

BEFORE THE IOWA BOARD OF BARBERING

IN THE MATTER OF THE PETITION)	
FOR WAIVER BY:)	
)	Waiver Request No. 18-001
Michael Foster)	ORDER
4105 11 th Place)	
Des Moines, IA 50313)	
)	

Pursuant to Iowa Code section 17A.9A (2018) and Iowa Administrative Code 645 chapter 18, the Iowa Board of Barbering (hereinafter, "Board") makes the following ruling on Michael Foster's (hereinafter, "Petitioner") Petition for Waiver.

PROCEEDINGS

1. On September 7, 2018, the American College of Hairstyling (hereinafter "ACH") filed a Petition for Waiver on behalf of the Petitioner Michael Foster requesting a waiver of Iowa Administrative Code rule 645—21.2(3)(c) that governs the requirements for licensure.
2. Iowa Administrative Code rule 645—21.2(3)(c) requires that an applicant must be licensed in the state of Iowa as a barber for no less than two years before they are eligible to apply for an instructor's license.
3. Petitioner acquired his Iowa cosmetology license in 1983 after graduating from the Americana Beauty Academy.
4. Petitioner successfully completed a barbering program in November 2009 from the ACH.
5. Petitioner has informed the Board that he intends to seek employment at the ACH as an instructor.
6. The Board considered the Petition for Waiver at its regularly scheduled board meeting on September 17, 2018.

APPLICABLE LAW

7. Subparagraph 21.2(3) sets out the qualifications to become a licensed barber instructor in the state of Iowa. Applicants shall be licensed as a barber for no less than two years.
8. The Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:
 - a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
 - b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
 - c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
 - d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

Iowa Admin. Code r. 645—18.4. The Board's rules provide that "the burden of persuasion rests with the Petitioner to demonstrate by clear and convincing evidence that the Board should exercise its discretion to grant a waiver from a rule." Iowa Admin.Code r. 645—18.10(2).

ANALYSIS OF WAIVER CRITERIA

Would application of the rule create an undue hardship on the person requesting the waiver?

9. The Board was in consensus there is not a difference between the two modalities of cosmetology and barbering and requiring Petitioner to have two years of barbering experience prior to becoming a barber instructor would impose an undue hardship on Petitioner.

Would a waiver prejudice the substantial legal rights of person?

10. The Board is not aware of any substantial legal rights of any person being prejudiced by granting this waiver.

Does the petition seek waiver of a rule mandated by statute?

11. The requirement found in the Board's administrative rule is not mandated by statute.

Will substantially equal protection of the public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested?

12. The Board was in consensus that public health, safety and welfare would not be adversely affect by granting this waiver. The Petitioner has been actively practicing as a cosmetologist since 1983 with no evidence of disciplinary action taken against his license.

IT IS THEREFORE ORDERED:

The petition for waiver of Iowa Administrative Code rule 645—21.2(3)(c) is **GRANTED** and the Petitioner may be issued an Iowa barber instructor's license after providing proof of passing both the written and practical exams.

Appeals from this order shall be taken in conformance with 645 18.16.

Dated this 17th day of September, 2018.



John Anderson
Board Chairperson
Iowa Board of Barbering
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