



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-085

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

While s. 454.01 (2), Stats., is listed in the explanation of board authority, it is not listed under statutory authority, implying that the agency relies on s. 227.11 (2) (a) (intro.), Stats., to promulgate rules as necessary to interpret the provision. It may be useful for the agency to provide additional detail regarding its exercise of authority to define the scope of practice of aesthetics, and the relationship of that scope to the scope of practice other licensees regulated by ch. Cos 2. In particular, it appears the agency should explain in further detail its reasoning for including microblading, defined as insertion of pigment under the skin, in the scope of practice of “aesthetics”, which the statute refers to as “...cleaning, applying..., massaging, stimulating, wrapping or exercising the skin of the human body”. [s. 1.01 (2) (c) 1., Manual.] A similar analysis could be conducted for other activities referenced in the proposed rule and existing code, such as microneedling, dermaplaning, and microdermabrasion.

2. Form, Style and Placement in Administrative Code

a. The introductory clause for the proposed rule should be updated to reflect any changes made in response to these comments. [s. 1.01 (2) (d), Manual.]

b. In SECTION 2 of the proposed rule, consider reformatting the rule with an introduction to allow for more future practices to be included under the scope of practice of aesthetics. In the current format, there would need to be an entirely new rule section for every new practice. [s. 1.11, Manual.] See, also, other comments on the relationship between scope of practice and delegated medical procedures.

c. In SECTION 4 of the proposed rule, s. Cos. 2.025 (2) (d) includes “microneedling” as a delegated medical procedure but does not include it within the practice of aesthetics, in contrast to the treatment of microblading under SECTION 1. Relatedly, unlike microblading, microneedling is not defined in newly created s. Cos 2.01. Conversely, dermaplaning is defined in s. Cos 2.01, and referred to in context of aesthetician licensure in s. Cos 2.025 (2m), but it is also not specifically identified as within the scope of practice of aesthetics.

Generally, the creation of s. Cos 2.015 as a single item included in the scope of practice of aesthetics creates confusion with respect to the scope of practice of aesthetics, the scope of practice of other licensees under s. 454.06, Stats., and the status of delegated medical procedures performed by such licensees. Presumably, the delegated medical procedures are also within the scope of practice of aesthetics (and also, possibly, within the scope of practice of other licensees), subject to the additional requirements of s. Cos 2.025. However, if the rule is promulgated as currently drafted, only microblading will be explicitly defined as within the scope of aesthetics practice under s. Cos 2.015.

More extensive revision to ch. Cos 2 may be useful. For example, the chapter could be revised to first identify and define the rule-based expansions to the scope of practice of all licensees under s. 454.06, Stats., then identify and define the rule-based expansions that apply only to the scope of practice of aesthetics. Lastly, the agency could identify certain activities within each of those scopes of practice that are subject to the additional, but varied, regulation as delegated medical procedures as prescribed by the current code and the proposed rule.

d. In SECTION 5 of the proposed rule, new material should be underscored. [s. 1.04 (4) (a), Manual.] Also, SECTION 5, which treats s. Cos 2.025 (2) (c) 1. and 2., should precede SECTION 4, which first treats sub. (2) (d).

e. Would the proposed rule benefit from an initial applicability clause, particularly as it relates to the changes to courses of instruction in SECTION 7? [s. 1.03 (3), Manual.]

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

a. In SECTION 2 of the proposed rule, should the reference be to s. 454.02, Stats., or s. 454.04, Stats., as it is not a definition but an expansion of current law regarding aesthetics practice?

b. In SECTION 4 of the proposed rule, the reference to s. 456.06 (3), Stats., is incorrect, as the statute does not exist. [s. 1.15 (2) (a) 1., Manual.] Did the agency intend to refer to s. 454.06 (4), Stats.? Relatedly, what is the intended effect of the specific reference to a licensed aesthetician in s. Cos 2.025 (2m) 2.? May the other activities be performed by a person holding any license issued under s. 454.06, Stats., if trained, as described in s. Cos 2.025 (2m) (intro.)? Note, also, that following the introductory material, sub. (2m) should be subdivided using lettered pars. (a) to (d), rather than numbered subs. 1. to 4.

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

a. In SECTION 1 of the proposed rule, consider defining “stratum corneum” in s. Cos. 2.01 in order to clarify references to the term in SECTION 4 of the proposed rule. Similarly, what does it mean to “impact” a skin layer? As used in the existing code and proposed rule, it appears possible that microblading, dermabrasion, eyelash and eyebrow tinting, dermaplaning, utilization of electromagnetic radiation and electric current, and utilization of thermal energy could all “impact” multiple skin layers in different instances.

Clarification is especially important if the intent of the rule is to allow microblading and other activities by certain licensees without direction or supervision by a physician. Review of medical texts indicates that the stratum corneum is the first layer of skin. Accordingly, note that the definition of dermaplaning, referring to removal of layers of skin (plural), is inconsistent with s. Cos 2.025 (2m) (intro.) and 2. The definition and treatment of microblading within the scope of practice of aesthetics under s. Cos 2.015 presents a similar conflict with the categorization of any

treatment impacting a skin layer below the stratum corneum as a delegated medical procedure, requiring direction and supervision by a physician under s. Cos 2.025 (2) (e).

b. In SECTION 3 of the proposed rule, what will it mean, practically, for a licensee to diagnose a disease under the direction of a physician? If a physician is directing a licensee in a context where diagnosis is required, would that diagnosis be made directly by the physician?

c. In SECTION 6 of the proposed rule, “prior to being serviced” reads less clearly than “before services are provided”. Consider retaining the current language.

d. In SECTION 7, each instance of “which” in s. Cos 5.01 (1) could be replaced by “that”.

e. In SECTION 7 of the proposed rule, s. Cos. 5.01 (2) refers to the “appropriate syllabus included in this section chapter”. The correct reference appears to be “appropriate syllabus as approved by the board in this chapter”, similar to s. Cos. 5.01 (1).

f. In SECTION 7, s. Cos 5.01 (3) allows a school to determine whether a course may be offered remotely, while s. Cos 5.01 (4) states that the board will determine when simulated patrons may be utilized, implying board approval of practical courses. Given this element of board oversight of practical courses, is it inaccurate to generally state that a school may determine when a course may be offered remotely?