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June 1, 2018

Senator Nass, Senate Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 10S, State Capitol  
Madison, WI 53702

Representative Ballweg, Assembly Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 210N, State Capitol  
Madison, WI 53702

**RE: Petition for Authorization to Repeal Rules Related to Cosmetology Continuing Education**

Dear Senator Nass and Representative Ballweg:

I am petitioning for authorization to repeal portions of the administrative code relating to continuing education requirements for cosmetology as referenced in chs. Cos 9 and 11. A copy of the proposed rule is attached.

2017 Wisconsin Act 81 eliminated the cosmetology continuing educational requirement, except where the Cosmetology Examining Board may require it for disciplinary resolution. Therefore, repealing affected portions of the administrative code related to cosmetology continuing education will update the code and make it consistent with the requirements of 2017 Wisconsin Act 81.

Using the expedited repeal process to eliminate continuing education references from the administrative code will mitigate confusion among cosmetology practitioners. Therefore, the Cosmetology Examining Board is requesting authorization from the Joint Committee for Review of Administrative Rules to repeal portions of chs. Cos 9 and 11 relating to the continuing education requirements for cosmetology licensure using the expedited rule repeal process under s. 227.26 (4), Stats.

Sincerely,

Vicky McNally  
Chair, Wisconsin Cosmetology Examining Board

STATE OF WISCONSIN  
COSMETOLOGY EXAMINING BOARD

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

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The Cosmetology Examining Board is petitioning the Joint Committee for Review of Administrative Rules to repeal a rule the Cosmetology Examining Board has determined to be an unauthorized rule using the process under s. 227.26 (4), Stats.

PROPOSED ORDER

A proposed order of the Cosmetology Examining Board to repeal Cos 9.01 (3), and Ch. 11; and to amend Cos 9.02, relating to cosmetology continuing education.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** Section 454.12, Stats.

**Statutory authority:** Sections 15.08 (5) (b), 227.11 (2) (a), Stats., and 2017 Wisconsin Act 81.

**Explanation of agency authority:** Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Cosmetology Examining Board is empowered by the legislature to promulgate rules that will provide guidance within the profession and to interpret the statutes it administers. 2017 Act 81 repealed the authority to require continuing education outside of the disciplinary process.

**Related statute or rule:** s. 454.265, Stats., Wisconsin Administrative Code, chs. Cos 1 to 11

**Plain language analysis:** The Cosmetology Examining Board is updating the rules governing the practice of cosmetology based upon passage of 2017 Wisconsin Act 81. Act 81 eliminates the cosmetology continuing education requirement. This update eliminates or amends references to continuing education in chs. Cos 9 and 11 of the Wisconsin Administrative Code consistent with the requirements of 2017 Wisconsin Act 81. The Board has determined that these rules are unauthorized rules and seeks their repeal under s. 227.26 (4).

**Agency contact person:** Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East

Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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TEXT OF RULE

Section 1. Cos 9.01 (3) is repealed.

Section 2. Cos 9.02 is amended to read:

**Cos 9.02.** If the application for renewal is filed less than 5 years after the expiration of the applicant's last license, the applicant shall ~~comply with the continuing education requirements in s. Cos 11.03,~~ and pay the late renewal fee in s. 440.08 (3) (a), Stats.

Section 3. Cos 11 is repealed.

Section 4. 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.

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(END OF TEXT OF RULE)

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STATE OF WISCONSIN  
COSMETOLOGY EXAMINING BOARD

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

An order of the Wisconsin Cosmetology Examining Board to repeal Cos 2.045 (1) Note; to amend Cos 2.045 (1), and (2), 6.04 (1) (a), (b), (c), and 8.02 (4); and to create Cos 2.0455, 2.085, and 5.015, relating to licensure and practicing outside of a licensed establishment.

Analysis prepared by the Department of Safety and Professional Services.

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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) 1. and (2), Stats.

**Explanation of board authority:** Section 15.08 (5) (b), Stats., provides examining boards, “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., discusses the parameters of an agency’s rule-making authority, stating in part, 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) 1, Stats., The examining board shall promulgate rules permitting the practice of electrology outside of a licensed establishment.

(2) The 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.

**Related statute or rule:** Chs. Cos 1-10, and subch. I of ch. 454, Stats.

**Plain language analysis:**

Chapters Cos 1-10 contains all the administrative codes relating to the practice of cosmetology, aesthetics, electrology, and manicuring. 2017 Wisconsin Act 82 changed statutes to allow cosmetologists, aestheticians, electrologists, and manicurists to practice outside of a licensed establishment. The Act also made other changes to these practices. This rule updates the administrative code to provide guidance on practicing outside of a licensed establishment, including sanitary standards, and the use of the instructor title. This rule also updates requirements for granting a license from another state. *It is recognized that this is not a final version and will need to be updated once changes are made, including the additional requirements for electrologists.*

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

There are no existing or proposed federal requirements.

