



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-058

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section BC 2.025 allows licensees to engage in specified “delegated medical procedures” apparently using the statutory exception “or under the direction of a licensed and practicing physician” in s. 454.02 (1), Stats. This statutory exception, available only to barbers or cosmetologists, is apparently not available to electrologists, since removal of hair by use of an electric needle is statutorily excluded from the definition of “barbering or cosmetology” under s. 454.01 (5) (d), Stats. Given the statutory exclusion of electrology from “barbering or cosmetology,” as well as the practice standard in s. BC 2.03 (1), which limits licensees to only those services which they are competent *and licensed* to provide, should s. BC 2.025 be clarified to exclude electrologists?

2. Form, Style and Placement in Administrative Code

- a. In s. BC 1.01 (3m), “means exclusively” should replace “refers exclusively to.”
- b. In the treatment clause of SECTION 5, “(intro.)” should be inserted after “(9)”.
- c. The second sentence of s. BC 1.01 (11m) is substantive and therefore should not be in a definition. [See s. 1.01 (7), Manual.]
- d. Section BC 2.03 (8) (intro.) should begin with “Licensees may not . . .” and end with a colon. [See ss. 1.01 (2) and 1.03 (8), Manual.]

- e. The titles to ss. BC 4.01 and 10.03 should be bold, with no underscoring.
- f. Section BC 4.07 (5) does not replace the deleted language with language that would finish the sentence.
- g. SECTION 31 of the rule repeals and recreates s. BC 4.10 (1), using the language “Prior to use, all reusable manicure instruments shall be disinfected.” SECTION 32 of the rule amends s. BC 4.10 (1) (a) while duplicating the same language used in SECTION 31 of the rule to recreate s. BC 4.10 (1). Because it begins a paragraph scheme and SECTION 33 of the rule proceeds by eliminating the paragraph scheme, it appears that SECTION 32 of the rule should be deleted. Also, in SECTION 31, the title in sub. (1) should be deleted since none of the other subsections have titles.
- h. The analysis should discuss, at least briefly, one of the most important substantive provisions of the rule, which is the creation of ch. BC 10 to regulate forfeiture actions brought under s. 454.15 (3), Stats.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The statutory authority for imposing forfeitures under the newly created ch. BC 10 is found in s. 454.15 (3), Stats. This statute should be listed under “Statutes authorizing promulgation:” at the beginning of the rule.
- b. The introductory clause and SECTION 4 of the rule state that the proposed order repeals s. BC 1.01 (8) (a) to (d), but these subsections do not exist. It appears that the “(8)” should be changed to “(9).”
- c. Since all of the definitions for chs. BC 1 to 9 are set forth in s. BC 1.01, the board should consider deleting s. BC 10.02 and adding the definitions of “credential” and “division” to s. BC 1.01. The definitions could then be made applicable to chs. BC 1 to 10.
- d. Section BC 10.03 (2) refers to Appendix I. However, no Appendix I was included with the proposed rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the second paragraph of the analysis, the next to last sentence states in part: “massaging that is limited A closing quotation mark is missing.
- b. In the third paragraph of the analysis, the last sentence begins: “The proposes rules” The word “proposes” should be changed to “proposed.”
- c. In the fourth paragraph of the analysis, the comma in the last sentence should be removed.

d. In the last paragraph of the analysis, the last sentence begins: “Practitioners who rent a chair or booth and who relocates” The “s” should be removed in “relocates” if “practitioners” is kept plural.

e. Section BC 1.01 (14m) defines “sterilization” as “a process which destroys all forms of microbial life, including spores.” Section BC 1.01 (6m) defines “disinfection” as “application of a disinfectant,” defined in s. BC 1.01 (6) as “a chemical or product that destroys disease-causing bacteria.” It appears there is a difference between “sterilization” and “disinfection,” because the rule recreates s. BC 4.02, titled “Disinfection,” while retaining s. BC 4.03, titled “Sterilization.” Could the difference be clarified in the definition--e.g., by clarifying the relationship between the “microbial life, including spores” term in the definition of sterilization and the “disease-causing bacteria” term in the definition of disinfection?

f. In s. BC 3.02 (2) (b), “ensure” should replace “be responsible for ensuring.” Also, “booth” is misspelled.

g. In s. BC 3.04 (1), the underlined language “or relocate the establishment as specified in s. BC 3.06” would be clearer if changed to “or relocate and thus create a new establishment as specified in s. BC 3.06 (2).”

h. The word “should” in various provisions should be replaced by “shall” if the action is mandatory. For example, see ss. BC 4.03 (2) and 4.07 (5). In s. BC 10.03 (1) (d), “shall” should replace “must.”