

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE : FOR COMMENTS FOR THE
COSMETOLOGY EXAMINING BOARD : ECONOMIC IMPACT ANALYSIS
: (CLEARINGHOUSE RULE 20-025)

PROPOSED ORDER

An order of the Cosmetology Examining Board to amend Cos 2.03 (8) (intro.), 2.06 (5), 3.01 (1), 4.01 (1) and (3r), and 4.05 (1); to repeal and recreate Cos 2.045 and 8.02; and to create 2.046, 2.09, 4.04 (3), 4.045, 5.015, 8.005 (title), (intro.), (1), (2) and (3), and 8.01 (note); relating to cosmetology licensure and practice outside of a licensed establishment.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Subch. I of ch. 454, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 454.08 (1) (ag), Stats.

Explanation of board authority:

Section 15.08 (5) (b), Stats., provides that an examining board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., states that an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers if the proposed rule does not exceed proper interpretation of the statute.

Section 454.08 (1) (ag), Stats., provides that “[t]he examining board shall promulgate rules permitting the practice of electrology outside of a licensed establishment,” and that, [t]he examining board shall promulgate rules permitting the use of a chemical process in the practice of cosmetology, aesthetics, or manicuring outside of a licensed establishment, except that the examining board may not promulgate any rule that restricts the use of a chemical process in cutting or styling hair in the practice of cosmetology or applying cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics in the practice of aesthetics.”

Section 454.15 (2) (c) provides that “[s]ubject to the rules promulgated under s. 440.03 (1) and this subchapter, the examining board may revoke, limit, suspend, or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this subchapter or reprimand the holder of a license or permit issued under this subchapter if it finds that the holder or applicant has done any of the following...

(c) Engaged in conduct in the practice of...cosmetology, aesthetics, electrology, or manicuring that evidences a lack of knowledge or ability to apply professional principles or skills.”

Related statute or rule: None.

Plain language analysis:

The Cosmetology Examining Board rules are revised as necessary to make the rules consistent with recent statutory changes, including to reflect that tanning, tattooing, and body piercing are now regulated by DSPS rather than DHS. The board also revises its health and safety requirements under ch. Cos 4 to reflect current blood-borne pathogen best practices and to provide that credo razors and pumice stones may not be used.

Additionally, the rules are revised to provide that although the board will no longer require continuing education for renewal of a license generally, it may require continuing education for a licensee as a part of a disciplinary process to ensure competency.

The required 4,000 hours of experience for applicants seeking a reciprocal credential is replaced with a one-hour course on Wisconsin statutes and administrative rules that apply to the applicant’s practice. Additionally, a provision is added to reflect that service members, former service members, and their spouses may receive a reciprocal credential if they have a license in good standing in another jurisdiction that authorizes the professional practice authorized by the board credential the applicant is seeking and pay the required application fee.

The rule project also creates provisions to allow for the practice of cosmetology, aesthetics, and manicuring outside of a licensed establishment so long as the practitioner is employed at a licensed establishment, complies with professional practice and sanitary standards, displays their license to practice, and does not use a chemical process unless it is to style or cut hair, or apply cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics in the practice of aesthetics. Electrologists may practice outside of an establishment so long as they comply with professional practice and sanitary standards.

Finally, the rule project updates the code to eliminate the cosmetologist, aesthetician, electrologist, and manicurist manager licenses.

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

There are no existing or proposed federal requirements.

Comparison with rules in adjacent states:

Illinois:

Illinois requires 14 hours of continuing education before renewing a cosmetology license and 10 hours to renew either a nail technician or an esthetician license (225 ILCS 410/3-7, 410/3A-6, and 410/3C-8). Illinois also offers separate cosmetology, nail technician, and esthetician instructor licenses (225 ILCS 410/3-4, 410/3A-3, and 410/3C-3).

Mobile establishments are permissible so long as the salon owner/operator registers with the state (225 ILCS 410/3D-5). It does not appear that a separate license is required to manage an establishment, however, if the owner is not a licensee they must employ a licensed practitioner to operate the establishment (225 ILCS 410/3D-5 (b)). Administrative rules do require practitioners to maintain supplies of disinfectants and other sanitary standards. There do not appear to be sanitary standards specific to mobile salons, nor a ban on the use of pumice, credo razors or chemical processes (68 Ill. Admin. Code § 1175.115).

