufficient clean linen storage in enclosed cabinet/containers.

007.08 Blackboard.

007.09 Bulletin board, conspicuously located for posting rules and regulations, notices and other information.

007.10 One (1) set of record files for student history, activities and duplicate copies of reports filed.

007.11 Sanitary hair removal equipment, either vacuum, compressed air or individual wipes.

007.12 Automatic lather mixer or canned lather.

007.13 Supply of standard tonics, lotions, shampoos and other cosmetics.

007.14 One (1) time clock.

007.15 One (1) mannequin for each student.

007.16 One (1) first aid kit.

007.17 Hooded hair dryers.

007.18 Library facilities which shall contain at least the following materials:

007.18A Current version of State of Nebraska Laws Relating to the Practice of Barbering.

007.18B Current version of Board of Barber Examiners Rules and Regulations.

007.18C Standard Dictionary of the English Language.

007.18D Standard Medical Dictionary.

007.18E Approved textbooks of barbering and hairstyling, hair structure, chemistry and physics.

008 BARBER CHAIR

008.01 Each barber chair must be in good condition, mechanically sound and with acceptable covering of a material capable of being sanitized and free of tears.

008.02 Barber chairs shall be placed at least four and one-half (4 1/2) feet apart, center to center,

and each chair must occupy not less than thirty-five (35) square feet of floor space.

009 RECORDS

009.01 Enrollment: Each school shall forward to the Board, a record of student enrollment upon the date of admittance of the student.

009.02 Transfer of student credit hours from one school to another is at the discretion of the official school administrator, specific requirements having been met, as set forth herein.

009.03 Student has certificate of enrollment with his state barber administration or board.

009.04 No more than two (2) years shall lapse from the date of initial enrollment in school from which transfer is requested, and the taking of the registered examination.

009.05 All student requirements set forth in the statutes of this state have been met.

009.06 Each school shall keep daily class records of each student, showing information as follows:

009.06A Hours devoted to respective subjects.

009.06B Hours in attendance.

009.06C Records shall be subject to inspection by the examiners or representatives at any time during business hours.

009.07 An owner of a school shall furnish the Board, at the end of each month, the names of students enrolled, enrollment status and accredited hours earned.

009.08 The time and clinical operations of each student in each phase of demonstration, lectures and practical supervision shall be filed with the Board office at the end of each quarter.

010 FINAL RECORD: The school owner, instructor, manager or other qualified individuals designated by the school owner shall compile from his or her records:

010.01 A summary of each student's grades.

010.02 Hour and clinical service reports, shall be presented to the student upon graduation, and such reports shall be made a part of his or her application for examination. Any individual identified in 010 of this section must sign each report required and certify the record is correct and that the student has received a diploma from the school.

011 PROPER QUARTERS:

011.01 Shampoo bowls located in common areas shall have access without obstruction.

011.02 Toilet facilities shall be located on the school premises and kept clean, sanitary and in working order at all times.

011.03 Barber school/school of cosmetology that occupy the same location, the barber practical work area shall be visually distinct from the other and shall be clearly identified as such to the public by a sign.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: February 27, 2007

TITLE 51 - BOARD OF BARBER EXAMINERS

CHAPTER 13- SANITARY AND SAFETY RULES REGULATING BARBER SHOPS AND SCHOOLS

~~71-223.01~~ 001 Barber shops and barber schools; sanitary requirements; inspections~~;~~. ~~The Board shall by rules and regulations duly adopted, prescribe sanitary requirements for barber shops and barber schools.~~ The Board or its employees shall regularly inspect all barber shops and barber schools in this state to insure compliance with ~~such~~ these regulations. Such sanitary requirements and inspections shall include all activities, in addition to barbering as defined in section 71-202, taking place on the licensed premises. A written report of each such inspection made shall be submitted to the ~~barber board~~ Board.

Each school or barber shop shall be called upon at least once each ~~year~~ licensing period for the purpose of inspection prior to the issuance of its license to be eligible for ~~annual~~ renewal of certification or registration. ~~**Source:** Laws 1963, c. 409, §. 29, p. 1328; Laws 1971, LB 1020, §. 28; Laws 1978, LB 722, §. 18; Laws 1996, LB 1044, §. 483; Laws 1997, LB 622, §. 95: Laws 1999, LB 121, §. 2.~~

002 Sanitary and Safety Rules

~~RULE 1~~**. 002.01**–RULES POSTED. The owner or manager of every barber shop or school shall keep a copy of these sanitary rules posted in a conspicuous place in the business for the information and guidance of all persons employed and studying therein, and the public generally.

~~RULE 2.~~ **002.02** WATER/WASTE. Each barber shop or school must supply adequate hot and cold running water. Connections must be made in cities or villages' where running water is available. Waste water shall be disposed of through a system that carries it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of city ordinances and the approval of the city or village Board of Health, as required by law.

~~RULE 3~~. **002.03** SIGNS. A barber school shall display a sign indicating that it is a barber school. The sign shall be clearly visible at the main entrance. A sign shall also be displayed in the clinical area indicating that all services are performed by students.

~~RULE 4~~. **002.04** PROPER QUARTERS. Every barber shop or school shall be a fixed, permanent structure, or a part of one, shall have adequate lighting and ventilation, plumbing fixtures properly installed, electrical connections and equipment properly installed and grounded, shall have hand washing facilities, and provide soap, dispenser type, and individual towels of cloth or paper, or other hand drying devices, provided in the clinical area. All fixtures and equipment shall be kept in a clean, orderly and sanitary condition as required by rules and regulations of the Board of Barber Examiners.

~~RULE 5~~. **002.05** STYPTIC. Any material used to stop the flow of blood shall be used in liquid or powder form. The use of styptic pencils is strictly prohibited.

~~RULE 6~~. **002.06** HEADREST. The headrest of every barber chair shall be protected with sanitary paper or linen. Such sanitary paper or linen must be changed after its use on each client.

~~RULE 7~~. **002.07** PERSONAL CLEANLINESS AND FREEDOM FROM DISEASE. Every barber and student, while engaged in serving the public, shall be neat and clean in person and in dress and free from

any communicable disease. He or she shall wash his or her hands with soap and water or any equally effective cleansing agent immediately before serving each client.

