

OPINION NO. 88-075**Syllabus:**

When a school of cosmetology refuses to certify a student's record for purposes of transfer to another school, the state board of cosmetology has no obligation under R.C. Chapter 4713 or rules promulgated pursuant to R.C. 4713.02 to obtain that student's record from the refusing school or to certify credits for transfer to another school.

**To: Robert W. Schroeder, Chairman, Ohio State Board of Cosmetology,
Columbus, Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request for my opinion regarding the legal obligation of the board of cosmetology (hereinafter the board), when requested by a student, to obtain the record of the hours of instruction completed by that student and certify those hours to another school to which the student wishes to transfer. You inform me that the board has performed this service for students in the past when a school of cosmetology has refused to certify a student's record to another school. Often the school's refusal is based on allegations that the student has failed to meet contractual obligations owed to the school holding the student's records. You ask whether the board has a legal obligation to obtain such records on behalf of the student and certify them to the new school.

I note first that the board, as a creature of statute, has only those powers and duties conferred upon it by statute or necessarily implied therefrom. *See generally State ex rel. Funtash v. Industrial Commission*, 154 Ohio St. 497, 96 N.E.2d 593 (1951). The profession of cosmetology is governed by R.C. Chapter 4713. The board is created by R.C. 4713.02 and is made up of five members, four of whom must be graduate licensed cosmetologists and one of whom must be a licensed physician. R.C. 4713.02 states, in part:

The board shall adopt rules for carrying out sections 4713.01 to 4713.25 of the Revised Code, for conducting examination of applicants for license, and governing the recognition of, and the credits to be given to, the study of cosmetology, or any branch thereof, in a school of cosmetology....

The board shall hold examinations of all applicants for license whose applications have been submitted in proper form....

R.C. 4713.04 establishes the minimum hours of instruction required of applicants for various types of licenses. Pursuant to R.C. 4713.05, "[s]uch application...shall contain proof of the qualifications of the applicant." R.C. 4713.15(D) requires schools of cosmetology to "notify the state board of cosmetology of the enrollment of each new student, keep a daily record of the attendance of each student, and a

record devoted to the different practices, establish grades, and hold examinations in order to certify the students' completion."

It is clear that this statutory scheme authorizes the board to promulgate administrative rules regulating the manner by which credits are given by approved schools of cosmetology. Accordingly, in 1959 Op. Att'y Gen. No. 457, p. 238, one of my predecessors concluded in the syllabus that:

The State Board of Cosmetology *has the authority* under the provisions of rules and regulations adopted in conformity with Sections 4713.02 and 4713.15, Revised Code, to ask for and obtain, from a privately owned school of cosmetology, all student records, including daily time sheets showing the number of hours devoted to the study of different subjects, and *may* use the information so obtained, to certify the record of studies to another school of cosmetology to which a student may wish to transfer. (Emphasis added.)

However, the question which you now raise goes beyond the question asked in 1959 Op. No. 457. That opinion addressed only the authority of the board. You now ask whether the board is under a duty to act upon the request of a student wishing to transfer credits.

My review of R.C. Chapter 4713 reveals no language which expressly imposes a duty upon the board to order a school of cosmetology to produce a student's credits for the board upon demand solely for the purpose of allowing a student to transfer those credits elsewhere. R.C. 4713.15(D) requires the school to maintain records of hours of instruction. Compliance is a condition of licensure. R.C. 4713.17(A). It does not follow, however, that the board is obligated to obtain such records for purposes of recognizing transfer credits. R.C. 4713.05 places responsibility on the student to provide proof of qualifications as part of an application for a cosmetology license. The statute places no obligation on the board to intervene on the student's behalf. I see no reason to infer that the board would have a higher obligation to a transferring student than to a student who has completed the required hours of instruction. However, in order to answer your question, it is also necessary to consider the board's administrative rules. There are two rules which appear to apply. 7 Ohio Admin. Code 4713-9-51 states:

A student enrolled in a school of cosmetology who desires to transfer to another school shall first request the school to certify the hours of training already had in such school to the board on proper forms furnished by the board. If such certification of hours is approved, the board shall notify the school to which the student wishes to transfer the number of hours of training approved. *If the school refuses to transfer a student who has met all the student's obligations of a signed contract*, the board or its authorized agent *may* obtain the record from the school and get the credit for the student for transfer to another school. (Emphasis added.)

