

Clearinghouse Rule 12-016

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
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 12-)

PROPOSED ORDER

An order of the Barbering and Cosmetology Examining Board to amend ss. BC 2.07 (1g) and BC 6.04 (1), and to create s. BC 6.04 (1m), relating to responsibilities of the manager and practical training for apprentices.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 454.10 (1), and (3) (a) and (b), Stats., as amended by 2009 Wisconsin Act 189.

Statutory authority:

Sections 15.08 (5) (b), 454.10 (10), Stats.

Related statutes and rules:

There are no related statutes and rules other than those indicated above.

Explanation of agency authority:

Pursuant to s. 15.08 (5) (b), Stats., the Barbering and Cosmetology Examining Board (Board) is required to “promulgate rules...for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular...profession[.]” over which it has authority. In addition, s. 454.10 (1), Stats., provides that “apprentices employed under an apprentice contract...shall be governed by...the rules of the [barbering and cosmetology] examining board.” Thus, the Board must promulgate administrative rules governing the barbering and cosmetology professions, including rules for apprentices.

Plain language analysis:

This proposed rule-making amends §§ BC 2.07 (1g) and 6.04 (1) to reflect statutory changes resulting from the passage of 2009 Wisconsin Act 189 (Act 189). Prior to the passage of Act 189, the previous version of s. 454.10 (3), Stats., permitted supervision of apprentices by a licensed barbering or cosmetology manager only. Act 189 amended former § 454.10 (3), Stats., creating paragraphs (a) and (b), and adding a provision in para. (a) that allows licensed managers to delegate apprentice supervision to a licensed practitioner who meets certain minimum qualifications. This proposal implements Act 189's softening of the apprentice supervision law, affording barbering and cosmetology managers the option of delegating the supervision of his or her apprentice(s), and thus, alleviating some of the manager's already numerous responsibilities.

SECTION 1 proposes to amend BC 2.07 (1g), the rule stating the responsibilities a barbering and cosmetology manager has for the licensees and apprentices under him or her. The amendment would add a clause to the existing rule's second sentence to implement Act 189's provision allowing delegation of apprentice supervision to a licensed barbering or cosmetology practitioner who has completed at least 2,000 hours of practice.

SECTION 2 would amend BC 6.04, which regards practical training requirements for apprentices. BC 6.04 (1) currently allows apprentice supervision by licensed barbering and cosmetology managers only, and thus, is not consistent with s. 454.03, Stats., as affected by Act 189. Similar to the amendment requested for BC 2.07 (1g), the proposed amendment to BC 6.04 (1) would add Act 189's provision allowing a manager to delegate supervision of apprentices to a licensed practitioner who has completed at least 2,000 hours of practice.

SECTION 3 establishes the intended effective date of the amendments to ss. BC 2.07 (1g) and 6.04 (1), as the first day of the month that follows publication thereof.

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

There are no existing or proposed federal regulations addressing barbering and cosmetology apprentice supervision.

Comparison with rules in adjacent states:

Illinois:

Neither the Illinois Compiled Statutes (ILCS), nor the Illinois Administrative Code contain provisions regarding apprenticeship programs for barbers, cosmetologists, estheticians, hair braiders, or nail technologists. The Illinois Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 (Act of 1985) is found in the statutes regarding those five professions at 225 ILCS 410/3E-4. The statutes are administered by the Illinois Department of Financial and Professional Regulation. The department's rules implementing the Act of 1985 are codified at Title 68, Chapter VII, Subchapter b, Part 1175. The Act of 1985 may be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1351&ChapterID=24>. The statutes created by the 1985 Act provide for unpaid student internships in the practice of hair braiding only, at 225 ILCS 410/3E. Hair-braiding interns may not spend more than 30 hours in an internship, and must be under the direct supervision of an on-site licensed cosmetologist or

hair braider. The supervising cosmetologist or hair braider may supervise only one student at a time. See

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022504100HArt%2E+IIIE&ActID=1351&ChapterID=24&SeqStart=8100000&SeqEnd=8298437>.

The rules and regulations associated with the Act of 1985 are set forth at Title 68, Part 1175 of the Illinois Administrative Code. The code allows for unpaid student internships in cosmetology, 68 Ill. Admin. Code 1175.530 (h); esthetics, 168 Ill. Admin. Code 1175.835 (a) (5); nail technology, 68 Ill. Admin. Code 1175.1135 (a)(5); and hair braiding, 68 Ill. Admin. Code 1175.1535 (f), but is silent with respect to internships for barbers. See <http://www.ilga.gov/commission/jcar/admincode/068/06801175sections.html>, and go to the curriculum requirements for the schools of each of the five professions.

