

WISCONSIN LEGISLATIVE COUNCIL STAFF



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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-133

AN ORDER to repeal BC 2.01, 2.03 (6), 2.06 (2) (b) and (c), 3.01 (2), 3.03, the Note following BC 4.06 (2), 6.01 (3) and 9.02; to renumber BC 1.01 (1), 2.06 (2) (d) and 7.09 (2); to renumber and amend BC 1.01 (5), 2.06 (1), (2) (intro.) and (a), 7.09 (3), 8.01 (1) (intro.), (a), (b) and (c) and 9.01 (3); to amend BC 1.01 (6), (8) and (14), 2.02 (3), 2.03 (5), 2.07 (1), 3.01 (5), (6) and (12), 3.04 (1), (2) and (3), 4.02 (3) and (4), 4.03, 4.04 (1), 4.05 (1), 4.06 (2), 4.07 (intro.), (1), (3), (4) and (5), 4.08 (intro.), (1) and (2), 4.09 (2), (3) and (4), 4.10 (1) (a) and (b), Figure BC 5.02 VI, 6.01 (1), (4), (5), (6) and (7), 6.02, Figure BC 6.03 (1), VI 6.04 (1), Figure BC 6.04 (3) IV, 6.05 (2), 7.03, 7.04 (1), 7.09 (1), chapter BC 8 (title), 8.01 (title), chapter BC 9 (title) and 9.01 (title); to repeal and recreate BC 1.01 (2) and (9), 2.03 (4), 2.07 (2), 3.02 and 6.01 (2); and to create BC 1.01 (1), (2a), (10a), (13a) and (16), 2.045, 2.06 (3) and (4), 2.07 (1a) and (1b), 3.01 (13) and (14), 3.06, 4.01 (2), 4.02 (3) (a) and (b) and (3a), a Note following BC 4.06 (3), 6.01 (7) and (8), 6.05 (3), 7.09 (4) and 8.01 (4), relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

09-02-98 RECEIVED BY LEGISLATIVE COUNCIL.
09-28-98 REPORT SENT TO AGENCY.

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-133

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.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1, s. BC 1.01 (1) should be renumbered to read "BC 1.01 (1m)." The use of an intermediate letter such as "m" allows the agency the flexibility to insert other provisions preceding sub. (1m) if the necessity ever arises. [See also s. BC 1.01 (2a) and (10a) and see s. 2.07 (1a) and (1b), which should be created to read s. BC 2.07 (1g) and (1r).]

b. In order to preserve the structure of the subsections in s. BC 2.06, sub. (5) should be rewritten to read: "In the case of an owner of a barbering and cosmetology establishment, appoint a manager who shall have direct authority over the operations of the establishment." Similarly, in SECTION 23, s. BC 2.06 (4) should simply begin with the word "Maintain."

c. In s. BC 2.07 (1a), the phrase "be responsible for the provision of training and supervision to an apprentice" should be replaced by the phrase "train and supervise an apprentice." Also, the word "must" should be replaced by the word "shall."

d. In s. BC 2.07 (2), the phrase "be responsible for the posting of" should be replaced by the word "post."

e. In s. BC 3.01 (13), the word "must" should be replaced by the word "shall."

f. In s. BC 3.02 (1), the phrase "have direct responsibility to" is unnecessary and should be deleted and the phrase "is required to" should be replaced by the word "shall."

g. In s. BC 4.03 (1), the acronym "FDA" should be spelled out since the acronym is not defined.

h. Section BC 4.07 (5) should be rewritten to conform to the structure of the preceding subsections.

i. In s. BC 6.01 (5), the phrase "have direct responsibility for the provision of employment and for making arrangements" should be replaced by the phrase "employ and make arrangements."

j. In s. BC 6.01 (8), the phrase "in the exercise of its discretion" is unnecessary and should be deleted.

