



**VIRTUAL/TELECONFERENCE
COSMETOLOGY SCOPE OF PRACTICE COMMITTEE
COSMETOLOGY EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Adam Barr (608) 266-2112
February 10, 2022**

*The following agenda describes the issues that the Committee plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Committee. A **quorum of the Board may be present during any committee meetings.***

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-2)**
- B. Introductions, Announcements and Recognition**
- C. Administrative Matters – Discussion and Consideration**
 - 1. Department, Staff, and Board Updates
- D. Committee Goals – Discussion and Consideration**
- E. Review of Cos 2, 3, 5, & 8, Relating to Scope of Practice, Mobile Practice, Distance Learning – Discussion and Consideration (3-9)**
- F. Next Steps**
- G. Public Comments**

ADJOURNMENT

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the deaf or hard of hearing, or other accommodations, are considered

upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

STATEMENT OF SCOPE

Cosmetology Examining Board

Rule No.: Cos 2, 3, 5, and 8

Relating to: Scope of practice, mobile establishments, and distance learning.

Rule Type: Permanent and Emergency

1. Finding/nature of emergency:

The Covid-19 epidemic has restricted the ability of cosmetology, manicuring, electrology, and aesthetics educators to provide in-person instruction to students. As a result, the board is interested in potentially clarifying its rules to expressly allow for remote or distance learning.

2. Detailed description of the objective of the proposed rule:

The board is considering revising its rules to establish regulations relating to the provision of certain services, including but not limited to, microdermabrasion, microblading, and dermaplaning. The board will also consider creating standards for licensed establishments that are mobile in nature. Further, the board will consider whether it is desirable to develop a definition for “chemical process,” and if so, what should that definition entail. Finally, the board will consider revising its rules to clarify when remote or distance learning may be allowed for the purposes of meeting the education requirements to receive a credential from the board.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Given the nature of changes in the cosmetology industry, the board believes it may be valuable to revise its rules to bring them more into line with current industry practice. This may include establishing standards a credential holder must meet in order to perform certain procedures that may elevate the risk of infection, providing specific standards for mobile licensed establishments, and finally to clarify the methods of providing education which are acceptable to meet the necessary education requirements to receive a credential.

4. Detailed explanation of statutory authority for the rule:

Section 15.08 (5) (b), Stats. provides examining boards “[s]hall 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. provides that “[e]ach 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...”

Section 440.62 (5) (b), Stats. provides that “[t]he cosmetology examining board shall promulgate rules prescribing the subjects required to be included in courses of instruction at schools of cosmetology and specialty schools and establishing minimum standards for courses of instruction and instructional materials and equipment at schools of cosmetology and specialty schools.”

Section 454.08 (1) (ag) and (ar), Stats. provides that the board may promulgate rules allowing for the practice of cosmetology, electrology, manicuring, and aesthetics outside of a licensed establishment.

Section 454.08 (4), Stats. provides that “[t]he examining board shall, by rule, establish minimum standards concerning the maintenance, equipment, plans, and specifications for licensed establishments as they relate to the public health and safety.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 80 hours.

6. List with description of all entities that may be affected by the proposed rule:

Individuals and entities who hold cosmetology, aesthetics, manicuring, and electrology practitioner and establishment credentials, or are seeking such a credential; providers of cosmetology, aesthetics, manicuring, and electrology education.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule:

The rule is not anticipated to have a significant economic impact on small businesses.

Contact Person: Jon Derenne, Administrative Rules Coordinator, (608) 266-0955

Approved for Publication:



Board Chair

September 21, 2020
Date Submitted

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : 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 2.025 (2) (b) and (2r); to renumber Cos 1.01 (11g) and (11n); to renumber and amend Cos 1.01 (2m); to amend Cos 1.01 (6e), 2.03 (8), 2.05 (2); to repeal and recreate Cos 5.01; and to create Cos 1.01 (2g), (4m), (11n), and 2.015 related to scope of practice, mobile establishments, and distance learning.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 454.02, 454.04, and 440.62 (5) (b) 1., Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 440.62 (5) (b) 1., 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 440.62 (5) (b) 1., Stats., states that “[t]he cosmetology examining board shall promulgate rules prescribing the subjects required to be included in courses of instruction at schools of cosmetology and specialty schools and establishing minimum standards for courses of instruction and instructional materials and equipment at schools of cosmetology and specialty schools.”

Section 454.01 (2), Stats., defines “aesthetics” as ... caring for or beautifying the skin of the human body, including but not limited to cleaning, applying cosmetics, oils, lotions, clay, creams, antiseptics, powders or tonics to or massaging, stimulating, wrapping or exercising the skin of the human body.

