



Antitrust Referral Analysis Submission by Board or Commission

Board or Commission: Ohio State Cosmetology and Barber Board

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Date: October 4, 2018

Referral Topic: Disciplinary Process for Unlicensed Practice (Barbering)

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. The CSI office was codified by ORC 107.52 for agency rule review. Additional scope was added in 2017 under ORC 107.56 which describes actions to be reviewed by the CSI Office for determination of approval or disapproval.

Referral Information

1. What is the action/proposed action being taken?

The Ohio State Cosmetology and Barber Board uses the following approach when the Board identifies an individual who is engaging in the practice of barbering and has never held a license issued under Chapter 4709 of the Revised Code. This approach is based on the Board's internal Violation Guidance Matrix and established Board policy.

1st Offense: The individual is issued a Notice of Hearing, along with a proposed Consent Agreement, proposing a \$250 fine.

2nd Offense: The individual is issued a Notice of Hearing, along with a proposed Consent Agreement, proposing a \$500 fine.

3rd Offense: The individual is issued a Notice of Hearing, along with a proposed Consent Agreement, proposing a \$1,000 fine. The matter is also presented to the Board’s Administrative Review Group to determine if additional action is necessary, and the recommendations of the Administrative Review Group are presented to the full Board for review and approval at the next regular, public meeting. The potential additional action involves seeking an injunction against the individual in accordance with section 4709.14 of the Revised Code.

4th (or more) Offense: The individual is issued a Notice of Hearing proposing a \$1,000 fine (no Consent Agreement is offered). The matter is also presented to the Board’s Administrative Review Group to determine if additional action is necessary, and the recommendations of the Administrative Review Group are presented to the full Board for review and approval at the next regular, public meeting. The potential additional action involves seeking an injunction against the individual in accordance with section 4709.14 of the Revised Code.

In all cases where the Board seeks disciplinary action under Chapter 4709 of the Revised Code, the Board issues a Notice of Hearing in accordance with R.C. 4709.13(C) that sets forth a statement of the charges and informs the individual of the time and place of an administrative hearing on the charges. This notice must be served upon the individual in accordance with section 119.07 of the Revised Code. Once proper service has been obtained, the Board holds an administrative hearing before a Hearing Officer in accordance with Chapter 119 of the Revised Code, and the affected party is permitted to participate in this hearing, if they desire to do so, regardless of whether or not they have specifically requested the hearing, unless the affected party chooses to settle the matter through a consent agreement.

2. In a brief statement explain the factual background, nature, purpose and rationale of the action/proposed action pertaining to this referral.

Section 4713.01 of the Revised Code provides the definition for “the practice of barbering”. This definition clearly defines the scope of practice for barbering. Board inspectors, during routine inspections of licensed facilities and investigations of complaints, encounter individuals engaging in practices that are within the defined scope of practice for barbering, and who have never held a license by the Board. As practicing barbering, holding oneself out as a practicing barber, or advertising as a barber without a barber license is specifically listed as a prohibited act under division (A) of section 4709.02 of the Revised Code, these individuals receive an inspection report noting this alleged violation, unless they are covered by one of the exemptions listed in section 4709.03 of the Revised Code. This inspection report is then forwarded to Board staff for the processing of a potential administrative action against the individual. The proposed action presented in this referral is the standardized disciplinary approach for these administrative action cases. The Board is currently holding a number of inspection reports noting a violation of R.C. 4709.02(A) for individuals who have never held a license issued by the Board until a decision is made on this referral.

3. Please check all of the following that apply as reasons the action/proposed action is subject to review? (ORC 107.56(B)(1))?

- Fixes prices or limits price competition;
- Divides, allocates or assigns customers or potential customers or geographic markets in this state among members of the occupation regulated by the boards;
- Excludes present or potential competitors from the occupation regulated by the board;
- Limits output or supply in this state of any good or service provided by the members of the regulated occupation;
- Prohibits offering a particular quality-level of a product or service;
- Restricts advertising or makes it more expensive or less effective;
- Substantially reduces the number of firms or providers that can serve a particular set of customers; or
- Any other activity that could be subject to state or federal antitrust law if undertaken by private persons.

4. Is the action/proposed action explicitly compelled or specifically authorized by statute? If so, please list the statute(s).

Yes. R.C. 4709.02(A) specifically prohibits the practice of barbering, holding oneself out as a practicing barber, or advertising as a barber without a barber license.

R.C. 4709.14(B) authorizes the Board to take disciplinary action (including the imposition of fines) against any individual for a violation of any provisions of Chapter 4709 of the Revised Code or the rules promulgated thereunder.