~~RULE 8~~. **002.08** IMPLEMENTS. All barber shops and schools of barbering shall be equipped with, and utilize wet sanitizers. All tools and implements which come in contact with a client's hair or skin must be sanitized before use on each client. With the exception of hair clippers, the sanitizing process shall consist of three steps, the elimination of any one of which shall be considered to render the sanitizing process ineffective. The three steps are: (1) Thorough washing in hot water and soap or synthetic detergent to remove all traces of soil. (2) Thorough rinsing in clear water to remove all traces of soap or detergent and (3) Complete immersion of combs and brushes and the blades of shears and razors in a fresh, clean and effective germicidal solution prepared and used in accordance with the directions on the label, after which the implement may be removed, dried and stored in a clean, covered dust proof container or cabinet. This includes the group of sanitizing agents known as "Quaternary ammonium compounds" (QUATS), 1000 parts per million (ppm). Ultra-violet ray treatment procedures are NOT acceptable in lieu of the three step sanitizing procedure mentioned in this section. The use of formaldehyde in any form is strictly prohibited in the sanitizing process. Electrical or mechanical hair clipper blades shall be cleaned and sanitized after use on each client. An oily solution of an effective germicide prepared specifically for the germicidal treatment of tools and implements may be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean and free from contaminants.

A sanitizing solution shall be available for immediate use at all times the shop or school is in operation. It shall be kept in a container large enough for complete immersion in the solution of objects, or portions thereof, to be sanitized. Each shop or school shall provide one or more sanitizers adequate for the number of barbers or students usage requirements and volume of business.

Sanitized tools and implements shall be stored separately from all others. Storage drawers for sanitized tools and implements shall be clean, free of hair and used only for the sanitized tools and implements. Storage cabinets, work stations and vanities shall be kept clean.

All soiled tools and implements shall be deposited in a separate receptacle. All nail care and waxing implements that come into direct contact with a client and are not capable of being sanitized in accordance with this rule shall be disposed of in a waste receptacle immediately after use.

Tools and implements shall not be carried in clothing pockets, nor shall they be left on cabinet tops after usage on clients. Bristle type neck dusters are not capable of being sanitized. Their use is strictly prohibited.

~~RULE 9~~. **002.09** FOOD. A barber shop in a place where food is prepared and served must be separated by a partition, ceiling height, of lath and plaster, glass or other solid material. If a door is cut through, it shall be hung with spring hinges or other self closing appliances. If confectionery is sold in the barber shop, it must be in sealed packages.

~~RULE 10.~~ **002.10** DISEASE. No client suffering from a known communicable disease may be served in a barber shop or school.

~~RULE 11~~. **002.11** TOWELS. All sanitary linen must be kept in an enclosed, dust proof cabinet. Any towel that has been used once shall be considered soiled and disposed of into a receptacle. A sanitary towel, neck strip or other protection shall be used to prevent the hair/shampoo cloth from coming into contact with the skin of each client.

~~RULE 12~~. **002.12** TOILET FACILITIES. All barber shops and schools shall have acceptable toilet facilities as required by the Rules and Regulations of the Board of Barber Examiners. Toilet facilities shall have hand washing facilities and provide soap, dispenser type, and individual towels of cloth, paper or other hand drying devices.

~~RULE 13~~. **002.13** PETS. No pets or animals shall be permitted in the shop or school premise. This prohibition does not apply to trained animals accompanying sightless or hearing impaired persons or to fish in a covered aquarium.

~~RULE 14~~. **002.14** SMOKING, INTOXICATING BEVERAGES, CONTROLLED SUBSTANCES PROHIBITED. Licensees and students of barbering are prohibited from smoking while actively engaged in serving the public. No owner/lessee shall knowingly permit employees/lessors, students or clients to use, consume, serve or in any manner possess or distribute intoxicating beverages or controlled substances, unless prescribed by a physician, upon its premises during the hours the shop or school is open to the public.

~~RULE 15.~~ **002.15** COMPLIANCE. It shall be the personal responsibility of every licensee who is licensed under the laws of Nebraska relating to the practice of barbering, to observe these laws, the rules and regulations of the Board of Barber Examiners, Department of Environmental Quality concerning water supply and waste water disposal and Health and Human Services with the local board of health having jurisdiction.

The foregoing sanitary rules regulating barber shops and schools have been promulgated by the Board of Barber Examiners. They were adopted after due notice and hearing as provided by law, and are filed with the Secretary of State. These rules supersede all previous rules of the Board on this subject. The effective date of these rules is July 1, 2007.

November 21, 2006/revised 2/27/07

TITLE 51 — Board of Barber Examiners

CHAPTER 14-- Practice and Procedure for Hearings in Contested Cases

001. General.

001.01. **Application of Model Rules**. ~~Pursuant to Neb. Laws 1994, LB 446, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General's model rules are impracticable under the circumstances.~~ These rules are adapted from model

rules of the Attorney General, as practicable under the circumstances, and apply to hearings in contested cases before the Board of Barber Examiners.

001.02. **Definitions.** The following definitions shall apply as used throughout ~~Chapter 4 of~~ these rules and regulations.

001.02A. ~~**Agency** shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55 of the Nebraska Revised Statutes, the courts including the Nebraska Workers's Compensation Court, the Commission of Industrial Relations, the Legislature and the Secretary of State with respect to the duties imposed by the Administrative Procedure Act.~~ **Board** shall mean the Board of Barber Examiners. The term "**President** shall mean the chairperson of the Board or, in the absence of the President, the Vice President, and in the absence of both, any other member designated by the President or by a majority of the Board to serve.

001.02B. **Contested case** shall mean a proceeding before ~~an agency~~ the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after ~~an agency~~ a Board hearing.

001.02C. **Ex parte communication** shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.02C1. Communications which do not pertain to the merits of a contested case;

001.02C2. Communications required for the disposition of ex parte matters as authorized by law;

001.02C3. Communications in a ratemaking or rulemaking proceeding; and

001.02C4. Communications to which all parties have given consent.

001.02D. **Hearing officer** shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

001.02E. **Party** means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

001.02F. **Petition** means the initial document filed by ~~or with an agency~~ the Board that sets forth a claim and request for ~~agency~~ Board action.

002. Prohibitions against ex parte communications.

002.01. **Prohibitions; when applicable**. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. ~~An agency~~ The Board may designate an earlier time, but such earlier time shall be required to be set forth in the ~~agency's~~ Board's rules of procedure.

002.02. **Prohibitions; to whom applicable**.

002.02A. **Parties and public.** No party in a contested case or other person outside the ~~agency~~ Board having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to ~~an agency head~~ a Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

002.02B. **Persons in decision-making roles.** No hearing officer or ~~agency head~~ Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the ~~agency~~ Board having an interest in the contested case.

002.02C. **Investigators.** No ~~agency head~~ Board member or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or ~~agency head~~ Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

002.03. **Disclosure of contacts**. The hearing officer or ~~agency head~~ Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02C shall file in the record of the contested case:

002.03A. All such written communications;

002.03B. Memoranda stating the substance of all such oral communications; and

002.03C. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

002.03D. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given

to all parties of record.

002.03E. Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003. Intervention in a contested case.

003.01. Intervention in a contested case shall be allowed when the following requirements are met:

003.01A. A petition for intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

003.01B. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

003.01C. The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02. The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

003.03. If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

003.03A. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

003.03C. Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

003.04. The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

003.04A.The hearing officer or designee may modify the order at any time, stating the

reasons for the modification.