Related statute or rule:

Microdermabrasion is currently considered a delegated medical procedure that must be supervised, with exceptions laid out in Cos 2.025 (2r).

Plain language analysis:

Microdermabrasion is currently considered a medical procedure that must be supervised, with exceptions laid out in Cos 2.025 (2r). The proposed rule removes microdermabrasion as a delegated medical procedure and provides that the scope of practice for aesthetics includes dermaplaning, microblading, and microdermabrasion. The proposed rule also clarifies that courses may be offered to students remotely as deemed appropriate by the school. Schools may use simulated patrons for practical training upon prior written approval from the Board. The proposed rule makes other changes to definitions consistent with industry practice.

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:

Cosmetologists are prohibited from using any technique, product, or practice intended to affect the living layers of the skin. Estheticians are prohibited from using techniques, products, and practices intended to affect the living layers of the skin.

Iowa:

Iowa code prohibits cosmetologists/estheticians from administering any procedure in which the human tissue is cut, shaped, vaporized, or otherwise structurally altered. The code specifically prohibits dermaplaning.

Michigan:

Under Michigan law, the practice of microdermabrasion is limited to the direct supervision and control of a licensed physician. Microblading is considered a body art procedure that must be performed at a licensed body art facility.

Minnesota:

Minnesota allows cosmetologists to perform dermaplaning and microdermabrasion unsupervised if they have additional training and an advanced practice esthetician license. Minnesota requires a tattoo license to perform microblading, and does not allow cosmetologists/estheticians/advanced practice estheticians to perform it unless under supervision of a physician.

Summary of factual data and analytical methodologies:

The Cosmology Examining Board reviewed their rules to ensure statutory compliance and that the rules are consistent with current practices.

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

The rule will be posted for 14 days on the department’s website to solicit economic impact comments from stakeholders.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis will be attached upon completion.

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 Daniel.Hereth @wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, 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 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 a time and place to be announced in the Administrative Register to be included in the record of rule-making proceedings.

TEXT OF RULE

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

Cos 1.01 (2g) “Chemical process” means the use of chemical reactions to change the texture, style, or length of hair, skin, or nails.

Section 2. Cos 1.01 (2m) is renumbered to Cos 1.01 (2r) and amended to read:

Cos 1.01 (2r) “Chemical waving” means a system of permanent waving ~~employing~~ catalyzed or executed by chemicals rather than heat.

SECTION 3. Cos 1.01 (4m) is created to read:

Cos 1.01 (4m) “Dermaplaning” means the removal of skin layers by use of a razor-edged instrument.

SECTION 4. Cos 1.01 (6e) is amended to read:

Cos 1.01 (6e) "Disinfection" means application of a disinfectant following thorough cleaning of the utensil or surface.

SECTION 5. Cos 1.01 (11g) and (11n) are renumbered Cos. 1.01 (11c) and (11g).

SECTION 6. Cos 1.01 (11n) is created to read:

Cos 1.01 (11n) "Microblading" means the insertion of semipermanent pigment under the skin in order to change its appearance.

SECTION 7. Cos 2.015 is created to read:

Cos 2.015 Scope of Practice The scope of practice of aesthetics under s. 454.01, Stats., includes dermaplaning, microblading, and microdermabrasion.

SECTION 8. Cos 2.025 (2) (b) and (2r) are repealed.

SECTION 9. Cos 2.03 (8) is amended to read:

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

SECTION 10. Cos 2.05 (2) is amended to read:

Cos 2.05 (2) An establishment shall either post a list of cost of services in a conspicuous place or display a sign which states: "All establishment patrons have the right to be informed of the cost of services ~~before the services are provided~~ prior to being serviced."

SECTION 11. Cos 5.01 is repealed and recreated to read:

Cos 5.01 General course requirements. (1) Schools which provide instruction to students for cosmetology practitioner, or specialty schools which provide instruction to students for aesthetician, electrologist, or manicurist licenses, shall develop curricula for instruction which are based on the applicable syllabus approved by the board in this chapter.

(2) A school or specialty school shall offer at a minimum the practical and theory hours listed for subjects in the appropriate syllabus included in this section chapter.

(3) Courses may be offered to students remotely as deemed appropriate by the school.

(4) Simulated patrons, such as mannequins, may be used for practical training as deemed appropriate by the board. Schools utilizing simulated patrons must obtain prior written approval from the board.

SECTION 12. 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)