R.C. 4709.99 establishes that an individual may be fined between \$100 and \$500 for a first-time violation of Chapter 4709 of the Revised Code or the rules promulgated thereunder, and between \$500 and \$1,000 for each subsequent violation of the of the provision.

R.C. 4709.05(H) explicitly states that the Board's authority to investigate and/or inspect activities or establishments for alleged violations of Chapter 4709 of the Revised Code and the rules promulgated thereunder applies to unlicensed individuals and businesses.

5. Is the action/proposed action within the scope of the board or commission's statutorily-delegated general authority to regulate in a given occupation or industry? If so, please describe how it is within scope and reference the statute.

N/A. The proposed process is specifically authorized by statute.

6. Please identify the clearly articulated state policy (e.g., health and safety, or consumer protection) in state statute or rule, or any supporting evidence of the harm the action/proposed action is intended to protect against?

The proposed action is designed to protect public health and safety and to provide protection for consumers.

- 6a. How does the action/proposed action address the harm or advance the articulated state policy?

The proposed action serves as a method to deter individuals from engaging in unlicensed practice. This helps to ensure that barbering services are only provided by qualified, competent individuals who are subject to inspection by the Board, which protects consumers from harm (chemical burns, razor cuts, skin diseases, infections, etc.) that could be caused by unsafe or unsanitary practices.

8. If appropriate, explain the action/proposed action's alleged consistency with state or federal antitrust law, which may include a description of how the action or proposed action may affect the number of competitors and those competitors incentive to compete in amount, quality, variety or other aspects of the good or service offered.

The action is consistent with state and federal antitrust law as it implements a clearly articulated state policy. Specifically, the Ohio General Assembly has determined that individuals providing barbering services should be licensed and regulated, and have tasked the Ohio State Cosmetology and Barber Board with carrying out this licensure and regulation. The Ohio General Assembly has also directly stated that engaging in such practices without a license is prohibited. The Board's proposed process carries out this state policy within the framework established by the General Assembly in sections 4709.13, 4709.14, and Chapter 119 of the Revised Code.

9. What process did the board or commission follow to arrive at its decision to take action/proposed action including public hearings held, public comments invited, studies conducted, data collected interviews conducted, etc.?

The Board developed a violation matrix for licensees under Chapter 4709 of the Revised Code based on the violation matrix that had previously been created for individuals and businesses licensed under Chapter 4713 of the Revised Code. This Violation Guidance Matrix was adopted by the Board during a public meeting on January 29, 2018. The Violation Guidance Matrix will be reviewed and updated whenever changes are made to relevant Board statutes or rules.

10. Does the action/ proposed action relate to or depend upon a question that is the subject of a formal opinion request pending before the Ohio Attorney General?

No.

11. Provide any other information the board or commission deems appropriate for the Office's review of the action/proposed action.

The Board has attached a copy of its current Violation Guidance Matrix for Chapter 4709 of the Revised Code and the rules promulgated thereunder. This matrix has been annotated to assist with CSI review.

*Send this completed form, a complete copy of action or proposed action, and any other documentation deemed appropriate for evaluation to CSISReferrals@governor.ohio.gov.

OHIO STATE COSMETOLOGY AND BARBER BOARD

To protect and support the public through regulation and education, while promoting the integrity of the cosmetology and barbering industries.



Violation Guidance Matrix – Barbering

Revision Date 01/22/2017

ANNOTATED FOR CSI REVIEW

All violations charged under R.C. 4709.13 and 4709.14, unless noted separately, shall be fined as follows:

Occurrence	Violation	Additional First-Time Violations in the Same Inspection
1 st	\$250	\$100 each
2 nd	\$500	\$200 each
3 rd	\$1000	\$300 each
4 th	\$1000 or Suspend/Revoke	\$300 each

Each violation must be monitored for the number of past occurrences to ensure the appropriate fine amount, as only first-time violations will be given the reduced amount for additional violations. For example, if a salon is found in violation of OAC 4709-9-050 and OAC 4709-9-06, they would be fined \$350 (\$250 for one first-time violation, and \$100 for the additional first-time violation). If, during a later inspection, the salon was found in violation of the same two rules plus an additional rule, they would be fined \$1,200 (\$500 for each second-time violation, and \$200 for the additional first-time violation).

