Publication Date: **December 23, 2010**
Effective Dates: **December 23, 2010 through May 21, 2011**

STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD
EMERGENCY RULE ORDER

An order of the Barbering and Cosmetology Examining Board to amend BC 9.02; and to repeal and create ch. BC 11, relating to late renewal and continuing education.

Analysis prepared by the Department of Regulation and Licensing.

FINDING OF EMERGENCY

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

ANALYSIS

Statutes interpreted:
Section 454.12, Stats.

Statutory authority:
Sections 15.08 (5) (b), 227.11 (2) and 454.12, Stats.

Explanation of agency authority:

The Barbering and Cosmetology Examining Board is granted the authority under s. 454.12, Stats., to promulgate rules that establish continuing education requirements for licensure. Prior to promulgation of this emergency rule, the board made the determination that this rule-making was necessary to preserve the public health, safety or welfare.

Plain language analysis:

This proposed rule-making modifies continuing education requirements for licensure. It also modifies the criteria for the approval of continuing education programs and the types of programs required to be taken for license renewal.

SECTION 1 sets out the maximum number of credits that must be completed for late renewal applicants whose license has not been expired greater than 5 years. The requirements for late renewal is clarified to reflect that if the total number of delinquent continuing education credits exceed 30, then 30 shall be the maximum required for late renewal.

SECTION 2 repeals and recreates ch. BC 11. Section BC 11.01 identifies the authority and purpose for ch. BC 11, Continuing Education. Section BC 11.02 provides definitions for "biennium," "continuing education," "continuing education credit" or "CEU," "course" or "program," and "safety, sanitation and infection control."

Section BC 11.03 provides the continuing education requirements for license renewal. This section clarifies the requirement that applicants for renewal licenses must have obtained a minimum of 12 credits of continuing education during the 2-year period immediately preceding the license renewal date. A licensee must continue to obtain the following types and number of credit hours: 2 credit hours reviewing the laws governing their profession; 4 credit hours in safety, sanitation and infection control, and 6 elective credit hours. However, in addition to credits directly related to the provision of services allowed under the applicant's license, credit may also be had for courses related to identifying and reporting domestic abuse. It also clarifies that applicable licensees must complete 6 elective credits for each license

held. A Note is added to explain that courses may count under more than one license, and that licensees may be granted credit for business management class.

Section BC 11.04 creates standards for approval of programs and courses. The rule specifies the criteria necessary for a course to meet requirements for approval which include: programs organized and structured to contribute to licensee's professional competency; a program conducted by individuals or entities that have specialized education, training or experience and are considered qualified concerning the subject matter of the program; a program that fulfills pre-established goals and objectives and provides attendance or completion verification records.

Additional provisions designate universities, technical colleges, state licensed schools, the Wisconsin Barbering and Cosmetology Examining Board, the Department of Regulation and Licensing, and state or national professional organizations recognized by the board as approved providers who will not need prior approval of its programs. Other entities may become approved providers upon application on prescribed department forms and approval. All providers will have to have their law course approved by the department, and may have their approvals revoked at the discretion of the board.

Section BC 11.05 requires certificates of completion or proof of attendance that must be retained and submitted to the department upon request for audit purposes. Section BC 11.06 outlines the requirement that completion certificates be retained for a minimum of five years.

Section BC 11.07 specifies the waiver provisions. It limits waivers to licensees who are actively practicing in the profession and are temporarily unable to comply with the continuing education requirements. The board will have the discretion of granting a full or partial waiver, or granting an extension of time to the applicant. It spells out that applicants must make a written request for waiver and pay the renewal fee prior to the expiration of their license. It further provides that a licensee may not receive a waiver, partial waiver or extension for two consecutive biennium. Lastly, the provision outlines that if a waiver is denied, the licensee may not practice, or must cease practicing, until he or she comes into compliance.

Summary of, and comparison with, existing or proposed federal regulation:
There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:
Continuing education requirements are as follows: Ten hours are required for estheticians, 14 hours for cosmetologists, and 10 hours for nail technicians for each biennial renewal. There are no requirements for barbers.

Iowa:
Continuing education requirements are 8 hours each for barbers, cosmetologists, nail technicians, and estheticians. www.idph.state.ia.us

Michigan:
There are no continuing education requirements for barbering or cosmetology. www.michigan.gov/dleg

Minnesota:
Cosmetologists, manicurists, and estheticians must provide documentation that they have practiced for a certain amount of hours in the previous 3 year period or have taken an approved 40 hour refresher course. This requirement does not exist for barbers. These professions do not have continuing education requirements. www.bceboard.state.mn.us

Summary of factual data and analytical methodologies:
The comparison information with the rules in adjacent states was obtained directly from contact with those states and a review of their rules. The comparison to the adjacent states demonstrates that the proposed rules are substantially consistent with the rules in those states. In addition, the Barbering and Cosmetology Examining Board examined models of continuing education from national organizations related to their profession, as well as from other Wisconsin regulatory boards.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:
Internet research, as well as telephone surveys were conducted regarding the availability and costs related to continuing education in the cosmetology profession. Continuing education credits are available at an average cost range of $10-$25 per credit hour, and are available in a wide array of modes (online, video correspondence, workshops, etc.). That data was compared with the requirements outlined in the proposed rules and based thereon, appears that while individual licensees will see a slight increase in the cost associated with doing business as a result of these rules, the rules will have no significant impact on a substantial number of small businesses.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector:
The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:
The department estimates that this rule will require staff time in the Division of Enforcement, Division of Management Services, and the Office of Exams. The total one-time salary and fringe costs are estimated at $26,172. The total on-going salary and fringe costs are estimated at $40,228.

