

Clearinghouse Rule 15-035

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : COSMETOLOGY EXAMINING
COSMETOLOGY EXAMINING BOARD : BOARD
: ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cosmetology Examining Board to repeal Cos. 1.01 (11e), 1.01 (17), 2.025 (2) (a) 5., (2g), and (2r) (j), 3.02 (3), and 4.01 (3); to amend Cos 1.01 (6m), 2.04 (2), 2.06 (4) and (5), 2.07, 3.01 (6) and (10), 3.02 (1) and (2) (b), 3.04 (2), 3.05 (1), 4.01 (2), 4.02 (3) and (6) (Note), 6.04, 7.03 (2), 7.04, 8.01 (2), 8.02 (intro.), 11.01, 11.03 (5) (b) and (c) 2., 3., and 5.; to repeal and recreate Cos 9.03; to create Cos 1.01 (3e), 1.01 (3m), 2.405 (1m), 3.01 (10) (Note), 4.01 (3), (3g), and (3r), 4.04 (1m), 8.03, 11.04 (1) (e), relating to cosmetology schooling, licensure, and practice requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 454.06 (8m) (d) and 454.08 (1) (a), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 454.06 (8m) (d), 454.08 (1) (a), Stats., 2011 Wisconsin Act 190

Explanation of agency authority:

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Cosmetology Examining Board (Board) is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and to interpret the statutes it administers. Section 454.06 (8m) (d), Stats., requires the Board to establish, by rule, the limits of minimal cosmetology work for inactive licensees. Section 454.08 (1) (a), Stats., authorizes the Board to promulgate rules providing for cosmetology services outside of licensed cosmetology establishments. The passage of 2011 Wisconsin Act 190 prompted the Board to review all of the regulations concerning cosmetology and undertake a comprehensive update of the rules making them consistent with the new legislation as well as contemporary industry practices.

Related statute or rule:

Wis. Admin. Code Cos. chs. 1 to 11

Plain language analysis:

The Cosmetology Examining Board undertook a comprehensive review of the rules governing cosmetology practice in Wisconsin. This review was prompted by the passage of 2011 Wisconsin Act 190 which separated the Barbering and Cosmetology Examining Board, leaving the regulation of cosmetology practice to the Cosmetology Examining Board and transferring the regulation of the practice of barbering to the Department of Safety and Professional Services. This proposed rule makes the changes necessitated by the passage of 2011 Wisconsin Act 190 to Wisconsin Administrative Code Chapters 1 to 11, which includes redefining the term manager to cosmetology manager and creating an inactive license classification. Other changes in the proposed rule include identifying the settings that are excluded from providing cosmetology services outside of a licensed cosmetology establishment, eliminating the requirement for a separate establishment license for electrologists, eliminating the training programs and continuing education required to perform delegated medical procedures, and clarifying the late renewal and reinstatement processes.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: Cosmetology managers are not licensed in Illinois. Licensed cosmetologists, cosmetology teachers, or cosmetology clinic teachers may elect to place their license on inactive status. 225 ILCS410/3-7.1. Once a cosmetologist, cosmetology teacher or cosmetology clinic teacher's license is in an inactive status, the licensee may not practice in Illinois. Unlike the Wisconsin provision which allows a licensee to work if the work is minimal. Wis. Stats. § 454.06 (8m) (d).

Iowa: Iowa does not license cosmetology managers but there are provisions regarding inactive license classification. "A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice cosmetology arts and sciences in Iowa until the license is reactivated." 645 IAC 60.8(6).

Michigan: Michigan does not issue a license for cosmetology managers and does not have an inactive licensure classification.

Minnesota: Similar to Wisconsin, Minnesota regulates salon managers. Minn. Stat. §155A.23. Minnesota also allows for an inactive license for applicants who have ceased

all practice of cosmetology. An inactive license does not allow a licensee to engage in the practice of cosmetology. Minn. R. 2105.0200

Summary of factual data and analytical methodologies:

The methodologies used in drafting the proposed rule was reviewing 2011 Wisconsin Act 190, reviewing neighboring states statutes and rules, and receiving input from the Cosmetology Examining Board.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kathleen Paff, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Paff@wisconsin.gov.

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

Comments may be submitted to Kathleen Paff, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Paff@wisconsin.gov. Comments must be received on or before the public hearing to be held on June 22, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Cos 1.01 (3e) and (3m) are created to read:

Cos 1.01 (3e) “Cosmetologist” has the meaning given in s. 454.01 (7e), Stats.