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

a. In s. BC 1.01 (2), it is not clear that the term "over-curlly" is necessary. What does the term mean?

b. In s. BC 1.01 (15), the phrase "regular on premise" should be replaced by the phrase "regular, on-premise."

c. The definition of "Low level disinfection" in s. BC 1.01 (10a) could refer to the requirements in s. BC 1.01 (9) (a) to (d) rather than repeating them, since they are identical. Also, in subs. (9) and (10a), the word "the" should be inserted before each occurrence of the word "manufacturer's."

d. It is not clear why s. BC 2.03 (4) is repealed.

e. In ss. BC 2.06 (4) and 2.07 (1b), the phrase "including employment records" should be set off by commas.

f. The basic requirement in s. BC 3.02 that a manager must work full-time is not clear. Also, the provision in s. BC 3.02 (3) requiring a manager to work "full-time" for more than one establishment is unclear. One alternative would be to define "full-time"; another would be to consider revising the standard.

g. What is the intended scope of the phrase "any specialty service" in s. BC 3.02 (4)? This should be clarified. Also, the word "their" should be replaced by the word "its."

h. The agency has moved the material contained in a note following s. BC 4.06 (2) to the text of the rule. It appears the provisions are more appropriate for a note because they are phrased in a general, advisory manner, not in a direct, regulatory manner.

i. The term "principals of electricity," as used in several places in the rule, should be changed to "principles of electricity." It is not clear in the rule why this requirement is being added; or why references to "tanning" are being deleted. [See SECTIONS 50 and 59.]

j. How will the agency determine in s. BC 6.02 whether an apprentice has enrolled in the "first available" course of theory instruction? With multiple schools available, it would seem

problematic to require enrollment in the "first available" course. This should be reviewed and revised if necessary to accomplish the intended result. Also, the word "apprentices" should be replaced by the phrase "an apprentice" and the word "their" should be deleted.

k. In s. BC 6.05 (3), the rule requires the department to grant transferees to an apprenticeship program credit for time spent in prior training. The agency may wish to change this provision from mandatory to discretionary by changing "shall" to "may" to permit review of circumstances prior to granting credit.

l. Section BC 8.01 (1) permits the board to enter into a reciprocal agreement with the licensing authority of another state where the education and services practiced are substantially equivalent to those in Wisconsin. The statutory authority for this provision is contained in s. 454.13, Stats. That statute refers to "services performed," not "education and services practiced." This should be reviewed to assure that the rule is consistent with the statute. Also, amending the "and" to "or" in s. BC 8.01 (1), creates some uncertainty regarding the requirements that must be met. It appears that sub. (1) simply should conclude with a colon.

m. The agency should consider the use of an "initial applicability" section to specify when the new rule provisions will first apply.

**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY :EXAMINING BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 98-133)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the BARBERING AND COSMETOLOGY EXAMINING BOARD is submitting in final draft form proposed rules relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Administrative Rules in Final Draft Form

Barbering and Cosmetology Examining Board

Rule: Chs. BC 1 to 9

Relating to:
Barbering and Cosmetology

Clearinghouse Rule:
No. 98-133

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-133
BARBERING AND COSMETOLOGY : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This proposed rule-making order of the Barbering and Cosmetology Examining Board contains amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

Rules are amended to clarify the procedures for safety and sanitation, to include defining levels of disinfection, modifying protocol for disinfecting instruments and standards necessary to protect the public health, safety and welfare. Rules are created relating to the clarification of the roles and responsibilities of the establishment owner and licensed manager for maintaining and providing training and supervision consistent with chapter 454, Stats. Rules are amended to clarify the conditions under which a manager may manage multiple establishments. Rules are revised to clarify the requirements for a basin to wash hands in between clients. Rules are created to identify references for disposing of contaminated paper products and the disposal of sharps. Rules are repealed and recreated to define the apprenticeship program that is consistent with current policy and practice of the board. Rules are amended to clarify the different requirements for applicants from other states seeking licensure in Wisconsin. Rules are revised to clarify the requirements for renewal and reinstatement.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on October 5, 1998. Larry Wagner, Milwaukee, Kathy Schauer, Mayville, representing the Waukesha County Technical College, and Jan

Studesville, Madison, appeared in support of the proposed rules. There were no other appearances nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY : EXAMINING BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 98-133)