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715). These requirements are essentially identical to the regular Illinois reciprocity application requirements found in the administrative rules, except a typical application is not expedited (68 IL. Admin. Code §1175.420).

Iowa: Iowa does not allow the practice of any of the professions regulated by the cosmetology board outside of a licensed salon or school, unless the client's physical or mental disability prevents the client from seeking services at a salon or school (IA Admin Code § 65.2 (33)). Professions regulated by the cosmetology board are required to complete 6 hours of continuing education each biennium (IA Admin Code § 64.2(2)). Iowa does prohibit the use of certain products or techniques, including but not limited to the use of animals or substances banned or determined to be hazardous by the FDA, however it does not specifically ban the use of pumice or credo razors (IA Admin Code § 63.18). Iowa law does require cosmetology arts instructors to be licensed both as practitioners and as instructors (IA Stats. §157.8 (3) (c)). Iowa does not appear to require an establishment manager license to manage an establishment.

Reciprocal licenses may be granted by the board if the applicant has held their license in another state for at least 12 of the last 24 months, pays the required licensure fee, and passes either a state or national exam depending on when the individual completed cosmetology school (IA Admin Code § 60.7). Iowa requires the board to expedite reciprocal license applications for veterans as defined under Iowa law, as long as the board determines the individual is licensed in another jurisdiction and the requirements to obtain that license are substantially equivalent to the requirements to obtain the license in Iowa. If the requirements are not substantially equivalent, the applicant may receive a provisional license to allow practice while meeting remaining requirements for equivalency (IA Stats. § 272C.4 (12)).

Michigan: The state of Michigan requires 1,500 hours of training and a two-year apprenticeship for a cosmetology license with an additional 500 hours for an instructor license. Fewer training hours are required for estheticians, electrologists, and nail technicians (MI Admin. Code R338.2163c.). Michigan does not require continuing education for license renewal. Michigan does appear to allow the use of pumice stones, so long as they are used only on one client and discarded (MI Admin. Code R 338.2179c (c)). The practice of cosmetology board licensed professions outside of an establishment is prohibited unless it is performed on-site for a participant in an event, or is done in a nursing home, old-age home,

adult foster care facility, or a hospital (MI Stats. § 339.1217). Michigan statute does require the cosmetology board to promulgate rules for mobile salons, however these do not appear to be in effect at this time.

Michigan law requires the board to issue a reciprocal credential if the applicant is at least 17, is of good moral character, has a license in good standing in another jurisdiction, and the requirements to obtain the license in the other jurisdiction are substantially equal to Michigan requirements (MI Stats. § 339.1211). Michigan law does allow for a temporary credential to be issued to active duty military and spouses if they hold a credential in good standing that allows for the practice of the profession they are seeking licensure for. This temporary credential is good for at least 6 months and can be extended if the person needs more time to meet licensing requirements (MI Stats. § 339.213).

Minnesota: Minnesota requires eight hours of continuing education in the three years prior to renewing a license, and must include one hour in state statutes and administrative rules relevant to their practice, three hours in OSHA standards applicable to cosmetology, and four hours combined in any of product chemistry and chemical interaction, proper use and maintenance of machines and instruments, business management, professional ethics, human relations, or techniques relevant to the type of license held (MN Stats. § 155A.271 (1)). Minnesota does not appear to have a special license for cosmetology school instructors.

Minnesota provides temporary certification for the practice of cosmetology for service members, their spouses, and service members discharged within the last two years. Applicants must show documentation of service member, discharged service member, or spouse of a service member or former service member status, evidence of licensure as a cosmetologist, esthetician, advanced practice esthetician, nail technician, eyelash technician, salon manager, school manager, or instructor in another state, and payment of application fees (MN Admin. Code § 2105.0184).