Effect on small business:
These proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:
Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2385; email at kristine.anderson@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, WI 53708-8935, or by email to kristine.anderson@wisconsin.gov. Comments must be received on or before to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. BC 9.02 is amended to read:

BC 9.02 Late renewal. If the application for renewal is filed less than 5 years after the expiration of the applicant's last license, the applicant shall comply with the continuing education requirements in s. BC ~~11.01~~ 11.03, and pay the late renewal fee in s. 440.08 (3) (a), Stats.

SECTION 2. Ch. BC 11 is repealed and recreated to read:

Chapter BC 11

CONTINUING EDUCATION

BC 11.01 Authority and purpose. The rules in this chapter are adopted under the authority in ss. 15.08 (5) (b), 227.11 (2) and 454.12, Stats., and govern biennial continuing education for aesthetics, barbering and cosmetology practitioner and manager, electrology and manicuring licenses.

BC 11.02 Definitions. As used in this chapter:

(1) "Biennium" means a 2-year period beginning April 1 of each odd-numbered year.

(2) "Continuing education" means the planned, professional development activities designed to contribute to the advancement, extension and enhancement of the professional skills or knowledge of the licensees in the practice of barbering and cosmetology, manicuring, aesthetics and electrology.

(3) "Continuing education credit" or "CEC" means a unit of credit for continuing education courses. Fifty minutes of actual instruction equals one continuing education credit hour.

(4) "Course" or "program" means any qualifying course, program or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(5) "Safety, sanitation and infection control" means topics or subjects which pertain to all of the barbering and cosmetology professions and which are designed to safeguard the public health, safety and welfare by providing instruction on and increasing knowledge and awareness of the identification, assessment, management, control and prevention of factors that may adversely affect the health, comfort, safety or well-being of individuals. This could include courses dealing with first-aid, blood-borne pathogens, product selection, infection control, client safety, proper techniques for cleaning, disinfection and sterilization of equipment in accordance with acceptable state and federal standards.

BC 11.03 Continuing education requirements for license renewal. (1) Except as provided in sub. (3), every licensee shall complete a minimum of 12 continuing education credit hours during the 2-year period immediately preceding the license renewal date of March 31 of every odd-numbered year.

(2) The required credit hours of continuing education shall consist of all of the following:

(a) Two credit hours reviewing the laws governing licensees and establishments.

(b) Four credit hours in safety, sanitation and infection control.

(c) Six elective credit hours directly related to the provision of services that are permitted under the license held by the licensee, except up to 2 elective credits may be counted for courses designed to aid licensees in the recognition of domestic abuse or violence and referrals of victims to the appropriate agencies for assistance. Licensees holding more than one license shall complete a minimum of 6 credits in each area of practice in which they are licensed to meet the requirements under this subsection. These credits are in addition to any other continuing education credits required under this chapter.

Note: Credit may be counted for courses related to business management concepts relating specifically to delivery of services to a consumer. A course on a particular topic may count toward the elective credits for more than one license where appropriate and applicable.

(3) (a) A licensee is not required to complete continuing education credit hours between initial licensure and the first renewal period.

(b) A licensee who has held an active Wisconsin license for 30 or more years shall complete only 6 credit hours of continuing education during the 2-year period immediately preceding the license renewal date of March 31 of every odd-numbered year. The licensee shall complete the credit hours listed in sub. (2) (a) and (b).

(c) Except as provided in par. (a), a licensee shall complete 6 credit hours of continuing education to qualify for license renewal on March 31, 2011. The licensee shall complete the credit hours listed in sub. (2) (a) and (b).

(4) If a licensee fails to complete the continuing education requirement within a 2-year licensing period, continuing education credit hours acquired on or after April 1 of any odd-numbered year will be first applied to the preceding 2-year period until the requirement is fulfilled. Those credit hours will not apply to any other period.

(5) Continuing education may be obtained through any one of the following means:

(a) Attending qualifying seminars, corporate in-house courses, workshops, professional or technical presentations made at meetings, conventions, or conferences. Attendance can be in person or via remote classroom where a qualified provider is available to the participant to comment and answer questions.