PROPOSED ORDER

An order of the Barbering and Cosmetology Examining Board to *repeal* BC 2.01, 2.03 (6), 2.06 (2) (b) and (c), 3.01 (2), 3.03, 6.01 (3) and 9.02; to *renumber* BC 1.01 (1), 2.06 (2) (d) and 7.09 (2); to *renumber and amend* BC 1.01 (5), 2.06 (1), (2) (intro.) and (2) (a), 7.09 (3), 8.01 (1) (intro.), (a), (b) and (c) and 9.01 (3); to *amend* BC 1.01 (6), (8) and (14), 2.02 (3), 2.03 (5), 2.07 (1), 3.01 (5), (6) and (12), 3.04 (1), (2) and (3), 4.02 (3) and (4), 4.03, 4.04 (1), 4.05 (1), 4.06 (2), 4.07 (intro.), (1), (3), (4) and (5), 4.08 (intro.), (1) and (2), 4.09 (2), (3) and (4), 4.10 (1) (a) and (b), Figure BC 5.02 VI, 6.01 (1), (4), (5), (6) and (7), 6.02, Figure BC 6.03 (1) VI, 6.04 (1), Figure BC 6.04 (3) IV, 6.05 (2), 7.03, 7.04 (1), 7.09 (1), chapter BC 8 (title), 8.01 (title), chapter BC 9 (title) and 9.01 (title); to *repeal and recreate* BC 1.01 (2) and (9), 2.03 (4), 2.07 (2), 3.02 and 6.01 (2); to *create* BC 1.01 (1), (2m), (10m), (13m) and (16), 2.045, 2.06 (3) and (4), 2.07 (1g) and (1r), 3.01 (13) and (14), 3.06, 4.01 (2), 4.02 (3) (a), (b) and (3a), a Note following BC 4.06 (3), 6.01 (7) and (8), 6.05 (3), 7.09 (4) and 8.01 (4), relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 454.08 (1) (a) and (4), Stats.

Statutes interpreted: ss. 454.01, 454.02, 454.04, 454.06, 454.07, 454.08, 454.10, 454.13 and 454.145, Stats.

This proposed rule-making order of the Barbering and Cosmetology Examining Board contains amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

Rules are amended to clarify the procedures for safety and sanitation, to include defining levels of disinfection, modifying protocol for disinfecting instruments and standards necessary to protect the public health, safety and welfare. Rules are created relating to the clarification of the roles and responsibilities of the establishment owner and licensed manager for maintaining and providing training and supervision consistent with chapter 454, Stats. Rules are amended to clarify the conditions under which a manager may manage multiple establishments. Rules are

revised to clarify the requirements for a basin to wash hands in between clients. Rules are created to identify references for disposing of contaminated paper products and the disposal of sharps. Rules are repealed and recreated to define the apprenticeship program that is consistent with current policy and practice of the board. Rules are amended to clarify the different requirements for applicants from other states seeking licensure in Wisconsin. Rules are revised to clarify the requirements for renewal and reinstatement.

TEXT OF RULE

SECTION 1. BC 1.01 (1) is renumbered BC 1.01 (1m).

SECTION 2. BC 1.01 (1) is created to read:

BC 1.01 (1) "Antiseptic" means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

SECTION 3. BC 1.01 (2) is repealed and recreated to read:

BC 1.01 (2) "Chemical relaxing" means the process of straightening hair by use of chemical agents.

SECTION 4. BC 1.01 (2m) is created to read:

BC 1.01 (2m) "Chemical waving" means a system of permanent waving employing chemicals rather than heat.

SECTION 5. BC 1.01 (5) is renumbered BC 1.01 (15) and amended to read:

BC 1.01 (15) "~~Direct supervision~~" "Supervision" means ~~maintaining visual contact~~ regular, on-premise coordination, direction and inspection of the practice of another.

SECTION 6. BC 1.01 (6) is amended to read:

BC 1.01 (6) "Disinfectant" means ~~an agent that destroys or neutralizes harmful microorganisms~~ a chemical that is capable of destroying disease-causing organisms on inanimate objects, with the exception of bacterial spores.

SECTION 7. BC 1.01 (8) is amended to read:

BC 1.01 (8) "Infectious" means that which is capable of being transmitted ~~without~~ physical contact.

SECTION 8. BC 1.01 (9) is repealed and recreated to read:

BC 1.01 (9) "Intermediate level disinfection" means application of a process that may be accomplished by any of the following:

(a) Immersion of the object to be disinfected in 70% to 90% isopropyl or ethyl alcohol for at least 10 minutes followed by air drying.

(b) Immersion of the object to be disinfected in household bleach, diluted to one tablespoon per quart of water, for at least 10 minutes (100 ppm available chlorine/ 1:250 dilution).

(c) Use of a phenolic germicidal detergent solution prepared and used according to the manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(d) Use of an iodophor germicidal detergent solution prepared and used according to the manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

SECTION 9. BC 1.01 (10m) is created to read:

BC 1.01 (10m) "Low level disinfection" means application of a process that may be accomplished by any of the following:

(a) Immersion of the object to be disinfected in 70% to 90% isopropyl or ethyl alcohol for at least 10 minutes followed by air drying.