Iowa:

No Iowa statutes (Iowa Code) specifically reference barbering or cosmetology apprenticeships or internships. However, the Iowa Code addresses apprenticeships for several technical trades and professions directly, and also contains a statute governing apprenticeship programs in general at s. 260C.44. The word “apprentice” is therein defined as “a person...who is employed in an apprenticeable occupation, and is registered with the United States department of labor, office of apprenticeship.” Iowa Code s. 260.44 2.a. The United States Department of Labor, Office of Apprenticeship (DOLOA) maintains a list of apprenticeable professions on its website, which includes both barbering and cosmetology. Nevertheless, through telephone contact with the executive of the Iowa Board of Barbering, the Wisconsin board has learned that despite the barbering profession’s presence on the DOLOA list, Iowa has neither a barbering apprenticeship or mentoring program. For the statutory definition of “apprentice,” see Iowa Code s. 260.44 2.a. at <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>. To view the DOLOA list, see http://www.doleta.gov/oa/bull10/Bulletin_2010-05_List_of_Appren_Occ.pdf. The sole Iowa Administrative Code (IAC) reference to “apprentice” related to either barbering or cosmetology appears in the rules governing barber schools, at s. 645 IAC 23.15. That rule permits a barbering student who completed apprenticeship hours in another state to apply those hours to Iowa’s 2,100-hours course-of-study requirement for graduation from a barber school. The foreign apprenticeship hours are applicable to course-of-study requirement at the rate of four to one. See <http://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/Rule.645.23.15.pdf>. The IAC includes a “mentoring” program for students of the various cosmetology professions. Rule 645—61.20, IAC. Students in the mentoring program may participate for no more than five percent of the total hours required by the course-of-study rule, Rule 645—61.20 (2), and a participant must be under the mentor’s supervision at all times, Rule 645—61.20 (3). See <http://www.legis.state.ia.us/asp/ACODocs/DOCS/11-2-2011.645.61.20.pdf>.

Michigan:

Michigan’s statutes and rules related to the barbering and cosmetology professions are set forth in two different compilations of law, one on barbering, and the other on the cosmetology professions. See the **Barbering Law Book** at <http://www.dleg.state.mi.us/bcsc/forms/barb/bclawbk.pdf>, or the **Cosmetology Law Book** at <http://www.dleg.state.mi.us/bcsc/forms/cos/coslawbk.pdf>.

The only Michigan statutory reference to an apprentice or apprenticeship in the barbering context appears in s. 339.1108 (3), Michigan Compiled Laws (MCL). That section provides that an individual who was either a licensed barber or a barbering apprentice in another jurisdiction may apply the time so spent to Michigan's 2,000-hour barber school course-of-study requirement, at the rate of three months for 100 hours of instruction. See <http://legislature.mi.gov/doc.aspx?mcl-339-1108>.

The Michigan statutes refer to cosmetology apprenticeships in the definition of "apprentice," found in the, MCL s. 339.1201 (a). Under that section, a cosmetology apprentice is "an individual engaged in learning cosmetology in a cosmetology establishment." Section MCL 339.1201 (d) defines "cosmetology" as any of the services of barbering, or "hair care," skin care, manicuring, or electrology, or a combination thereof. Under s. 339.1203a, MCL, no Michigan cosmetology licensee may practice electrology without a separate license for such practice. For the definition of cosmetology, see <http://legislature.mi.gov/doc.aspx?mcl-339-1201>. (To view any of the other citations in this or the next paragraph, use the same web address, substituting the appropriate 1200 number at the end. For example, see MCL s. 339.1207 at <http://legislature.mi.gov/doc.aspx?mcl-339-1207>.)

Michigan's general cosmetology apprenticeship program is described in MCL ss. 339.1205 and .1207. Under MCL s. 330.1207 (d), an applicant for cosmetology licensure may substitute two years of cosmetology apprenticeship for the 1,500-hour cosmetology school course-of-study licensure requirement. The statutes specific to apprenticeships in electrology, manicuring, esthetics, and natural hair cultivation are set forth in ss. MCL 339.1208, .1209, .1210, and .1210a, respectively. The ratio of required school-training hours to months of apprenticeship for each of the four subsidiary practices varies as indicated in those sections.