Generally, to obtain a permanent reciprocal license in Minnesota an applicant must show that they are at least 17 years old, have experience of 1,550 hours for a cosmetologist, 600 hours for an esthetician, 350 hours for a nail technician, and 38 hours for an eyelash technician. The applicant must present a certification from their state examining board confirming licensure that is no more than 90 days old, evidence of passage of board approved practical and theory examinations, evidence of passage of a Minnesota specific statutes and rules examination within the last year, and payment of all required fees (MN Admin. Code § 2105.0183).

A salon must employ a licensed salon manager. Practice is allowed outside of a licensed salon if the practitioner has obtained a “homebound” or “special services” license under MN Admin. Code § 2105.0410 (3). Mobile salons are licensed, and must meet the same facility, safety, infection control, and scope of services requirements as typical licensed establishments (MN Admin. Code § 2105.0395).

Summary of factual data and analytical methodologies:

The Cosmetology Examining Board developed the proposed order after a careful review of the statutory changes and requirements.

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

This rule was posted on the department's website 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:

Attached.

Effect on small business:

None.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing to be held at 9:30 AM on August 17, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Cos. 2.03 (8) (intro.) is amended to read:

Cos. 2.03 (8) Licensees A licensee may not provide the following services unless both the licensee and the establishment are properly licensed by the department of ~~health~~ safety and professional services:

SECTION 2. Cos 2.045 is repealed and recreated to read:

Cos 2.045 Personal care services for persons in hospitals, nursing homes, and correctional institutions. A licensee may provide any personal care services, subject to all practice standards set forth in this chapter, to persons who are in hospitals, nursing homes, or correctional institutions, regardless of whether it is done in a designated area or in the personal room of an inmate, patient, or infirm person.

SECTION 3. Cos 2.046 is created to read:

Cos 2.046 Personal care services outside of a licensed establishment generally. Other than personal care services provided under s. Cos. 2.045, an appropriately credentialed licensee may provide services outside of a licensed establishment as follows:

(1) Aesthetics, cosmetology, and manicuring services may be provided outside of a licensed establishment if all the following are true:

(a) The licensee owns, manages, is employed by, or affiliated with an establishment that is licensed to provide services under s. 454.08 (2), Stats.

(b) The licensee brings to the outside service location their active license certificate, or a copy, provided to them under s. 454.06 (7), Stats.

(c) The licensee complies with all practice standards provided in this chapter when providing personal care services outside of a licensed establishment.

(d) The licensee complies with all sanitation and safety precautions regarding the use of chemical processes provided in ch. Cos 4.

(e) The services provided do not involve the use of a chemical process, with the following exceptions:

1. A licensee practicing aesthetics or cosmetology outside of a licensed establishment may apply cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics.

2. A licensee practicing cosmetology outside of a licensed establishment may use cleansing, styling, and finishing products for the purpose of cutting or styling hair.

(2) Electrology services may be provided outside of a licensed establishment if all the following are true:

(a) The licensee complies with all practice standards provided in this chapter when providing personal care services outside of a licensed establishment.

(b) The licensee complies with all sanitation and safety precautions provided in ch. Cos 4.

SECTION 4. Cos 2.06 (5) is amended to read:

Cos. 2.06 (5) ~~In the case of an owner of a cosmetology establishment who is not a licensed cosmetologist, employ a cosmetology at least one licensed cosmetologist to act as a full-time manager who shall have direct authority over the operations of the establishment ensure that the establishment operates in compliance with state statutes and administrative rules. 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 5. Cos 2.09 is created to read:

Cos 2.09 Continuing education. To ensure competency, the board may require specific remedial continuing education requirements for any licensee as part of a disciplinary process.

SECTION 6. Cos 3.01 (1) is amended to read:

Cos 3.01 (1) Cosmetology, aesthetics, electrology, and manicuring shall not be practiced outside the confines of a licensed establishment except as provided in ~~s.ss.~~ Cos 2.045 and 2.046. Establishments, including floors, walls, ceilings, furniture, equipment, tools, utensils and instruments, shall at all times be in good repair and maintained in an orderly and sanitary condition.