(b) Immersion of the object to be disinfected in household bleach, diluted to one tablespoon per quart of water, for at least 10 minutes (100 ppm available chlorine/ 1:250 dilution).

(c) Use of a phenolic germicidal detergent solution prepared and used according to the manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(d) Use of an iodophor germicidal detergent solution prepared and used according to the manufacturer's instructions for use and dilution. Exposure time to the solution shall be at least 10 minutes.

(e) Use of a disinfectant registered with the United States environmental protection agency with demonstrated bactericidal, germicidal and fungicidal activity, used according to manufacturer's instructions. For hair scissors and electric clippers, use of an alcohol wipe after thorough cleaning is preferred.

SECTION 10. BC 1.01 (13m) is created to read:

BC 1.01 (13m) "Personal care services" means shampooing, setting, combing, brushing, cutting, chemical waving, chemical relaxing, bleaching or coloring the hair. "Personal care services" also includes electrology, manicuring and aesthetic services.

SECTION 11. BC 1.01 (14) is amended to read:

BC 1.01 (14) "Practitioner" means a person who holds ~~the initial~~ a current license to practice barbering and cosmetology issued under s. 454.06 (2), Stats.

SECTION 12. BC 1.01 (16) is created to read:

BC 1.01 (16) "Training permit holder" means a person who holds a current training permit issued pursuant to s. 454.06 (9), Stats.

SECTION 13. BC 2.01 is repealed.

SECTION 14. BC 2.02 (3) is amended to read:

BC 2.02 (3) No licensee, having a known infectious or contagious disease, may provide ~~services a service~~ to a patron ~~while having a known infectious or contagious disease~~ if the licensee is, by reason of the disease, unable to safely and competently perform the duties customarily provided by a licensee holder service.

SECTION 15. BC 2.03 (4) is repealed and recreated to read:

BC 2.03 (4) Licensees may neither consume alcohol nor take controlled substances during practice, unless prescribed by a physician..

SECTION 16. BC 2.03 (5) is amended to read:

BC 2.03 (5) Licensees shall take adequate and necessary precautions to protect the patron from health and safety hazards when performing services. Licensees shall not smoke while performing personal services on a patron.

SECTION 17. BC 2.03 (6) is repealed.

SECTION 18. BC 2.045 is created to read:

BC 2.045 SERVICES OUTSIDE OF A LICENSED ESTABLISHMENT. (1) Licensees shall not provide personal care services outside of a licensed establishment except for persons who are unable to leave their homes because of illness or disability or for persons who are in hospitals, nursing homes, correctional institutions or other institutions. Licensees may provide any personal care service for inmates or patients regardless of whether it is done in a designated

area or in the personal room of an inmate, patient or infirm person within an institution or private home.

(2) Licensees shall comply with all practice standards set forth in s. BC 2.03 in providing services outside of a licensed establishment.

SECTION 19. BC 2.06 (1) and (2) (intro.) are renumbered BC 2.06 (intro.) and amended to read:

BC 2.06 RESPONSIBILITIES OF OWNERS. (intro.) The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4. The owner shall:

SECTION 20. BC 2.06 (2) (a) is renumbered BC 2.06 (5) and amended to read:

BC 2.06 (5) Appoint In the case of an owner of a barbering and cosmetology establishment, employ a manager who shall have direct authority over the operations of the establishment.

SECTION 21. BC 2.06 (2) (b) and (c) are repealed.

SECTION 22. BC 2.06 (2) (d) is renumbered BC 2.06 (2).

SECTION 23. BC 2.06 (3) and (4) are created to read:

BC 2.06 (3) Ensure the provision of supervision and training of apprentices, temporary permit holders and training permit holders.

(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.

SECTION 24. BC 2.07 (1) is amended to read:

BC 2.07 (1) The licensed manager of a barbering and cosmetology establishment shall be responsible for the daily operations of an establishment and ~~shall provide training or supervision to an apprentice in accordance with s. BC 6.04 (1), temporary permit holder, aesthetician in training, manicurist in training or electrologist in training, and shall maintain and provide appropriate records for apprentices, temporary permit holders, aestheticians in training, manicurists in training, electrologists in training, and practitioners~~ ensure that the establishment is in compliance with ch. 454, Stats., and chs. BC 3 and 4. The manager shall maintain supplies and equipment necessary to ensure safe and sanitary establishment conditions.