First-Time Warning Violations

The following violations shall receive warnings on a first violation, and will then follow the process from the table above for additional violations (with the second violation being treated as a first violation for fine purposes), unless noted separately:

ORC 4709.07(D) – Display of License and Photograph ORC 4709.09(B)(5) – Display of Shop License	OAC 4709-7-06 – Display of Sign or Barber Pole OAC 4709-7-07 – Notification of Changes in Ownership, Shop Name, or Managing Barber
ORC 4709.09(D) – Return of Shop License After Closure	OAC 4709-7-12 – Pets in Barber Shops
ORC 4709.13(A)(4) – Working in Barber Shop Violating Sanitation Rules	OAC 4709-7-13 – Posting Inspection Reports
ORC 4709.13(A)(6) – Operating a School Without Posting that All Work is Performed by Students	OAC 4709-7-14 – Posting Shop License
ORC 4709.13(A)(7) – Operating a Barber Shop Without a Sign or Barber Pole	OAC 4709-7-15 – Posting License and Photo at Work Station
OAC 4709-3-02(K) – Barber School Sign	OAC 4709-9-01 – General Cleanliness and Sanitation of Barber Shops
OAC 4709-3-02(L) – Posting that All Work is Performed by Students	OAC 4709-9-03 – Washing of Hands Prior to Service
OAC 4709-3-02 Outro Paragraph – Posting OAC Rules	OAC 4709-9-05(D) – Implement Storage
OAC 4709-3-05(G)(2) – Submitting Student Conduct Rules	OAC 4709-9-07 – Storage of Linens and Paper Towels

OAC 4709-7-02(A) – Floor Plan for Barber Shops	OAC 4709-9-08 – Use of Fresh Towel on Each Patron
OAC 4709-7-02(B) – Filing Revised Floor Plan	OAC 4709-9-09 – Covering Head Rest of Barber Chair
OAC 4709-7-02(C) – Prohibiting Games and Pool Tables in Barber Shops	OAC 4709-9-10 – Neck Protectors
OAC 4709-7-05 – Sanitary Condition of Restroom	OAC 4709-9-11 – Storage of Used Towels

Other Violations

The following violations shall be acted upon as noted below, and shall not follow the standard fine procedure noted above:

ORC 4709.02(A) ORC 4709.02(C) ORC 4709.02(G) – Practicing or Teaching Barbering Without a Valid License	Follow normal fine schedule, with the following exceptions on a first-time violation: No License: Fine and verify practice has ceased. License not renewed (within 30 days of expiration): Verify renewal, and if not, fine.
ORC 4709.02(B) ORC 4709.02(D) ORC 4709.02(E) – Operating or Advertising a Barber Shop Without a Valid License	Follow normal fine schedule, with the following exception on a first-time violation: License not renewed (within 30 days of expiration): Verify renewal, and if not, fine.
ORC 4709.02(F) – Operating a Barber School Without a Valid License	Follow normal fine schedule for first two occurrences, with the following exceptions on a first-time violation: No License: Verify operations have ceased until in compliance. License not renewed (within to 30 days of expiration): Verify renewal, and if not, fine. 3 rd Occurrence: Denial
ORC 4709.02(I) ORC 4709.02(J) – License or Practice Fraud	1 st Occurrence: Denial or suspension for one (1) year 2 nd Occurrence: Deny or Revoke
ORC 4709.09(C) – Independent Contractor/Chair	Follow normal fine schedule, with the following exceptions on a first-time violation: No license: 30 day abeyance.

License	License not renewed (within 30 days of expiration): Verify renewal, and if not, fine.
ORC 4709.13(A)(1)-(3) ORC 4709.13(B) – False Advertising, Drunkenness or Addiction, Unprofessional Conduct, Felony Convictions After Initial Licensure	Board discretion, but fines cannot exceed the maximum amounts in ORC 4709.99
OAC 4709-3-07(D)(13) – Advertising that a School is Open before Obtaining a License	1 st Occurrence: \$250 2 nd Occurrence: Closure until valid 3 rd Occurrence: Denial
OAC 4709-5-08(A) – Tier I Sex Offenders	Board discretion to refuse to issue or renew, or revoke
OAC 4709-5-08(B) – Tier II and III Sex Offenders	Refuse to issue or renew, or revoke
OAC 4709-7-03(B) OAC 4709-7-03(C) – Sewage Disposal	1 st Occurrence: \$250 2 nd Occurrence: \$500 3 rd Occurrence: Suspend/Revoke
OAC 4709-7-04 – Plumbing Permits	Refer to agency with jurisdiction.
OAC 4709-7-05 – No Functional Restroom	1 st Occurrence: \$250 2 nd Occurrence: \$500 3 rd Occurrence: Suspend/Revoke
OAC 4709-7-13 – Refusing Inspection	Follow normal fine schedule for first two occurrences. 3 rd Occurrence: Suspend/Revoke