(b) Teaching a continuing education program. A person who teaches may only receive credit for the initial offering or presentation of a course or program. Fifty minutes of actual instruction is equivalent to one continuing education credit hour. A maximum of 6 credit hours may be obtained by teaching in any biennial registration period. Full-time faculty may not claim continuing education credits for teaching done as part of their regular duties.

(c) Distance education, including completion of interactive short courses or tutorials, delivery of educational programs and courses on CD-ROM, internet or correspondence courses that meet the following criteria:

1. Is offered by a provider approved under s. BC 11.04 and the program meets all continuing education requirements.
2. Requires assignments that are completed or prepared by the licensee and submitted to the provider for correction, grading, or both.
3. The course or program includes a written examination designed to ensure that the licensee actively participated in the presentation of material and derived a measurable benefit from participation. A score of 75% or higher shall be considered a passing examination score.
4. The program or course shall contain a reasonable security procedure to assure that the licensee enrolled is the actual participant.
5. The course or program contains a minimum of 50 minutes of actual instruction for each credit hour offered. For purposes of calculating actual instruction time, the time spent for testing and assessment purposes shall not be included.
6. All corrected or graded lessons and examinations are to be maintained by the provider for no less than 5 years and submitted to the board or its designee upon request for auditing purposes.

BC 11.04 Standards for approval. (1) To be approved for CECs, a continuing education program or course shall meet all of the following criteria:

(a) The program includes instruction in an organized method of learning contributing directly to the professional competency of the licensee and pertaining to subject matters which integrally relate to the practice of the profession.

(b) The program is conducted by individuals or entities that have specialized education, training or experience and are considered qualified concerning the subject matter of the program as determined by the board.

(c) The program fulfills pre-established goals and objectives as determined by the board.

(d) The program provides attendance or completion verification records in the form of completion certificates or other documents supporting evidence of attendance at, or completion of, the program or course.

(2) Except as provided in sub. (4), the following providers are approved by the board for purposes of offering programs for continuing education credit hours:

(a) Universities, technical colleges and schools licensed by the appropriate authority for the state in which the program is offered.

(b) The Wisconsin barbering and cosmetology examining board and the Wisconsin department of regulation and licensing.

(c) State or national professional organizations recognized by the board.

(d) For the providers approved under sub. (2) (a) to (c), no prior approval of programs is necessary.

(3) The board may approve programs by the following providers:

(a) State licensed or certified instructors who have not had any disciplinary actions taken against them in the 3 year period preceding their planned instruction.

(b) Product distribution companies, national salon chains or other providers that offer programs with significant professional educational benefits for licensees as determined by the board.

(4) The board shall approve a curriculum for the law program every biennium. All providers except those approved under s. BC 11.04 (2) (a) and (b), shall submit law courses for review and approval by the board or its designee.

(5) An application for approval of a continuing education program shall:

(a) Be on a form approved by the board or its designee.

(b) Be completed as prescribed by the board or its designee and filed with the board no later than 45 working days prior to the program or course date.

(6) Provider and program approval may be withdrawn in the sole discretion of the board or its designee if it finds the course, as implemented, fails to comply with the requirements of this chapter.

BC 11.05 Certificate of completion, proof of attendance. (1) Each licensee shall certify on the renewal application full compliance with the continuing education requirements set forth in this chapter.

(2) The board may conduct a random audit of its licensees on a biennial basis for compliance with these requirements. It is the responsibility of each licensee to retain or otherwise produce evidence of compliance.

(3) If evidence of compliance is requested by the board or its designee, the licensee shall submit the requested information or documentation within 30 days of receiving the written notice. Failure to do so may result in disciplinary action.

BC 11.06 Recordkeeping. Licensees shall obtain a certificate of completion from the program provider for each continuing education course completed. It shall be the responsibility of the licensee to retain the certificates and any other required documentation for a minimum of 5 years.

BC 11.07 Waiver of continuing education. (1) A renewal applicant who is actively practicing in the profession and is unable to fully comply with the continuing education requirements due to temporary and extreme hardship, as determined by the board, may submit a written request for a waiver. The board or its designee will review the request, and in its sole discretion may grant a full or partial waiver, or an extension of time to comply with the requirements.

(2) A renewal applicant who prior to the expiration date of the license submits a request for a waiver, pays the renewal fee and provides a written statement setting forth the basis of the request, shall be deemed to be licensed and in good standing until the final decision on the application is issued by the board or its designee. If a finding of extreme hardship is not made, the applicant shall immediately discontinue engaging in the practice of barbering and cosmetology until the applicant meets the requirements of s. BC 11.03 and submits evidence of compliance to the board or its designee.

(3) A renewal applicant may not receive a waiver under this provision for 2 consecutive biennium.

(4) Except as provided in sub. (2), a licensee who fails to meet the continuing education requirements by the renewal date, as specified in s. 440.08 (2) (a), Stats., may not engage in the practice of a barbering and cosmetology profession until the license is renewed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect upon publication in the Wisconsin State Journal, pursuant to s. 227.24, Stats.