(3m) “Cosmetology manager” has the meaning given in s. 454.01 (7s), Stats.

SECTION 2. Cos 1.01 (11e) is repealed.

SECTION 3. Cos 1.01 (6m) is amended to read:

Cos. 1.01 (6m) “Division” means the division of ~~enforcement~~ legal services and compliance in the department of safety and professional services.

SECTION 4. Cos 1.01 (17) is repealed.

SECTION 5. Cos 2.025 (2) (a) (intro.) is amended to read:

Cos 2.025 (2) (a) Laser hair removal services. ~~Prior to providing any laser hair removal procedures, a licensee shall complete advanced training in the use of laser devices in a training program of not less than 6 hours. If the training program is provided in a setting other than a licensed school of cosmetology, the program shall incorporate all of the following:~~

SECTION 6. Cos 2.025 (2) (a) 1. to 5., (2g), and (2r) (h), (i), and (j) are repealed.

SECTION 7. Cos 2.04 (2) is amended to read:

Cos 2.04 (2) Licensees shall report to the board unauthorized or unlicensed practice or other violations of ch. 454, Stats., and chs. ~~Cos 1 to 9~~ Cos 1 to 11.

SECTION 8. Cos 2.045 (1m) is created to read

Cos 2.045 (1m) Licensees shall not perform personal care services in any setting in which a persons is not confined to their home because of illness or disability or an institution. Examples of settings in which personal care services may not take place include on-site wedding parties, adult day care centers, or assisted living facilities.

SECTION 9. Cos 2.06 (4) and (5) are amended to read:

Cos 2.06 (4) Maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records, to enable apprentices or practitioners to meet the requirements of s. 454.06 (3) (b), 440.63 (3) (a) 1. or 454.10 (2), Stats., for credentialing as a practitioner, manager or instructor. Owners shall maintain these records for a minimum of 5 years.

(5) In the case of an owner of a cosmetology establishment, employ a cosmetology manager who shall have direct authority over the operations of the

establishment. If the cosmetology manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a cosmetology manager. The owner shall notify the board that the cosmetology manager is no longer employed or has become otherwise unavailable within 10 days following the cosmetology manager's last day of employment.

SECTION 10. Cos 2.07 is amended to read:

Cos 2.07 Responsibilities of the cosmetology manager. (1) The licensed cosmetology manager of a cosmetology establishment shall be responsible for the daily operations of an establishment and ensure that the establishment is in compliance with ch. 454, Stats., and chs. Cos 3 and 4. The cosmetology manager shall maintain supplies and equipment necessary to ensure safe and sanitary establishment conditions.

(1g) A cosmetology manager shall train and supervise any apprentices in accordance with s. Cos 6.04 (1) and shall supervise any temporary permit holders and training permit holders.

(1r) The cosmetology manager shall, for a minimum of 5 years, maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records, to enable apprentices or practitioners to meet the requirements of s. 454.06 (3) (b), 440.63 (3) (a) 2., or 454.10 (2), Stats., for credentialing as a practitioner, cosmetology manager or instructor.

(2) The cosmetology manager shall post all required licenses, permits and notices.

SECTION 11. Cos 3.01 (6) and (10) are amended to read:

Cos 3.01 (6) Establishments shall provide safe and secure areas for storing, cleaning and disinfecting equipment. Poisonous substances stored in public areas shall be locked in a cabinet or closet, with the exception of over-the-counter products used for room deodorizing. These products shall be kept in an elevated location out of the reach of children.

(10) Pets ~~Animals~~ shall not be kept in an establishment during business hours, except for service animals.

SECTION 12. Cos 3.01 (10) (Note) is created to read:

Note: Section 106.52 (1) (fm) of the Statutes reads as follows: “ ‘Service animal’ means a guide dog, signal dog, or other animal that is individually trained or is being trained to do work or perform tasks for the benefit of a person with a disability, including the work or task of guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

SECTION 13. Cos 3.02 (1) and (2) (b) are amended to read:

Cos. 3.02 Other establishment requirements. (1) COSMETOLOGY MANAGER

REQUIRED. The owner of a cosmetology establishment shall not operate the establishment unless a licensed cosmetology manager has been employed for the establishment, subject to the exception for temporary unavailability of a cosmetology manager in s. Cos 2.06 (5). The cosmetology manager shall be responsible for supervising and managing the operation of the establishment. The owner and the cosmetology manager shall ensure that the establishment operates in compliance with ch. 454, Stats., and rules of the board as follows:

(a) The owner of more than one establishment shall employ a sufficient number of cosmetology managers to satisfy the requirement that a cosmetology manager be present full time in each establishment as defined in s. Cos 1.01 (7).