003.04B.The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004. Commencement of a contested case.

004.01. The contested case begins either with the filing of a petition and request for hearing, or the denial of an application and request for hearing, ~~if applicable~~, with the ~~agency~~ Board. The petition is the initial document filed by or with ~~an agency~~ the Board that sets forth a claim and request for ~~agency~~ Board action. No petition needs to be filed in the case of a hearing on an application for a barber school, shop, booth rental permit, individual license or registration, or other approval the Board is authorized to grant. The application and request for hearing by the applicant shall take the place of a petition.

004.02. The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the respondent or person against whom a contested case is brought.

004.03. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law. In all actions involving the suspension or revocation of a license or permit, the Board may request the Attorney General to file the petition or, at the discretion of the Board, the petition may be filed by the Director. The Board may also request that the Attorney General take part in proceedings involving applications for a license, permit or other approval the Board is authorized to grant.

004.04. The pleadings in a contested case may include a petition, the application, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before ~~an agency~~ the Board. Other than an application, ~~Any~~ any pleading filed in a contested case shall meet the following requirements:

004.04A. The pleading shall contain a heading specifying the name of the ~~agency~~ Board and the title or nature of the pleading, shall state material factual allegations and state concisely the action the ~~agency~~ Board is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

004.04A1. Attorneys shall also include their address, telephone number and bar number.

004.04A2.The initial petition shall also contain the name and address of the

respondent.

004.04B. All pleadings shall be made on white, letter-sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.05. All pleadings shall be filed with the ~~agency~~ Board at its official office. Filing may be accomplished by personal delivery or mail, or by facsimile or other electronic methods when authorized by the Board, and will be received during regular office hours of the ~~agency~~ Board . Regular office hours for the Board are from 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday, exclusive of state or federal holidays. When a filing is submitted after regular business hours, or when a filing date falls on a weekend or legal holiday, the filing date for such filing shall be the next business day.

004.06. The ~~agency~~ Board shall serve a copy of the petition on each respondent listed in the petition personally or by first-class or certified mail. Written proof of such service shall be filed with the ~~agency~~ Board. Each respondent who chooses to file a responsive pleading must do so within 20 days from the date of personal service or the date of ~~agency~~ Board mailing of the petition.

004.07. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the ~~agency~~ Board.

004.08. Unless state law provides that a hearing is not required, a hearing date shall be set by the ~~agency~~ Board in accordance with statutory requirements. Under 71-218, the Board may not refuse to renew, suspend or revoke any certificate of registration or approval under 71-217 unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him. In all other cases, twenty (20) days' prior notice shall be required. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the ~~agency~~ Board upon all attorneys of record or other representatives of record and upon all unrepresented parties.

All notices given shall comply with the requirements of 71-218, 71-234, and 84-913. The notice must include a proof of such service and will be filed with the ~~agency~~ Board. The Board may give further notice by publication. A hearing, when requested by an applicant, a licensee, a permit holder, other interested party or the Board, shall be held by the Board in all cases when:

004.08A An application for an individual license has been denied for reasons other than failure of the examination.

004.08B An application for issuance of an individual license without examination has been

denied.

004.08C An application for a barber shop or barber school license or a booth rental permit has been denied.

004.08D An application for approval of a barber instructor course or for one-year of supervised training of an assistant barber instructor has been denied.

004.08E An individual is charged with a violation by an inspector.

004.08F The Board, in any other case, is considering the suspension or revocation of a license issued under the Barber Act.

004.09. In computing time prescribed or allowed by ~~chapter 4 of~~ these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

005. Hearing officer; criteria.

005.01. ~~An agency~~ The Board may be authorized by law to delegate to a hearing officer other than the agency head or governing board the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the ~~agency~~ Board.

005.02. A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.03. A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.04. If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

005.05. A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.06. A person may serve as hearing officer at successive stages of the same contested case.

006. Prehearing Procedures.

006.01. **Prehearing conferences and orders**. A hearing officer designated to conduct a hearing may determine, subject to the ~~agency's~~ Board's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

006.01A.If a prehearing conference is conducted:

006.01A1. The hearing officer shall promptly notify the ~~agency~~ Board of the determination that a prehearing conference will be conducted. The ~~agency~~ Board may assign another hearing officer for the prehearing conference; and

006.01A2.The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The ~~agency~~ Board shall give notice to other persons entitled to notice.

006.01A3.The notice referred to in subsection 006.01A2 shall include the following: telephone number of the hearing officer for the prehearing conference;

006.01A3(a). The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

006.01A3(b). The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the ~~agency~~ Board;

006.01A3(c).The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

006.01A3(d). A statement of the time, place, and nature of the prehearing conference;

006.01A3(e). A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

006.01A3(f). The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

006.01A3(g). A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

006.01A3(h). Any other matters that the hearing officer considers

desirable to expedite the proceedings.

006.01B. The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters

determined at the prehearing conference.

006.01C. The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

006.02. Discovery in contested cases.

006.02A. The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. ~~Subpoenas and orders issued under this subsection may be enforced by the district court~~. <u>In case of the disobedience of any person in complying with any order of the Board, or a subpoena issued by the Board or any of its members, or on the refusal to testify to any matter regarding he or she may be lawfully interrogated, the judge of any district court of the county in which the person resides, on application by any member of the Board, shall compel obedience by attachment proceedings as for contempt, as in the case of the disobedience of a subpoena issued from such court or a refusal to testify therein.</u>

006.02B. Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

006.02B1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

006.02B2. State the reasons supporting the motion;

006.02B3. Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

006.02B4. Be filed with the ~~agency~~ Board. The moving party must serve copies of all such motions to all parties to the contested case.

006.02C. Other than is provided in subsection 006.02B4 above, discovery materials need not be filed with the ~~agency~~ Board.

006.03. **Continuances.** The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

006.03A. **Good cause**. Good cause for an extension of time or continuance may include, but is not limited to, the following:

006.03A1. Illness of the party, legal counsel or witness;

006.03A2. A change in legal representation; or

006.03A3. Settlement negotiations are underway.

006.04. **Amendments**.

006.04A. A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

006.04B. A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

006.05. **Informal Disposition**. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

006.06 **Motions.** Motions shall be in writing, shall state briefly the action or relief being sought and shall include the grounds for the motion. Motions shall be filed with the Board at its official office and a copy mailed or personally delivered to the hearing officer and to the other party or parties. If the party making the motion wishes to be heard, a request for argument should be included in the motion. A hearing officer may decide all motions with or without argument, but when argument is had, will notify the parties of the time and place to appear.

006.07 Witness Fees. Each witness who shall appear in obedience to a subpoena before the

Board shall receive for his or her attendance the fees provided for witnesses in civil cases in the district court of this state and mileage at the rate provided in section 81-1176 for state employees, which shall be paid upon the presentation of proper vouchers, approved by any two members of the Board.