SECTION 25. BC 2.07 (1g) and (1r) are created to read:

BC 2.07 (1g) The manager shall train and supervise an apprentice in accordance with s. BC 6.04 (1), and to temporary permit holders and training permit holders. Supervision and training shall be conducted by a currently licensed manager or practitioner with sufficient education, training and experience to provide the supervision and training.

(1r) The manager shall 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, manager or instructor.

SECTION 26. BC 2.07 (2) is repealed and recreated to read:

BC 2.07 (2) The manager shall post all required licenses, permits and notices.

SECTION 27. BC 3.01 (2) is repealed.

SECTION 28. BC 3.01 (5) and (6) are amended to read:

BC 3.01 (5) ~~Public toilet facilities for the establishment shall be provided within the building. Toilet facilities shall be kept clean, sanitary and in working order at all times. Soap, disposable towels and a wash basin with hot and cold running water shall be provided. The A toilet room shall not be used as a dispensary or for the providing of services. Items stored in the toilet rooms shall be in closed cabinets. Poisonous substances stored in the toilet room shall be locked in a cabinet or closet.~~

(6) Establishments shall provide safe and secure areas designated for storing, cleaning and disinfecting equipment. Poisonous substances stored in public areas shall be locked in a cabinet or closet.

SECTION 29. BC 3.01 (12) is amended to read:

BC 3.01 (12) Establishments shall provide a basin ~~appropriate for services offered by the establishment~~ which has hot and cold running water, and a chair which is designed for the service to be provided. At least one basin shall be constructed and available to permit licensees to wash their hands prior to serving each patron and following removal of gloves. Establishments shall provide the equipment and supplies necessary to perform services offered. Basins may be shared with other establishments located on the same premises.

SECTION 30. BC 3.01 (13) and (14) are created to read:

BC 3.01 (13) The establishment license shall be posted in the establishment.

(14) All facilities shall be equipped with a ventilation system adequate to comply with minimal occupational safety and health standards.

Note: See section ILHR 64.18, Wisconsin administrative code.

SECTION 31. BC 3.02 is repealed and recreated to read:

BC 3.02 OTHER ESTABLISHMENT REQUIREMENTS. (1) MANAGER REQUIRED. The owner of a barbering and cosmetology establishment shall not operate the establishment unless a licensed manager has been employed for the establishment. The manager shall be responsible for supervising and managing the operation of the establishment. The owner and the 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 at least one full-time licensed manager for the establishments.

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

(c) A manager is not required to be present in an establishment at all times when the establishment is open for business.

(2) CHAIR OR BOOTH LEASING. An owner may lease a chair or booth to a licensed individual as follows:

(a) A lease agreement shall be in writing.

(b) A lease of a chair or booth does not require a separate establishment license for the chair or booth if the owner and manager of the lessor establishment retain their responsibilities under subs. (1) to (4), to ensure that the leased chair or booth operates in compliance with ch. 454, Stats., and rules of the board.

Note: "Lease agreement" in this section includes chair and booth "rental" agreements. To avoid unintended insurance and tax consequences all parties to a lease or rental agreement are advised to consult with appropriate business advisors and government agencies.

(3) SEPARATE ESTABLISHMENT LICENSES FOR ELECTROLOGY. A barbering and cosmetology establishment may offer any specialty service under their license, except any licensed establishment that offers electrology shall obtain a separate electrology establishment license.

SECTION 32. BC 3.03 is repealed.

SECTION 33. BC 3.04 (1), (2) and (3) are amended to read:

BC 3.04 (1) Before a person may open a new establishment, or relocate or change the ownership of an existing establishment, the person shall submit an application to the board on a form specified by the board, ~~and secure the board's approval of the application.~~

(2) ~~The application shall be notarized, and the board may~~ shall require identification of the owner, business address, 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.

(3) Upon approval of the application and ~~posting~~ issuance of the license in the establishment, the establishment may open for business.

SECTION 34. BC 3.06 is created to read:

BC 3.06 CHANGE OF OWNERSHIP OR LOCATION. (1) Change of ownership of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

(2) Change of location of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

SECTION 35. BC 4.01 (2) is created to read:

BC 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 are not an acceptable substitute for washing hands with soap and running water.