SECTION 7. Cos 4.01 (1) and (3r) are amended to read:

Cos 4.01 (1) All areas of an establishment, or the area of practice outside of an establishment in accordance with the applicable standards, and the equipment, tools, and implements used by licensees ~~for services in an establishment,~~ shall be maintained in a clean, sanitary, and safe condition.

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

SECTION 8. Cos 4.04 (3) and 4.045 are created to read:

Cos 4.04 (3) Licensees providing services outside of an establishment shall have available with them at least one of the antiseptics listed in s. Cos 4.05 and have a reasonable supply of bandages and disposable gloves.

Cos 4.045 Prohibited materials. Cosmetologists, aestheticians, electrologists, or manicurists may not use pumice stones or credo razors when providing services.

SECTION 9. Cos 4.05 is repealed and recreated to read:

Cos 4.05 Procedure for exposure to blood.

(1) In the case of any patron injury, such as a scissors cut, razor cut, needle stick, laceration or other exposure to blood, broken skin, or a mucous membrane, the licensee shall do all of the following:

- (a)** Stop service.
- (b)** Put gloves on hands.
- (c)** Assist the client with rinsing the exposed area using soap and water. Pat dry with a towel.
- (d)** Provide the patron with disinfectant such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.
- (e)** Provide the patron with an adhesive bandage if appropriate.
- (f)** Dispose of single use items in the trash container and clean and disinfect all implements.
- (g)** Clean and disinfect the workstation.
- (h)** Remove gloves and wash hands before resuming service.

(2) In the case of any licensee injury that may expose a patron to blood, broken skin, or a mucous membrane, the licensee shall do all of the following:

- (a)** Stop service.
- (b)** Explain the situation to the patron.
- (c)** Rinse the area with soap and water.

- (d) Apply disinfectant such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.
- (e) Apply an adhesive bandage.
- (f) Dispose of single use items in the trash container.
- (g) Put gloves on hands.
- (h) Clean and disinfect all implements and clean and disinfect the workstation.
- (i) Replace gloves and return to service.

(3) A licensed establishment shall post a written protocol describing the procedure for unintentional occupational exposure to bodily fluids described in subs. (1) and (2). The protocol shall be posted in a place conspicuous to licensees.

SECTION 10. Cos 5.015 is created to read:

Cos 5.015 Persons providing practical instruction in schools and specialty schools. No person may use the title, “Wisconsin certified cosmetologist, aesthetician, electrologist, or manicurist instructor,” or use any title that implies the person is a Wisconsin certified instructor, or represents the person to be a Wisconsin certified instructor under this chapter unless the person holds a current license in cosmetology, aesthetics, electrology, or manicuring and meet the requirements under s. 440.63 (3), Stats.

SECTION 11. Cos 8.005 (title), (intro.), (1), (2) and (3) are created to read:

Cos 8.005 Definitions. For the purposes of ch. Cos 8:

- (1) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.
- (2) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.
- (3) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

SECTION 12. Cos 8.01 (Note) is created to read:

Cos 8.01 (Note) An individual may apply to the Department of Safety and Professional Services for a determination of whether the individual would be disqualified from obtaining the credential due to a criminal conviction. Application forms are available on the department’s website at dsps.wi.gov, or by request from the Department of Safety and Professional Services, P. O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

SECTION 13. Cos 8.02 is repealed and recreated to read:

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

- (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, in accordance with s. 454.13 (2), Stats.
- (2) The applicant has completed all of the following requirements:
 - (a) The applicant holds a current license in good standing in another jurisdiction.
 - (b) The applicant pays the appropriate fee as indicated in s. 440.05, Stats.
 - (c) The applicant completes a board approved one-hour course regarding Wisconsin statutes and administrative code applicable to their practice.

(3) A service member, former service member, or spouse of a service member or former service member who resides in this state, shall be granted a license issued under s. 454.06, Stats., if the individual meets all the following requirements:

(a) The individual applies for a reciprocal credential on a form prescribed by the board.

(b) The individual pays the fee specified under s. 440.05 (2).

(c) The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the board.

(d) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under the appropriate credential granted by the board.

SECTION 14. 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)

This Proposed Order of the Cosmetology Examining Board is approved for submission to the Governor and Legislature.

Dated August 19, 2020



Chairperson