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BOARD OF COSMETOLOGY—MAY OBTAIN ALL STUDENT RECORDS FROM A PRIVATE SCHOOL OF COSMETOLOGY AND CERTIFY THESE RECORDS TO ANOTHER SCHOOL TO WHICH A STUDENT DESIRES TO TRANSFER—SECTIONS 4713.02 and 4713.15.

SYLLABUS :

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.

Columbus, Ohio, May 14, 1959

Lilly C. West, Chairman, State Board of Cosmetology
Columbus 15, Ohio

Dear Madam:

I have your letter requesting my opinion in which you state:

"We will appreciate your formal opinion with regard to the Board's authority and duty as it pertains to the credit hours in the various subjects of cosmetology obtained by a student in a school of cosmetology.

"Students sign a contract furnished by a privately owned school to pay a certain amount of money decided by the school owner for the study of 1250 hours of cosmetology training to prepare herself for the State Board Examination.

"Each month the school must submit to the State Board of Cosmetology, on forms provided by this agency, a record of accumulated hours for every student in attendance during the past month. This record does not show the hours received in the individual subjects.

"A statement on the bottom of this form tells the school owner that those accumulated hours of credit will not be transferred to another school even if the student requests it.

"The questions before us are as follows:

- "1. Does this Board have the authority to obtain the record of hours by subject by going into this privately owned school and obtaining this information from their daily time sheets?
- "2. If this agency may obtain a copy of those records may they then be used by the Board upon request of the student involved, to permit her to transfer to another privately owned school?
- "3. If we should change or delete the language on the bottom of the monthly form would this Board have the authority to require school owners to submit the hours of credit for each subject obtained by student during the preceding month?

"We have a rule filed under the Administrative Procedure Act which reads:

" '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 by the Board. If such certification of hours is approved the Board will notify the school, to which the student wishes to transfer, of the number of hours of training approved.'

"Most of the school owners protest any attempts by the Board to obtain a certification of credit for a student when we request them by letter, and usually reply by saying a student has not paid for a contracted course, etc. If such is the case we urge the student to pay for her course in accordance with her contract. However, we have found personalities have entered into the case and a school owner often minds having the student leave his school to go to a school of a competitor.

"Experience has taught us that because a student is ready to work on the public after 300 hours and therefore would be a means of bringing revenue into the school through the clinic, they dislike releasing a student to another school.

"It is our belief that there should be some protection for the students who have paid for beauty courses ranging in price from \$200.00 to \$500.00 with the understanding that they will receive a complete and adequate training for a business which will in most cases be their life's work.

"We have before us at the present time several requests for transfer and the students state that they have met the terms of their contract but cannot get their hours of credit so that they might attend another school which they believe gives more complete training. How far can this Board go and what would be the procedure to require the school to release this information to us for use in transferring the student to another school?"

The rule cited in your letter, it being, I note, Rule 62 of the Rules and Regulations of the State Board of Cosmetology, is apparently inconclusive with regard to the problem with which you are concerned. Thus, the question arises what steps may be taken in the event a school of cosmetology refuses to certify the complete record of instruction and training when requested by a student who wishes to transfer to another school. The answer immediately suggesting itself, of course, assuming that the terms of the contract have been met and the tuition agreed upon has been fully paid, is for the student to obtain a court order compelling the school to act upon the request for certification. This, however, is obviously not a solution satisfactory to the Board in its apparent desire to be of assistance to students.

Examining the Cosmetology Act, in the light of the problem for which you seek a solution, I find that Section 4713.15, Revised Code, wherein requirements for schools of cosmetology are set forth, provides in subsection (D) as follows:

“* * *

“(D) They shall keep a daily record of the attendance of each student, and a record devoted to the different practices, and shall establish grades, and hold examinations before issuance of the diplomas.”

Rules 56, 57 and 58, adopted by the Board under the authority of

Section 4713.02, Revised Code, contain the following provisions:

“56. The school shall provide forms on which shall be recorded the amount of time a student is present in school each day, the amount of time occupied by lectures, practice work, and clinic work, and the amount of time thus devoted to the different subjects. The daily record must be signed by the instructor having supervision over the students.”

“57. The daily record, as defined in Rule 56, shall be kept in a metal file until such time as the student has been scheduled to take State Board Examination.”

“58. The completed training record of each student, showing the number of hours devoted to each branch of cosmetology and other subjects of the school’s curriculum, shall become the permanent record and be kept in a metal file. Such record shall be available to members of the Board or their authorized agents for inspection during all school hours.”

It will be noted that while the availability of complete student school records for the purpose of inspection by members of the Board or their authorized agents is mentioned only in Rule 58, it must be considered as self-evident that the right of free access to any and all student records, from the day a student begins training in a school of cosmetology is implied in the adoption of all reasonable rules pertaining to such records, for it would be pointless to have rules unless it can be ascertained that they are being observed.

It may be asked, however, whether or not the Board, although its authority to gain access to all student records cannot be doubted, may use the information thus obtained, to assist a student by certifying the record of studies to a school to which such student wishes to transfer. I don’t think a valid objection can be raised against such use, in view of the fact

that the information involved is not of a confidential nature and the purpose served is clearly lawful.

As to your question concerning forms for monthly reports required of schools of cosmetology, I do not think the Board can ask for more information than now required since the form in question is based on the express provisions of Rule 59, which reads as follows :

59. Persons holding a license for operation of a school of cosmetology shall file a monthly report with the Board. Such report shall be on forms furnished by the Board, and shall give the following information: The full name of each student attending during the calendar month, the date the student enrolled, the number of hours of training had by each student during the month, and the total number of hours of training credited the student since the date of enrollment. This monthly report shall be filed with the Board not later than the tenth day of the succeeding month."

By the same token, the statement at the bottom of these forms to which reference is made in your letter, is without binding effect, since nowhere in the Rules and Regulations of the Board is there a provision requiring the giving of assurance to schools that the information thus obtained will not be used in connection with student requests for transfer to another school.

In accordance with the foregoing, it is my opinion and you are advised 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.

Respectfully,

MARK MCELROY

Attorney General