**Comparison with rules in adjacent states:** *(This section will be updated following draft completion.)*

**Illinois:** The state of Illinois requires licensure for what they term as “general beauty professions”. Applicants must complete a specified minimum amount of educational training at a board approved school. Illinois does not allow apprenticeships but allows that 150 hours of an internship may be substituted for part of the required 1,500 hours of cosmetology training. Illinois does require continuing education and has a separate instructor license.

**Iowa:** Iowa does not require a cosmetology license in addition to an electrology, esthetics, nail technology or manicurist license. Iowa does require continuing education for license renewal and they require a separate instructor license. The state of Iowa requires graduation from a board licensed school along with an exam.

**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. Michigan does not require continuing education for license renewal.

**Minnesota:** Like Wisconsin, Minnesota requires 1,550 hours of training to obtain a cosmetologist license. Minnesota has a separate instructor license and has a continuing education requirement for license renewals.

**Summary of factual data and analytical methodologies:**

The Cosmetology Examining Board reviewed the rule and statutory requirements.

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

This rule will be posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days.

**Fiscal Estimate and Economic Impact Analysis:**

The Board will solicit information and advice from businesses, local government units, and individuals in order to prepare the economic impact analysis.

**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 [Kirsten.Reader@Wisconsin.gov](mailto:Kirsten.Reader@Wisconsin.gov), or by calling (608) 267-2435.

**Agency contact person:**

Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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

Comments may be submitted to Greg DiMiceli, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received on or before (TBD) to be included in the record of rule-making proceedings.

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TEXT OF RULE

Section 1. Cos 2.045 (1) is amended to read:

**Cos 2.045 Services outside of a licensed establishment.** (1) Licensees ~~shall not~~ may 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.

Section 2. Cos 2.045 (1) Note is repealed.

Section 3. Cos 2.045 (2) is amended to read:

**Cos 2.045 (2).** Licensees shall comply with all practice standards set forth in s. Cos 2.03 ~~in~~ when providing services under sub (1), outside of a licensed establishment. All other services provided outside of a licensed establishment not under sub. (1) shall comply with all practice standards set forth in s. Cos 2.03 and s. 454.08 (1) (ar), Stats.

Section 4. Cos 2.0455 is created to read:

**Cos 2.0455. Practice outside of a licensed establishment. (1)** A person licensed as a cosmetologist, aesthetician, electrologist, or manicurist may practice outside of a licensed establishment subject to the provisions of this section, s. Cos 2.03, and s. 454.08, Stats.

**(2)** A licensed cosmetologist who practices outside of a licensed establishment may use chemicals **only** for purposes of cutting or styling hair.

**(3)** Licensed aestheticians practicing outside of a licensed establishment may **only** apply cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics.

**(4)** A person who practices cosmetology, aesthetics, or manicuring outside of a licensed establishment may do so if all the following apply:

(a) The person owns, manages, is employed by, or affiliated with an establishment that is licensed under s. 454.06 (7), Stats., to provide services.

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

**(5)** A person who practices electrology outside of a licensed establishment may do so in accordance with...

**Commented [DGM-D1]:** What standards, if any, should apply to electrologists? See 454.08 (1) (ag) 1. Tie to Cos 4.09? Mirror cosmetologist's standards of practice outside of an establishment?

Section 5. Cos 2.0456. is created to read:

**SPS 2.0456. Sanitary standards outside of a licensed establishment.** A cosmetologist, aesthetician, electrologist, or manicurist practicing outside of an establishment shall be required to do all the following:

- (1) Bring enough practice items such as combs, brushes, towels, and other practice supplies, for single patron use.
- (2) Bring sealable containers to store and transport soiled items.
- (3) Wear disposable gloves and have a first-aid kit available that is suitable to comply with s. Cos 4.05 (1).

Section 6. Cos 2.06 (5) is repealed.

**Commented [DGM-D2]:** This was suggested by Gail.

Section 7. Cos 2.085 is created to read:

**Cos 2.085. Continuing education.** To ensure competency, the board may require specific remedial continuing education requirements for any actively licensed practitioner as part of a disciplinary process.

Section 8. 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 they are a Wisconsin certified instructor, or represent themselves to be a Wisconsin certified instructor under this chapter unless they hold a current license in cosmetology, aesthetics, electrology, or manicuring and meet the requirements under s. 440.63 (3), Stats.

Section 9. Cos 8.02 (4) is amended to read:

**Cos 8.02 (4).** ~~The applicant has at least 4,000 hours of experience in licensed practice~~  
completes a board approved one-hour course regarding Wisconsin statutes and administrative  
code applicable to their practice.

Section 10. 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.

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(END OF TEXT OF RULE)  
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DRAFT