SECTION 36. BC 4.02 (3) is amended to read:

BC 4.02 (3) (intro.) All combs, lifts and brushes, rollers and any other contact equipment and all clipper blades, razors, scissors, tweezers and all other cutting instruments shall be thoroughly cleaned with soap or detergent and water, dried, and then disinfected prior to use. ~~Disinfection may be accomplished by immersion as described in sub. (1). Clean contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected. as follows:~~

SECTION 37. BC 4.02 (3) (a) and (b) are created to read:

BC 4.02 (3) (a) Low level disinfection is acceptable unless the item has been contaminated by contact with blood.

(b) In the event that the item is contaminated by contact with blood, a practitioner shall apply intermediate level disinfection or sterilization to the item prior to reuse.

SECTION 38. BC 4.02 (3a) is created to read:

BC 4.02 (3a) Clean and disinfected contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected.

SECTION 39. BC 4.02 (4) is amended to read:

BC 4.02 (4) Powder puffs, sponges, and emery boards and other contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.

SECTION 40. BC 4.03 is amended to read:

BC 4.03 (1) Sterilization, as required by ss. BC 4.07, 4.09 and 4.10 shall be accomplished by use of a ~~FDA-registered~~ dry heat or steam sterilizer cleared for marketing by the food and drug administration, used according to manufacturer's instructions. If steam sterilization, moist heat, is utilized, heat exposure shall be at a minimum of 121 degrees C., 250 degrees F., for at least 30 minutes. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171 degrees C., 340 degrees F., for at least 60 minutes.

(2) ~~Equipment used to sterilize~~ Sterilizers shall be maintained in working order. Equipment should be checked periodically to ensure that it is reaching required temperatures based upon manufacturer's recommendations.

SECTION 41. BC 4.04 (1) is amended to read:

BC 4.04 (1) All work stations shall be supplied with at least one of the topical ~~disinfectants~~ antiseptics listed in s. BC 4.05 for use by licensees in case of injury.

SECTION 42. BC 4.05 (1) is amended to read:

BC 4.05 (1) When any patron or licensee is exposed to blood by scissors cut, razor cut, needle stick, laceration or other exposure to broken skin or a mucous membrane, the licensee shall stop, thoroughly wash the exposed area or wound on the patron's or the licensee's body with soap and water, and disinfect the exposed area or wound with a topical ~~disinfectant~~ antiseptic such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent. In the case of mucous membrane exposure, the licensee shall wash or rinse the affected area with plenty of water.

SECTION 43. BC 4.06 (2) is amended to read:

BC 4.06 (2) A licensee shall use disposable protective gloves when dealing with patrons with oozing or open lesions or weeping dermatitis. These gloves shall be changed between patrons and disposed of after use. Gloves shall be removed upon completion of patron services, and hands washed after glove removal.

SECTION 44. A Note following BC 4.06 (3) is created to read:

Note: Paper products contaminated with blood may be disposed of in the regular trash unless saturated with blood. See Wis. Admin. Code sec. NR 526.05 (Department of Natural Resources).

SECTION 45. BC 4.07 (intro.), (1), (3), (4) and (5) are amended to read:

BC 4.07 EAR PIERCING. (intro.) Licensees performing ear piercing shall do all of the following:

(1) Wear disposable protective gloves. These gloves shall be changed between patrons and disposed of after each use. Hands shall be washed after removal of gloves.

(3) Apply a topical ~~disinfectant (as listed in s. BC 4.05)~~ antiseptic to the skin surface of the area to be pierced and allow the ~~disinfectant~~ antiseptic to air dry.

(4) Sterilize earrings, needles, or other piercing instruments prior to insertion. Pre-sterilized earrings may be utilized; ~~and,~~

(5) ~~Disinfect prior~~ Prior to each use all other surfaces that come into contact with the skin of the patron should be subjected to intermediate level disinfection.

SECTION 46. BC 4.08 (intro.), (1) and (2) are amended to read:

BC 4.08 WAXING. (intro.) Licensees performing depilation by waxing shall do all of the following:

(1) Apply a topical ~~disinfectant (as listed in s. BC 4.05)~~ antiseptic to the skin surface of the area to be waxed and allow the ~~disinfectant~~ antiseptic to air dry; ~~and,~~

(2) Dispose of spatulas after each use; ~~and,~~

SECTION 47. BC 4.09 (2), (3) and (4) are amended to read:

BC 4.09 (2) Wear disposable protective gloves when working on a patron. These gloves shall be changed between patrons and disposed of following use. Hands shall be washed after removal of gloves.