007. Conducting a contested case hearing.

007.01. **Order.** At the discretion of the hearing officer, the hearing may be conducted in the following order:

007.01A.The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

007.01B.Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

007.01C **Presentation of evidence**.

007.01C1. Evidence will be received in the following order:

007.01C1(a). Evidence is presented by the petitioner;

007.01C1(b). Evidence is presented by the respondent;

007.01C1(c). Rebuttal evidence is presented by the petitioner; and

007.01C1(d). Surrebuttal evidence is presented by the respondent.

007.01C2. With regard to each witness who testifies, the following examination may be conducted:

007.01C2(a). Direct examination conducted by the party who calls the witness;

007.01C2(b). Cross-examination by the opposing party;

007.01C2(c). Redirect examination by the party who called the witness; and

007.01C2(d). Recross-examination by the opposing party.

007.01D. After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

007.01E. The hearing officer may continue a hearing from day to day or adjourn it to a later date by announcement at the hearing or by appropriate notice to all parties.

007.01F. To maintain decorum of the proceedings, the hearing officer may exclude from the hearing room or from further participation in the proceedings, any person, other than a party, who engages in improper conduct at the hearing.

007.02. Evidence.

007.02A. In contested cases ~~an agency~~ the Board or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.02B. Any party to a formal hearing before an ~~agency~~ Board, from which a decision may be appealed to the courts of this state, may request that the ~~agency~~ Board be bound by the rules of evidence applicable in district court by delivering to the ~~agency~~ Board at least three days prior to the holding of the hearing a written request therefore. Such request shall include the \

requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

007.02C. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.02D. All evidence including records and documents in the possession of the ~~agency~~ Board of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.02E. A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law.

007.02F. ~~An agency~~ The Board shall give effect to the rules of privilege recognized by law.

007.02G. ~~An agency~~ The Board may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by ~~such agency~~ the Board.

007.02G1. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.02G2. Parties shall be afforded an opportunity to contest facts so noticed.

007.02G3. The record shall contain a written record of everything officially noticed.

007.02H. ~~An agency~~ The Board may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.03. **Conducting the hearing by electronic means**. The hearing officer may conduct all or

part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

007.04. **Official record**.

007.04A. The ~~agency~~ Board shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the ~~agency~~ Board upon request and tender of the cost of preparation.

007.04B. ~~An agency~~ Board shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

007.04C. The ~~agency~~ Board record shall consist only of the following:

007.04C1. Notices of all proceedings;

007.04C2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the ~~agency~~ Board pertaining to the contested case;

007.04C3. The record of the hearing before the ~~agency~~ Board, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the ~~agency~~ Board during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.04C4. The final order.

007.04D. As provided in section 002.03 the hearing officer or ~~agency head~~, Board member or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

007.04E. Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the ~~agency~~ Board record shall constitute the exclusive basis for ~~agency~~ Board action in contested cases under the act and for judicial review thereof.

007.05. **Costs.** All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

008. Decision and order in a contested case.

008.01. Every decision and order adverse to a party to the proceeding, rendered by ~~an agency~~ the

Board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

008.**01A Hearing Officer Recommendations**. The hearing officer shall issue recommended findings of fact and conclusions of law and proposed order and shall file them with the Board, together with the transcript of hearing and record of the hearing. A copy of the recommendations of the hearing officer shall be served on all parties.

008.01B **Board Review**. The Board shall review the recommendations of the hearing officer and may adopt the recommendations or modify them in whole or in part in rendering its decision and order. The Board may use a telephone conference call to meet to render a decision. (See Op. Neb. Att'y Gen. No. 99046 (November 15, 1999).

008.02. The decision and order should include:

008.02A. The name of the ~~agency~~ Board and name of the proceeding;

008.02B. The time and place of the hearing;

008.02C. The names of all parties or their attorneys who entered an appearance at the hearing;

008.02D. The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

008.02E. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

008.02F. The order consisting of the action taken by the ~~agency~~ Board as a result of the facts found and the legal conclusions arising therefrom.

008.02F1 If the Board orders the suspension or revocation of a license or permit, it shall be for a definite period of time fixed in the Order.

008.03. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

009. Appeals.

009.01. Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

009.02. Parties desiring to appeal ~~an agency~~ a Board decision must file a petition for review in the district court of the county where the ~~agency~~ Board action is taken within thirty days after the

service of the final decision by the ~~agency~~ Board. The thirty day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

009.03. Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal.

TITLE 51—BOARD OF BARBER EXAMINERS

CHAPTER 15--PETITIONING FOR RULEMAKING

***001 General information*.** ~~Pursuant to Neb. Laws 1994, LB 446, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General<s model rules are impracticable under the circumstances.~~ These rules are adopted from the model rules promulgated by the Attorney General and apply to petitions for rulemaking before the Board of Barber Examiners.

***002 Rule Making Petition*.**

002.01 Petition. Any person may petition ~~an agency~~ the Board requesting the promulgation, amendment, or repeal of a rule or regulation.

002.02 Form. The petition shall:

002.02A. Be clearly designated as a petition for a rules change;

002.02B. In the case of a proposed new rule or amendment of an existing rule,

shall set forth the desired rule in its entirety;

002.02C. In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number;

002.02D. Describe the reason for the rules change

002.02E. Include an address and telephone where the petitioner can be reached during regular work hours; and

002.02F. Be signed by:

002.02F(1). The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;

002.02F(2). A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

003 Petition Consideration and Disposition.

003.01. Within sixty (60) days after submission of a petition, the ~~agency~~ Board shall:

003.01A. Deny the petition in writing, stating its reasons therefor;

003.01B. Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act;

003.01C. If otherwise lawful, adopt a rule or regulation.

TITLE 51—BOARD OF BARBER EXAMINERS

CHAPTER 16-- DECLARATORY ORDERS

001 General Information.

001.01 Application of these Model Rules. ~~Pursuant to Neb. Laws 1994, LB 446, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General's model rules are impracticable under the circumstances~~. These rules are adapted as far as practicable from model rules of the Attorney General and govern declaratory orders of the Board of Barber Examiners.

001.02 Scope of this Chapter. This chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by ~~an agency.~~ the Board of Barber Examiners.

~~**001.03 Related Regulations.** In addition to this Chapter, related regulations pertaining to administrative procedures before agencies are: 53 NAC Chapter 1, Model Procedures for Negotiated Rulemaking, 53 NAC Chapter 2, Petitioning for Rulemaking, and 53 NAC Chapter 4, Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency.~~

002 Definitions. *As used in this chapter:*

002.01 ~~**Agency or**~~ **Board** shall mean the ~~board, commission, department, officer, division, or other administrative office or unit of the state government as defined in Neb. Rev. Stat. § 84-901(1)~~. the Board of Barber Examiners.