(b) The owner of a cosmetology establishment may satisfy the requirement in this section by employing a cosmetology manager who also works at an establishment owned by a different person, provided the cosmetology manager works full time as defined in s. Cos 1.01 (7) at each establishment where he or she is employed as a cosmetology manager.

(c) A cosmetology manager is required to be present in an establishment full time, as defined in s. Cos 1.01 (7), but if an establishment is open for more than 30 hours per week, the cosmetology manager is not required to be present in the establishment at all times when the establishment is open for business, and the cosmetology manager may be absent for reasonable brief periods during a day.

(2) (b) The lessee of a chair or booth shall be responsible for ensuring that the leased chair or booth operates in compliance with ch. 454, Stats., and the rules of the board, and the lessee shall hold a cosmetology manager's and an establishment license. ~~Lessees of chairs or booths leased prior to the effective date of this paragraph shall come into compliance with this paragraph by October 1, 2004.~~

SECTION 14. Cos 3.02 (3) is repealed.

SECTION 15. Cos 3.04 (2) is amended to read:

Cos 3.04 (2) The board shall require identification of the owner, business address, cosmetology manager, type of business, and a copy of the floor plan showing dimensions and required equipment, in addition to other information which may be needed to approve the issuance of a license.

SECTION 16. Cos 3.05 (1) is amended to read:

Cos 3.05 Inspections. (1) Inspections by field representatives or agents of the board may be conducted to assure compliance with ch. 454, Stats., and chs. ~~Cos 1 to 6~~ Cos 1 to 11.

SECTION 17. Cos 4.01 (2) is amended to read:

Cos 4.01 (2) Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves. Waterless hand washing agents with alcohol as an active ingredient with a concentration of at least ~~70%~~ 60% are an acceptable substitute for washing hands that are not visibly soiled with soap and running water.

SECTION 18. Cos 4.01 (3) is repealed.

SECTION 19. Cos 4.01 (3), (3g), and (3r) are created to read:

Cos 4.01 (3) All tools, implements and items that come in direct contact with a client shall be cleaned and disinfected or disposed of after use on each client.

(3g) All non-disposable manicure tools and implements shall be cleaned and disinfected with a disinfectant as defined in s. Cos 1.01 (6e), after use on each client.

(3r) All items designed to be disposed of after a single use, such as orangewood sticks, cotton, gauze, neck strips, nail wipes, tissues, sponges, paper towels, wooden applicators and spatulas, emery boards or porous nail files, buffer blocks, pumice stones, sanding bands or sleeves and disposable nail bits shall be disposed of after each use.

SECTION 20. Cos 4.02 (3) and (6) (Note) are amended to read:

Cos 4.02 (3) Disinfection for combs, lifts, brushes, rollers and any other contact equipment shall consist of cleaning with soap and water to remove all organic material, ~~spraying with a tuberculocidal~~ treating with a disinfectant as defined in s. Cos 1.01, and air-drying.

(6) (Note) Chlorine bleach and Lysol® (brown bottle) are germicidal compounds.

SECTION 21. Cos 4.04 (1m) is created to read:

Cos 4.04 (1m) All establishments shall supply licensees with at least one antiseptic listed in s. Cos 4.05.

SECTION 22. Cos 6.04 is amended to read:

Cos 6.04 Practical training for apprentices. (1) (a) The establishment owner with whom an apprentice contracts shall employ a cosmetology manager, whose cosmetology manager's license is not an inactive license, to train and supervise the apprentice, except as provided in pars. (b) and (c). An apprentice shall only work under the supervision of a cosmetology manager, except as provided in pars. (b) and (c).

(b) A cosmetology manager may delegate their supervisory duty to a practitioner who has completed at least 2,000 hours of licensed practice.

(c) A cosmetology manager may delegate their supervisory duty to a barber licensed under ch. 454, Stats., who has completed at least 2,000 hours of licensed practice, but only if the apprentice is a barbering apprentice as referenced in s. 454.22 (1) (c), Stats., and if the apprentice engages only in barbering.

SECTION 23. Cos 7.03 (2) is amended to read:

Cos 7.03 (2) COSMETOLOGY MANAGER. An applicant for licensure as a cosmetology manager shall complete a written examination.

SECTION 24. Cos 7.04 is amended to read:

Cos 7.04 Passing scores. The passing score of the examinations for licensure as a cosmetologist, aesthetician, manicurist, electrologist, or cosmetology manager, shall be based on the board's determination of the level of examination performance required for minimum competence in the profession.