(3) Thoroughly wash the skin to be pierced with soap and water. Apply a topical ~~disinfectant~~ (as listed in s. BC 4.05) antiseptic to the skin surface of the patron and allow the ~~disinfectant~~ antiseptic to air dry prior to commencing electrolysis.

(4) Dispose of needles in a puncture resistant container specifically designed for disposal. Full sharps containers shall be disposed of appropriately.

SECTION 48. BC 4.10 (1) (a) and (b) are amended to read:

BC 4.10 (1) (a) Prior to use, ~~disinfect or sterilize~~ all reusable manicure instruments shall be subjected to intermediate level disinfection or sterilization.

(b) ~~Disinfection shall be accomplished with a disinfectant registered with the United States environmental protection agency as a tuberculocidal agent, used in accordance with the manufacturer's instructions.~~ Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.

SECTION 49. BC Figure 5.02 VI is amended to read:

VI. Shaving, beard and mustache shaping, trimming, superfluous hair removal, waxing, facials, facial massages, facial makeup, eyelashes, light therapy, ~~tanning,~~ basic principles of electricity, and introduction to electrology.

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SECTION 50. BC 6.01 (1) is amended to read:

BC 6.01 (1) ~~The manager to whom~~ owner of an establishment seeking to train an apprentice is to be indentured shall contact the ~~barbering and cosmetology examining board and the department of industry, labor and human relations~~ workforce development or the department for an application and indenture forms.

SECTION 51. BC 6.01 (2) is repealed and recreated to read:

BC 6.01 (2) An initial apprenticeship permit shall be issued for a period of 3 years. The permit shall be renewable for one additional one year period upon all of the following:

(a) The payment of the renewal fee specified in s. 440.08 (2) (b), Stats.

(b) Certification to the board from the department of workforce development of acceptable progress by the apprentice in theory instruction and practical training.

SECTION 52. BC 6.01 (3) is repealed.

SECTION 53. BC 6.01 (4), (5), (6) and (7) are amended to read:

BC 6.01 (4) An apprentice shall not engage in any barbering and cosmetology work or attend school until a permit has been issued by the board. ~~A permit will not be issued until the indenture is completed with the department of industry, labor and human relations.~~

(5) Each apprentice shall ~~be indentured to a manager who has been appointed by the owner who shall have direct responsibility over the operations of the establishment to ensure compliance~~ enter an apprenticeship contract with an establishment owner or his or her designated agent who shall employ and make arrangements for training of the apprentice in accordance with ch. 454, Stats., and the rules of the board.

(6) The ~~manager owner or his or her designated agent~~ shall provide the apprentice with the equipment necessary to learn all phases of practical barbering and cosmetology as listed in s. BC 6.04 and keep records of all apprentice practical work hours.

(7) An apprentice ~~transferring from one~~ seeking to transfer his or her apprenticeship contract to another establishment ~~to another within the state~~ owner shall contact the board department of workforce development or the department for transfer procedures. An apprentice shall not transfer without prior approval of the board.

SECTION 54. BC 6.01 (7) and (8) are created to read:

BC 6.01 (7) Cancellation of an apprenticeship contract by the department of workforce development shall result in an automatic suspension of an apprenticeship permit.

(8) An apprentice who has failed to complete an apprenticeship within 4 years from the date of issuance of his or her initial permit may apply for reentry into the apprenticeship program. Upon its review of the applicant's apprenticeship records, the board may deny the application or issue another apprenticeship permit under specified terms and conditions. The board may allow an apprentice credit for theory and practical training actually obtained under a previous permit.

SECTION 55. BC 6.02 is amended to read:

BC 6.02 THEORY AND PRACTICAL INSTRUCTION. Apprentices Following issuance of an apprenticeship permit, an apprentice shall complete a enroll in the first available course of theory instruction of not less than 288 hours at a school of barbering and cosmetology. Theory and shall maintain acceptable attendance and progress in instruction shall be completed within the first 22 months from the date the permit is issued. After the first 22 months of the apprenticeship the apprentice may not continue working in an establishment until all theory instruction has been completed and practical training. The manager shall pay the apprentice for the hours of school attendance and practical training.

SECTION 56. Figure BC 6.03 (1) VI is amended to read:

- VI. Shaving, beard and mustache shaping, 30
trimming, superfluous hair removal,
waxing, facials, facial massages, facial
makeup, eyelashes, light therapy, ~~tanning,~~
basic principles of electricity, and
introduction to electrology.