~~**002.02 Agency director** shall mean the director or governing body, whichever is applicable, of the agency~~.

002.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

002.04 Contested case shall mean a proceeding before the ~~agency~~ board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the ~~agency~~ board.

002.05 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the ~~agency~~ board as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the ~~agency~~ board.

002.06 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

002.07 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the ~~agency's~~ board's issuance of a binding declaratory order.

002.08 Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

002.09 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the ~~agency~~ board who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

002.10 Petition shall mean the document filed in accordance with section 003 of this chapter to initiate a declaratory order proceeding.

002.11 Petitioner(s) shall mean a party or parties who have filed a petition with the ~~agency~~ board seeking issuance of a declaratory order.

002.12 Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the ~~agency~~ board as set forth in this chapter.

003 Petition for Declaratory Order.

003.01 Generally. A request for a declaratory order must be made by a petition that meets the requirements of section 003.

003.02 Who May File. Any person may petition the ~~agency~~ Board for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the ~~agency~~ Board.

003.03 When Orders Appropriate. A declaratory order may be requested on the

applicability of a statute, rule, regulation, or order enforced by the ~~agency~~ board. “Applicability” refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies.

Considerations as to whether issuance of a declaratory order is appropriate include:

003.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

003.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

003.03C A declaratory order is not a mechanism for review or appeal of a decision made by the ~~agency~~ Board in a contested case.

003.03D A declaratory order may not be requested to obtain a declaration by the ~~agency~~ board that a statute or regulation is unconstitutional or that a regulation of the ~~agency~~ board is invalid.

003.03E A declaratory order may not be issued by the ~~agency~~ Board that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

003.04 Form of Petition. A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

003.04A A caption, which shall include:

003.04A1 The venue: BEFORE THE ~~[agency]~~ BOARD OF BARBER EXAMINERS OF THE STATE OF NEBRASKA;

003.04A2 A heading specifying the subject matter and the name of the petitioner; and

003.04A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.

003.04B The statements required in subsection 003.05 of this chapter.

003.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

003.04E Size and Paper. The petition shall be made on white, letter-sized (8-1/2 x 11") paper.

003.04F Print. The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

003.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2 x 11" paper or placed in an 8-1/2x 11" envelope and clearly marked as an attachment to the petition.

003.05 Contents of Petition. To be considered, the petition shall include the following:

003.05A The name and address of the petitioner;

003.05B The name and address of all persons or may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

003.05C The statute, rule, regulation, or order upon which the petitioner seeks

issuance of a declaratory order;

003.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner<s request for issuance of a declaratory order;

003.05E All propositions of law or contentions asserted by the petitioner;

003.05F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the ~~agency~~ board should rule and why the ~~agency~~ board should rule in the manner requested; and

003.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the ~~agency~~ board.

003.06 The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

003.07 Sample Petition. The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 003.04, 003.05, and 003.06 of this chapter are satisfied.

003.08 Written Consents. The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

004 Submission and Service of Declaratory Order Petition.

004.01 The original petition for declaratory order shall be filed with the ~~agency~~ ~~director~~ Board by mail or in person during the ~~agency's~~ board's normal business hours.

004.02 The petition shall be deemed as filed when it is actually received by the ~~agency~~ Board. The ~~agency~~ board shall date stamp all petitions upon receipt.

004.03 At the same time the petition is filed with the ~~agency~~ Board, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other

entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the ~~agency~~ board.

005 Disposition of the Petition.

005.01 Generally. Upon the filing of a petition, the ~~agency director~~ Board may consider the petition, refer the petition to an appropriate licensing or governing board, or delegate the matter to a designated hearing officer, board, or ~~agency~~ board employee to consider the petition and recommend a decision to the ~~agency director~~ Board. In reviewing the petition, the ~~agency~~ Board may, in its discretion, do one or more of the following:

005.01A Require that additional information be submitted before the petition will be further considered;

005.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the ~~agency~~ board;

005.01C Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition;

005.01D Consider the petition and any attachments without oral presentation.

005.02 Within thirty (30) days after the petition is filed, the ~~agency~~ Board shall, in writing:

005.02A Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02B Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02C Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

005.02D Decline to issue a declaratory ruling, stating the reasons for the ~~agency's~~ board's decision.

005.03 Notwithstanding section 005.02 of this rule, the ~~agency~~ Board may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The ~~agency~~ board shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the ~~agency~~ board determines not to issue a declaratory order.

006 Intervention in Declaratory Order Proceeding.

006.01 Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

006.01A. A petition for intervention must be submitted in writing to the ~~agency~~ Board. Copies must be mailed to all parties to the proceeding.

006.01B. The contents of the petition must be as specified in 006.02.

006.01C. The ~~agency~~ Board must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

006.02 Contents of Petition. The petition for intervention shall be submitted to the ~~agency~~ board, in writing, on 8 1/2x 11" white paper, and shall include each of the following:

006.02A The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

006.02B A statement of facts sufficient to show the intervenor's interest;

006.02C A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

006.02D All propositions of law or contentions asserted by the intervenor; and

006.02E A statement of the specific relief requested by the intervenor.

006.03 The ~~agency~~ Board may, at its discretion, invite any person or entity to file a petition for intervention.

006.04 The ~~agency~~ Board shall grant a petition for intervention if the requirements of § 006.01 and § 006.02 are satisfied.

006.05 The ~~agency~~ Board shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

006.06 The ~~agency's~~ board's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

007 Declaratory Order Proceedings.

007.01 Oral Argument, When. Oral argument shall be had only on specific order of the ~~agency~~ board. A petitioner, intervenor, necessary party, or the agency may submit a motion for oral argument to the ~~agency director~~ Board. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the ~~agency~~ board with a notice of the date, time, and location for oral argument. The ~~agency~~ board shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

007.02 Oral Argument, Procedure. Oral argument will be made before a hearing officer or before any representative of the ~~agency~~ Board who is authorized to render or to recommend a decision to the ~~agency~~ Board. The hearing officer or ~~agency~~ board representative shall be in control of the proceeding and shall:

007.02A Identify the proceeding and introduce himself or herself and identify each party for the record;

007.02B Hear the oral argument of the petitioner, intervenor, or necessary parties;

007.02C Close the proceedings.

007.03 At the declaratory order proceeding, ~~agency~~ board staff shall have the right to

present oral argument.

007.04 The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

007.05 The parties and ~~agency~~ board staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

007.06 The oral argument may be conducted either in person or by telephone conference call.

008 Issuance of Declaratory Order.

008.01 The ~~agency~~ Board shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

008.02 The declaratory order shall be in writing and shall include the following:

008.02A The names of all parties to the proceeding upon which the order is based;

008.02B The facts upon which the order is based;

008.02C The statute, regulation, rule, or order at issue in the matter;

008.02D The ~~agency's~~ board's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

008.02E The ~~agency's~~ board's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

008.02F The reasons relied upon by the ~~agency~~ board to support its conclusions.