SECTION 25. Cos 8.01 (2) is amended to read:

Cos 8.01 (2) An applicant for licensure as a cosmetology manager shall satisfy the requirements in s. 454.06 (1) and (3), Stats.

SECTION 26. Cos 8.02 (intro.) is amended to read:

Cos 8.02 Licensing requirement without examination. The board may grant a license to practice cosmetology, aesthetics, electrology, ~~or manicuring~~, or to practice as a cosmetology manager without examination to a licensee of another state provided that the following conditions are met:

SECTION 27. Cos 8.03 is created to read:

Cos 8.03 Inactive license. (1) Any person who has been granted an inactive license, under s. 454.06 (8m), Stats., may not receive compensation for personal care services performed by a licensee and may not practice in a licensed establishment.

(2) Activities permitted under this section include purchasing supplies or cutting hair outside of an establishment, without compensation, such as for a resident in a nursing home.

SECTION 28. Cos 9.03 is repealed and recreated to read:

Cos 9.03 Late renewal and reinstatement. (1) LATE RENEWAL. If the application for renewal is 5 years or more after the expiration of the applicant's last

license, the board in its discretion may require as a condition of renewal that the applicant successfully pass the examination required in s. Cos 7.03.

(2) REINSTATEMENT. A licensee who has a license with unmet disciplinary requirements which has not been renewed within five years of the renewal date or whose license has been surrendered or revoked may apply to have the license reinstated in accordance with all of the following:

(a) Evidence of completion of the requirements in sub. 1, if the credential has not been active within the last 5 years.

(b) Evidence of completion of disciplinary requirements, if applicable.

(c) Evidence of rehabilitation or change in circumstances warranting reinstatement of the credential.

(3) A licensee may not practice as a cosmetologist, aesthetician, electrologist, manicurist or cosmetology manager prior to being granted reinstatement of their respective license.

SECTION 29. Cos 11.01 is amended to read:

Cos 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 and cosmetology practitioner and cosmetology manager, electrology and manicuring licenses.

SECTION 30. Cos 11.03 (5) (b) and (c) 2., 3. and 5. are amended to read:

Cos 11.03 (5) (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 during a biennium. Fifty minutes of actual instruction is equivalent to one continuing education credit hour. A maximum of 3 4 credit hours may be obtained by teaching in any biennial reporting period. Full-time faculty may not claim continuing education credits for teaching done as part of their regular duties.

(c) 2. The course or program requires assignments that are completed and prepared by the licensee and submitted to the provider for correction, grading, or both. The assignment must be graded or corrected by the continuing education provider and returned to the licensee before the licensee is allowed to take the course examination. The continuing education provider may not provide a licensee with the assignment answers before the licensee has submitted their completed assignment.

(c) 3. The course or program includes a written examination designed to ensure that the licensee actively participated in the presentation of the material and derived a measurable benefit from participation. A score of 75 percent or higher shall be considered

a passing examination score. The continuing education provider may not provide a licensee access to the examination answers before the licensee has taken the exam.

(c) 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. All continuing education courses made available online, including booklets and text based courses, must include a timer that cannot be fast-forwarded by the licensee unless they have already completed that section of the course and are reviewing the material again. The timer shall ensure that there is a minimum of 50 minutes of actual instruction for each credit hour offered. Text based courses that require licensees to read a substantial amount of course material must include a minimum of 5,000 words per continuing education hour of educational material.

SECTION 31. Cos 11.04 (1) (e) is created to read:

Cos 11.04 (1) (e) Private continuing education providers shall refrain from using promotional materials that give the impression that a course they offer was created or delivered by the cosmetology examining board, the department of safety and professional services or any other state entity. The prohibition against such representations shall include all promotional material regarding provider name, course or business name, websites, advertisements, e-mails or mailings. This does not prohibit continuing education providers from disclosing relevant state approvals, licensures, or appointments in promotional materials.

SECTION 32. Cos 11.04 (4) and (5) (b) are amended to read:

Cos 11.04 (4) Each biennium, the board shall approve ~~a curriculum~~ courses for the continuing education credit hours required under s. Cos 11.03 (2) (a) regarding the laws governing the cosmetology professions and establishments. All providers except those approved under s. Cos 11.04 (2) (a) and (b), shall submit the content of their s. Cos 11.03 (2) (a) courses for review and approval by the board or its designee.

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

SECTION 33. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson

Cosmetology Examining Board