7 Ohio Admin. Code 4713-9-46 states:

A discontinued student is one who for some reason has discontinued his instruction in a school of cosmetology. The school shall maintain his records and shall advise the board of the discontinuance together with his reason therefor and shall submit the final record of the discontinued students to the board showing a breakdown of the completed instruction. If a discontinued student re-enrolls in a licensed school of cosmetology, the state board of cosmetology shall be so notified and a new enrollment card shall be submitted. *If a discontinued student re-enrolls in a school other than the original school, his credited hours may be transferred in the same manner as any other transfer student.* (Emphasis added.)

Regularly adopted administrative rules have the force of law, unless unreasonable or in clear conflict with law. Administrative agencies are thus bound by their own rules. See generally *State ex rel. Cuyahoga County Hospital v. Bureau of Workers' Compensation*, 27 Ohio St. 3d 25, 28, 500 N.E.2d 1370, 1372-73 (1986);

Parfitt v. Columbus Correctional Facility, 62 Ohio St. 2d 434, 436, 406 N.E.2d 528, 530 (1980), *cert. denied*, 449 U.S. 1061 (1980); *Kroger Grocery & Baking Co. v. Glander*, 149 Ohio St. 120, 125, 77 N.E.2d 921, 924 (1948); *State ex rel. Kildow v. Industrial Commission*, 128 Ohio St. 573, 580, 192 N.E. 873, 876 (1934). In interpreting these rules I am guided by the ordinary rules of statutory construction. See *State ex rel. Cunningham v. Industrial Commission*, 30 Ohio St. 3d 73, 75-76, 506 N.E.2d 1179, 1181 (1987); *State ex rel. Miller Plumbing Co. v. Industrial Commission*, 149 Ohio St. 493, 496-497, 79 N.E.2d 553, 555 (1948).

I note first that while rule 4713-9-51 provides that the board shall give notification of the number of transfer hours approved when a school has provided a certified record, the rule mentions board involvement in obtaining records only in connection with situations where a student has met all contractual obligations to the school holding the records. In accord with the doctrine of *expressio unius est exclusio alterius*, this language indicates an intent to exclude situations involving contract disputes from the exercise of the board's discretionary authority to transfer credits when a school refuses to do so. See *State ex rel. Alden E. Stilson & Assoc. v. Ferguson*, 154 Ohio St. 139, 145-46, 93 N.E.2d 688, 691 (1950) (it is a general principle of statutory construction "that the specification of one thing implies the exclusion of another"). Second, I note that rule 4713-9-51 states that the board "may obtain the record...and get the credit for the student for transfer." Use of the word "may" indicates that it is within the board's discretion to effect a transfer of credit, even in situations where no contract dispute is involved. See *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"); *State ex rel. John Tague Post No. 188 v. Klinger*, 114 Ohio St. 212, 214, 151 N.E. 47, 48 (1926) (appearance of "shall" and "may" in the same statute is evidence of intent to distinguish between mandatory and discretionary authority). In the absence of any statutory obligation, I see no reason to expand the narrow discretionary authority described in rule 4713-9-51 to impose a duty upon the board in the situation you present. Likewise, since rule 4713-9-46 states that the board "may" transfer credits of a discontinued student in accord with the same standards set out in rule 4713-9-51, the authority to do so is discretionary and imposes no obligation in the situation you describe.¹

It is therefore my opinion and you are advised that when a school of cosmetology refuses to certify a student's record for purposes of transfer to another school, the state board of cosmetology has no obligation under R.C. Chapter 4713 or rules promulgated pursuant to R.C. 4713.02 to obtain that student's record from the refusing school or to certify credits for transfer to another school.

¹ Rule 4713-9-46 also states that a school of cosmetology "shall maintain [discontinued students'] records...and shall submit the final record of the discontinued students to the board." (Emphasis added.) As I have noted, schools are required to provide the board with certain records. See also R.C. 4713.15(D), *supra*; 7 Ohio Admin. Code 4713-9-48 (daily records of student attendance); 7 Ohio Admin. Code 4713-9-49 (training record of students); 7 Ohio Admin. Code 4713-9-50 (filing of monthly attendance report with board). When a school refuses to certify a student's record for transfer, the board has authority to use those records, which are otherwise required, to make its own certification of transfer credit. 1959 Op. No. 457. It does not follow, however, that the board is required to make this use of the record when a school refuses to provide the student with a certified record for transfer purposes.