008.03 A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

008.04 Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

008.05 No Response within 60 Days. If the ~~agency~~ Board has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the ~~agency~~ board.

009 Circumstances Under Which ~~Agency~~ Board will not Issue Declaratory Orders.

009.01 Grounds upon which the ~~agency~~ Board shall refuse to issue a declaratory order include, but are not limited to, the following:

009.01A The petition requests a declaratory order on a matter that is outside the scope of authority of the ~~agency~~ board;

009.01B The petition requests review or appeal of a decision made by the ~~agency~~ board in a contested case;

009.01C The petition requests a declaratory order on the effect of past conduct;

009.01D An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the ~~agency~~ board involving the petitioner on substantially the same or similar facts or issues raised in the petition;

009.01E The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.01F The issue raised in the petition has been settled by a change in

circumstances or other means so as to render moot the need for a declaratory order;

009.01G An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

009.01H An order would not resolve the controversy or uncertainty; or

009.01I The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.02 Grounds upon which the ~~agency~~ Board may determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.02A Refusal is necessary to assure adequate allocation of resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.02B The question presented is of such complexity that the ~~agency~~ board has had insufficient opportunity or resources to develop a fully matured ruling;

009.02C The petitioner fails to submit any additional information requested by the ~~agency~~ board or submits such information after the date established by the ~~agency~~ board.

010 Appeal. A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 - § 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.

APPENDIX A

BEFORE THE BOARD OF BARBER EXAMINERS
STATE OF NEBRASKA

In the matter of	)
	)
the application of [name]	) PETITION FOR
	) DECLARATORY ORDER

1. Petitioner's name and address;

2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation, or order, or who may be adversely affected by the issue sought to be resolved;

3. All material facts and specific circumstances;

4. All rules of law which apply;

5. Petitioner's demand for relief.

DATED on this day of _____, 2____.

VERIFICATION

STATE OF	)
	) ss.
COUNTY OF	)

[name] , being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing **Petition For Declaratory Order**; and

that the allegations of fact therein are true.

_____
[Petitioner's signature]

SUBSCRIBED and sworn to before me on this day of _____, 2____ .
NOTARY SEAL
[Notary signature]

TITLE 51 — BOARD OF BARBER EXAMINERS

CHAPTER 17 —PROCEDURES FOR NEGOTIATED RULEMAKING

001 Application of these Model Rules. ~~Pursuant to Neb. Laws 1994, LB 446, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General's model rules are impracticable under the circumstances~~. These rules and regulations are adapted from model rules of procedure developed by the Attorney General and apply to negotiated rulemaking proceedings before the Board of Barber Examiners.

002 Negotiated rulemaking generally. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. The negotiated rulemaking process can be used by state agencies, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process also does not preclude other ~~agency~~ Board efforts or processes designed to reach consensus with

affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by the ~~agency~~ Board as a result of a subsequent formal rulemaking process.

003 Definitions. For purposes of this Chapter:

003.01 APA shall mean the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

003.02 ~~Agency~~ ~~shall mean that board, commission, department, officer,~~ division or other administrative office or unit of state government authorized by law to make rules and regulations which is promulgating these procedural rules. **Agency** shall not include those entities exempted in ***Neb. Rev. Stat. §*** 84-901 (1). **Agency or Board** shall mean the Board of Barber Examiners.

~~**003.03 Agency Director** shall mean the chief officer in charge of the department, division, other administrative office or unit of state government which is promulgating these procedural rules. If appropriate, Agency Director shall mean the governing board or the commission of state government which is promulgating these procedural rules~~.

003.03 ~~**003.04**~~ **Consensus** shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition.

003.04 ~~**003.05**~~ **Convenor** shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

003.05 ~~**003.06**~~ **Facilitator** shall mean a person who impartially aids in the discussion

and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decision-making authority.

003.06 ~~**003.07**~~ **Interest** shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

003.07 ~~**003.08**~~ **Negotiated rulemaking** shall mean rulemaking through the use of a negotiated rulemaking committee.

003.08 ~~**003.09**~~ **Negotiated rulemaking committee** or **committee** shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

003.09 ~~**003.10**~~ **Person** shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character.

003.10 ~~**003.11**~~ **Rule or regulation** shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules and regulations concerning the internal management of the agency not affecting private rights, private interest, or procedures available to the public and not including permits, certificates of public convenience and necessity, franchises, rate orders and rate tariffs, and any rules of interpretation thereof, and for the purposes of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.

004 Establishment of a Negotiated Rulemaking Committee; criteria. ~~An agency~~ The Board may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the ~~agency director~~ Board determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the ~~agency director~~ Board shall consider whether:

004.01 There is a need for the rule.

004.02 There are a limited number of identifiable interest that will be significantly affected by the rule.

004.03 There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

004.03A Can adequately represent the interests identified; and

004.03B Are willing to negotiate in good faith to reach a consensus on the proposed rule.

004.04 There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.

004.05 The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.

004.06 The ~~agency~~ Board has adequate resources and is willing to commit those resources, including technical assistance, to the committee.

004.07 The ~~agency~~ Board, to the maximum extent possible consistent with the legal obligations of the ~~agency~~ Board~~,~~ will use the consensus of the committee as the basis for the rule proposed by the ~~agency~~ Board in the formal rulemaking process of the APA.

005 Convenors; selection; duties. ~~An agency, at the discretion of the agency director,~~ The Board, at its discretion, may use the services of a convenor.

005.01 ~~An agency~~ The Board may employ or contract for the services of an organization or individual to serve as a convenor or may use the services of a state employee to act as a convenor. A convenor shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. ~~An agency~~ The Board shall determine whether a person under consideration as a convenor or facilitator of a negotiated rulemaking

committee has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

005.02 The convenor may assist the ~~agency~~ Board in making the determination of need for a negotiated rulemaking process discussed in section 004 above. The convenor may also assist the ~~agency~~ Board in:

005.02A Identifying persons who will be significantly affected by a proposed rule.

005.02B Conducting discussions with affected persons of the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

005.03 The convenor shall report findings and make recommendations to the ~~agency~~ Board. Upon the request of the ~~agency~~ Board, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convenor and any recommendations of the convenor shall be public records and made available to the public for review upon request.

006 Petitions for the use of a negotiated rulemaking committee. Any person may petition ~~an agency~~ the Board to request the use of a negotiated rulemaking committee in the development or revision of a rule, as provided below.

006.01 A negotiated rulemaking process may be requested on any topic appropriate for a rule or regulation by the ~~agency~~ Board.

006.01A A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the ~~agency~~ Board to implement.

006.01B A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.