SECTION 57. BC 6.04 (1) is amended to read:

BC 6.04 (1) The ~~manager establishment owner~~ to whom an apprentice is indentured shall employ a licensed manager to be responsible to supervise the training and work of the apprentice. Apprentices shall not work without the supervision of a licensed manager.

SECTION 58. Figure BC 6.04 (3) IV is amended to read:

- IV. Shaving, beard and mustache shaping, 80
trimming, superfluous hair removal,
waxing, facials, facial massages, facial
makeup, eyelashes, light therapy, ~~tanning,~~
basic principles of electricity, and
introduction to electrology.

SECTION 59. BC 6.05 (2) is amended to read:

BC 6.05 (2) Students transferring to an apprenticeship program shall be granted credit for hours attained at a ratio of one ~~student apprentice~~ theory hour to one apprentice student theory hour and one ~~student apprentice~~ practical hour to one apprentice student practical hour.

SECTION 60. BC 6.05 (3) is created to read:

BC 6.05 (3) The department may grant transferees to an apprenticeship program credit for calendar time spent in prior training.

SECTION 61. BC 7.03 is amended to read:

BC 7.03 (1) BARBER AND COSMETOLOGIST. An applicant for licensure as a barber or cosmetologist shall pass complete a written examination and each part of a practical examination which includes the following parts: haircut, chemical waving, chemical relaxing, thermal curling, tint and shampoo (one part), and blow drying.

(2) MANAGER. An applicant shall pass complete a written examination.

(3) AESTHETICIAN, ELECTROLOGIST OR MANICURIST. An applicant for a license as an aesthetician, electrologist or manicurist shall ~~pass complete~~ a written and a practical examination.

SECTION 62. BC 7.04 (1) is amended to read:

BC 7.04 (1) BARBER AND COSMETOLOGIST. The applicant's score shall be the average of the written examination and each part of the practical examination. The passing score of the examinations for licensure as a barber and cosmetologist shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

SECTION 63. BC 7.09 (1) is amended to read:

BC 7.09 (1) An applicant may retake ~~any failed part parts~~ of an examination within one year from the date of the ~~original initial~~ examination. Applicants ~~need repeat only those~~ shall take all parts failed. ~~Applicants who fail the written examination shall retake it in its entirety.~~

SECTION 64. BC 7.09 (2) is renumbered BC 7.09 (3).

SECTION 65. BC 7.09 (3) is renumbered BC 7.09 (2) and amended to read:

BC 7.09 (2) Applicants who do not ~~pass all~~ successfully complete an examination ~~parts~~ within one year shall retake ~~and pass the entire examination in order to be licensed.~~

SECTION 66. BC 7.09 (4) is created to read:

BC 7.09 (4) Scores of retake examinations for barbering and cosmetology practitioners shall be combined with examination parts previously passed to determine the score for the entire examination.

SECTION 67. Chapter BC 8 (title) and BC 8.01 (title) are amended to read:

Chapter BC 8 (title)

RECIPROCITY OF LICENSEES
OF OTHER JURISDICTIONS

BC 8.01 (title) LICENSING REQUIREMENT.

SECTION 68. BC 8.01 (1) (intro.), (a), (b) and (c) are renumbered BC 8.01 (intro.), (1), (2) and (3) and BC 8.01 (1), (2) and (3) are amended to read:

BC 8.01 (1) The board has entered into a written reciprocal agreement with the licensing authority of another state, where the education and services practiced are substantially equivalent to those in Wisconsin; ~~and~~

(2) The applicant holds a current license in the other jurisdiction; ~~and~~

(3) The applicant pays the appropriate fee as indicated in s. 440.05, Stats., and

SECTION 69. BC 8.01 (4) is created to read:

BC 8.01 (4) The applicant has at least 4,000 hours of experience in licensed practice.

SECTION 70. Chapter BC 9 (title) and BC 9.01 (title) are amended to read:

Chapter BC 9 (title)

RESTORATION RENEWAL AND REINSTATEMENT

BC 9.01 (title) RENEWAL OF LICENSE.

SECTION 71. BC 9.01 (3) is renumbered BC 9.02 and amended to read:

BC 9.02 REINSTATEMENT OF LICENSE. 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 may renew the license by completing the requirements for obtaining an initial license under s. 454.06 (2), (3), (4), (5), or (6), Stats successfully pass the examination.

SECTION 72. BC 9.02 is repealed.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson

Barbering and Cosmetology Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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