006.01C A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in subsection ~~**003.11**~~ **003.10.**

006.02 A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event it does not, the ~~agency~~ Board may refuse to accept it.

006.02A A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on Attachment 1, which is attached to these ~~model~~ rules and made a part of them by reference.

006.02B A petition may also be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.

006.02C All petitions must be on white, letter sized paper (8 ½ by 11) of standard weight.

006.02D Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.

006.02E Any documents that are intended to accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other requirements of this section as to size, print and legibility.

006.03 A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the ~~agency~~ Board may refuse to accept it.

006.03A The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter, and name.

006.03B The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.

006.03C The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.

006.03D The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in subsections 004.01 through 004.05 above. The petition may also include information on the criteria included in subsections 004.06 and 004.07 above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the ~~agency~~ Board in making a decision.

006.03E The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking and the proposed rule.

006.04 A petition for a negotiated rulemaking process hall be filed with the ~~agency director~~ Board. Filing may be made by personal delivery during regular ~~agency~~ Board office hours or by mail.

006.05 Upon the filing of a petition for a negotiated rulemaking procedure, the ~~agency director~~ Board may designate ~~an agency~~ a Board employee or use the services of a convenor to recommend to the ~~agency director~~ Board whether a negotiated rulemaking process should be initiated.

006.06 Within sixty (60) days after submission of a petition for a negotiated rulemaking procedure, the ~~agency~~ Board shall:

006.06A Deny the petition in writing, stating the reason(s) for denial; or

006.06B Initiate the negotiated rulemaking process as provided by these rules.

006.07 The decision of the ~~agency~~ Board with respect to a petition for a negotiated rulemaking procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the ~~agency's~~ Board's final decision by certified mail, return receipt requested.

006.08 A decision by the ~~agency~~ Board with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.

007 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership. If ~~an agency~~ the Board decides to go forward with the establishment of a negotiated rulemaking committee~~, the agency~~ Board shall proceed with the following process.

007.01 The ~~agency~~ Board shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as appropriate, publish notice in other newspapers and publications. The notice shall include:

007.01A An announcement that the ~~agency~~ Board intends to establish a

negotiated rulemaking committee to negotiate and develop a proposed rule.

007.01B A description of the subject and scope of the rule to be developed and the issues to be considered.

007.01C A list of interests likely to be significantly affected by the proposed rule.

007.01D A list of the persons proposed to represent the affected interest and the ~~agency~~ Board.

007.01E A proposed schedule for completing the work of the committee.

007.01F An explanation of how a person may apply for or nominate another person for membership on the committee.

007.02 Persons interested in making comments upon the formation of a particular proposed negotiated rulemaking committee shall have thirty (30) days from the date of publication of the notice concerning the committee to do so. Such comments shall be in writing, and shall either be personally delivered to the ~~agency~~ Board or mailed to the ~~agency~~ Board at its business office.

007.03 Persons interested in applying for membership on a particular proposed negotiated rulemaking committee or in nominating other persons for such membership shall have thirty (30) days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on Attachment 2 which is attached to these regulations and made of part of these regulations by reference, and which shall be provided by the ~~agency~~ Board.

008 Establishment of a Negotiated Rulemaking Committee; Procedure. After publication of notice and termination of the comment and membership application period, the ~~agency~~ Board will consider the comments and membership applications for a particular negotiated rulemaking committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a negotiated rulemaking committee, the ~~agency~~ Board may use the services of a convenor as set out in Section 005 above. In making the final determination as to creation of a negotiated rulemaking committee, ~~this agency and its agency director~~ the Board will apply the criteria set out in 004 above.

008.01 If, after such a determination, the ~~agency~~ Board decides that a negotiated

rulemaking procedure is feasible, it shall establish a negotiated rulemaking committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the ~~agency~~ Board in formal rulemaking.

008.02 If, after such a determination, the ~~agency~~ Board decides not to establish a negotiated rulemaking committee, the ~~agency~~ Board shall:

008.02A Notify the persons who commented on, applied for membership on or nominated persons for membership on the particular negotiated rulemaking committee of the reasons for the decision not to establish such a committee.

008.02B Publish notice of the decision not to establish the particular negotiated rulemaking committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.

009 Negotiated Rulemaking Committee; membership. All members of a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.

009.01 Members of a negotiated rulemaking committee may include:

009.01A A person designated by the ~~agency~~ Board to represent the ~~agency~~ Board. This person shall be authorized to fully represent the ~~agency~~ Board in the discussions and negotiations of the committee.

009.01B Persons selected by the ~~agency~~ Board as willing and qualified to represent the interests that will be significantly affected by the proposed rule.

009.01C Persons contacted and recruited by the negotiated rulemaking committee itself by consensus as essential to the success of the negotiated rulemaking process.

009.01D Persons selected by the negotiated rulemaking committee by consensus upon committee review of a petition for membership or nomination as set out in subsection 006.02 below.

009.02 Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee.

009.02A Each petition or nomination for committee membership shall be in writing and be submitted to the negotiated rulemaking committee by delivering or

mailing the same to the ~~agency~~ Board. All such petitions or nominations shall include:

009.02A1 Identification of the applicable negotiated rulemaking proceeding.

009.02A2 The name of the petitioner or nominee, and a description of the interests the person represents.

009.02A3 Evidence that the petitioner or nominee is authorized to represent parties related to the interest the person proposes to represent.

009.02A4 A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.

009.02A5 An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

009.02B Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may use the form attached hereto as Attachment 3. Attachment 3 is made a part of these regulations by reference. Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may also do so by letter, provided that the letter contains the information set forth above.

009.02C Upon receiving a petition for membership on or nomination to a particular negotiated rulemaking committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.

010. Negotiated rulemaking committee; operation. A negotiated rulemaking committee established under these rules shall consider the matter proposed by the ~~agency~~ Board for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determinates is relevant to the proposed rule.

010.01 A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.

010.02 The ~~agency~~ Board shall provide appropriate administrative support to a negotiated rulemaking committee including technical assistance and support.

010.03 The person representing the ~~agency~~ Board on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and

responsibilities as other members of the committee and shall be authorized to fully represent the ~~agency~~ Board in the discussions and negotiations of the committee.

010.04 If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the ~~agency~~ Board a report containing the proposed rule.

010.05 If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the ~~agency~~ Board a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.

011 Facilitators; selection; duties. A facilitator shall be selected to assist a negotiated rulemaking committee with its duties.

011.01 The ~~agency~~ Board may nominate a person to serve as a facilitator for the negotiations of a negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the ~~agency's~~ Board's nomination for facilitator, the ~~agency~~ Board shall submit a substitute nomination. If the committee does not approve the substitute nomination of the ~~agency~~ Board for facilitator, the committee shall select, by consensus, a person to serve as facilitator.

011.02 The ~~agency~~ Board may employ or contract for an organization or an individual to serve as a facilitator for a negotiated rulemaking committee or the ~~agency~~ Board may use the services of a state employee to act as a facilitator. A person designated by the ~~agency~~ Board to represent it on a negotiated rulemaking committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The ~~agency~~ Board shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

011.03 A facilitator approved or selected by a committee shall:

011.03A Preside at the meetings of the committee in an impartial manner.

011.03B Impartially assist members in conducting discussions and negotiations and reaching consensus.

011.03C Manage the keeping of minutes and records.

012 Negotiated rulemaking committee; expenses. Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, the ~~agency~~ Board may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in Neb. Rev. Stat. §§ 81-1174 through 81-1177 and a reasonable per diem rate of compensation if:

012.01 The committee member certifies a lack of adequate financial resources to participate on the committee using the form at Attachment 4 which is attached to these regulations and made a part of them by reference; and

012.02 The ~~agency~~ Board determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.

013 Grants or gifts. ~~An agency~~ The Board may accept grants or gifts from any source to fund the negotiated rulemaking process if:

013.01 Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

013.02 The grant or gift is given to and accepted by the ~~agency~~ Board without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

013.03 There is consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

014 Negotiated rulemaking committee; termination. A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the ~~agency~~ Board pursuant to the APA, unless the ~~agency~~ Board, after consulting the committee, or the committee itself, specifies an earlier termination date.

015 Negotiated rulemaking procedure; judicial review. Any action of the ~~agency~~ Board relating to establishing, assisting or terminating a negotiated rulemaking committee under the

Negotiated Rulemaking Act shall not be subject to judicial review, except that nothing in the section shall bar judicial review if such judicial review is otherwise provided by law.

51 NAC - ATTACHMENT 1
SAMPLE

BEFORE THE BOARD OF BARBER EXAMINERS
STATE OF NEBRASKA

In the Matter of [insert statute numbers or name] by [insert name of Petitioner])	) Petition for Negotiated Rulemaking

COMES NOW the petitioner, [insert name of Petitioner], according to the Nebraska Negotiated Rulemaking Act and according to the Board of Barber Examiners rules and regulations for Petitions for Negotiated Rulemaking, and requests that the Board of Barber Examiners establish a negotiated rulemaking committee as set forth in this Petition.

In support of this request, the Petitioner states as follows:

1. The Board of Barber Examiners administers the provisions of [insert sections of the statutes or legislative bill numbers for which negotiated rulemaking is sought], and is responsible for development of rules and regulations to implement these statutes.

2. Petitioner seeks a negotiated rulemaking procedure to [check one]:
( ) develop new rules
( ) amend existing rules, specifically ____ NAC ____, entitled _____.
( ) repeal certain existing rules, specifically ____ NAC ____, entitled

_____.

3. A negotiated rulemaking committee should be established to negotiate and develop rules on each of the following issues concerning the statute(s), legislative bill(s) or regulation(s) identified above [identify each issue as to each statute, legislative bill or regulation and the general scope of the rulemaking proposed]:

4. The facts surrounding each of the issues listed in paragraph 3 above are as follows:

5. Establishment of a negotiated rulemaking committee would be in the public interest under each of the following criteria based upon the information the Petitioner hereby submits.

A. There is a need for rulemaking on the issue(s) identified above because:

B. There are a limited number of identifiable interests that will be significantly affected by the rule, including the following interests:

C. There is a reasonable likelihood that a negotiated rulemaking committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule, as shown by the following:

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because:

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because:

F. [Optional for response by Petitioner] The [insert name of agency] should commit its resources, including technical assistance, to such a committee because:

G. [Optional for response by Petitioner] The [insert name of agency] should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because:

6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated

rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

8. Petitioner offers the following additional information for use by this agency in consideration of this request [if any]:

9. Petitioner has attached the following documents in support of this request [list all documents attached]:

Dated this _____ day of _____, 2____.

_____
Signature of Petitioner
List Petitioner's name [typed or printed]
List Petitioner's full mailing address
List Petitioner's telephone number [including area code]

51 NAC - ATTACHMENT 2
SAMPLE

BEFORE THE BOARD OF BARBER EXAMINERS
STATE OF NEBRASKA

In the Matter of the Negotiated	)
Rulemaking Committee for	) Application/Nomination
[Insert name of the proposed	) for membership
Negotiated Rulemaking Committee],	) on the committee.
____ NAC ____)	

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee proposed by this agency.

_____
Name of applicant (typed or printed)

_____
Full address of applicant

_____
Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiating rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

6. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee.

_____ Date _____

Signature of Applicant

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee proposed by this agency.

_____
Name of nominee (typed or printed)

_____
Full address of nominee

_____
Nominee<s telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest and parties listed

above because:

5. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

6. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rule making committed because:

_____ Date _____
Signature of Nominating Party

_____
Name of nominating party
(printed or typed)

_____
Full address of nominating party

_____
Telephone number of nominating party
(include area code)

51 NAC - ATTACHMENT 3
SAMPLE

BEFORE THE BOARD OF BARBER EXAMINERS
STATE OF NEBRASKA

In the Matter of the Negotiated	) Application/Nomination
Rulemaking Committee for	) for membership
[Insert name of the proposed	) on the committee
Negotiated Rulemaking Committee],	) (interest inadequately
____ NAC ____ .	) represented)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee.

_____
Name of applicant (typed or printed)

_____
Full address of applicant

_____
Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiating rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rule making committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

7. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule being considered by the above-referenced negotiated rulemaking committee.

_____ Date _____
Signature of Applicant

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee.

_____
Name of nominee (typed or printed)

_____
Full address of nominee

_____
Nominee<s telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rule making committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list all attachments):

7. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rule making committed because:

_____ Date _____
Signature of Nominating Party

_____
Name of nominating party
(printed or typed)

_____
Full address of nominating party

_____
Telephone number of nominating party
(include area code)

51 NAC - ATTACHMENT 4
SAMPLE

BEFORE THE BOARD OF BARBER EXAMINERS
STATE OF NEBRASKA

In the matter of the Negotiated Rulemaking Committee for [Insert name of the proposed Negotiated Rulemaking Committee], ____ NAC ____.	) Certification of) Financial) Need)

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

COMES NOW the undersigned, being first duly sworn, and hereby states and certifies as follows:

1. I am a member of the above-referenced negotiated rulemaking committee created by the Board of Barber Examiner..

2. In connection with my duties on that committee, I represent [insert the name of the appropriate identified interest].

3. In connection with my duties on that committee, I have incurred or will incur expenses and/or other costs.

4. I certify that I have a lack of adequate financial resources to serve on the above-referenced negotiated rulemaking committee, and that I need financial assistance from this agency in order to serve.

_____
Signature of Affiant

Subscribed and sworn to before me this _____ day of _____, 2_____.

_____
Notary Public