Michigan's administrative rules contain no provisions regarding barbering apprenticeships. Rules 339.6001 - .6051, Mich. Admin. Code. A barbering student must have a student license to work on a public patron, and any such work must take place in the school facility. Rule 339.6045 (1), Mich. Admin. Code. As part of their course-of-study requirement, barbering students must complete 1,750 hours of practical training in the practice. Rule s. 339.6047, Mich. Admin. Code. See all rules regulating barbers at http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33906001&Dpt=LG&RngHigh=.

The administrative code specific to cosmetology apprenticeships may be found at Rules 338.2141 - .2151. Notably, the general cosmetology training rules prohibit students from using school credit hours to fulfill apprenticeship training requirements, and vice versa. Rule 338.2133, Mich. Admin. A cosmetology licensee may seek the Board of Cosmetology's approval to become an apprenticeship practitioner, i.e., one who trains an apprentice, after completing at least three years of practice. Rule 338.2151 (2), Mich. Admin. Code. Among other things, an apprenticeship practitioner must agree to "[p]ersonally train the apprentice." Rule 338.2151 (2) (i), Mich. Admin. Code. Those rules make clear that apprenticeship practitioners may not delegate their apprentice training responsibilities. See all cosmetology rules at http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33802101&Dpt=LG&RngHigh=.

Minnesota:

Minnesota law governing barbers is codified at ch. 154, Minn. Stats. The statutes require persons practicing as a barber, barbering apprentice, or barbering instructor to have the current, appropriate certificate of registration for each of those practices. Sections 154.01 (a), (b), and (d), Minn. Stats. To become a registered barber, an applicant must have graduated from a barber school approved by the Board of Barber Examiners (BBE), practiced as a registered apprentice for 12 months, and passed the BBE's registration examination. Section 154.05, Minn. Stats. Under s. 154.03, Minn. Stats., a registered apprentice may practice barbering only under the "immediate personal supervision of a registered barber." See ch. 154, Minn. Stats. at <https://www.revisor.mn.gov/statutes/?id=154&view=chapter&format=pdf>.

Statutory law on cosmetology in Minnesota is set forth in ch. 155A, Minn. Stats. There are no provisions in ch. 155A regarding cosmetology apprentices or apprenticeship. See ch. 155A at <https://www.revisor.mn.gov/statutes/?id=155A&view=chapter&format=pdf>.

Minnesota's administrative code related to barbering is located at ch. 2100, Minn. Admin. Rules. The rules governing registered apprentices appear in ss. 2100.0200 - .1700, Minn. Admin. Rules. Section 2100.1200 of the Rules requires the registered barber supervising a registered apprentice to file an affidavit attesting to the number of supervised practice hours accumulated by the apprentice. To renew registration as a barber apprentice, an apprentice must provide a statement of the hours of practice under the immediate supervision of a registered barber. Section 2100.1500, Minn. Admin. Rules. Chapter 2100 contains no provisions regarding delegation of apprentice supervision. See ch. 2100, Minn. Admin. Rules at <https://www.revisor.mn.gov/rules/?id=2100&view=chapter&format=pdf>.

Minnesota has no administrative rules that reference apprenticeships in cosmetology or its subsidiary practices. The rules governing cosmetology and cosmetology establishments are located at ch. 2105, Minn. Admin. Rules. The rules governing cosmetology schools appear in ch. 2110, Minn. Admin. Rules. See ch. 2105 at <https://www.revisor.mn.gov/rules/?id=2105&view=chapter&format=pdf>. See ch. 2110 at <https://www.revisor.mn.gov/rules/?id=2110&view=chapter&format=pdf>.

Comparison of approaches:

The information provided above respecting each of Wisconsin's four neighboring states indicates a broad range of differences between each states' approach to the concept of barbering and cosmetology apprenticeships. However, the amendment to s. BC 6.04 (1) contemplated in the Wisconsin barbering and cosmetology examining board's rule-making proposal must occur to bring the existing rule into compliance with s. 454.10 (3), Stats. Thus, no comparison between the other individual states' approaches and Wisconsin's is necessary.

Summary of factual data and analytical methodologies:

The comparison information with the rules in adjacent states was obtained by thorough review of the laws and rules of those states, and from direct contact with them by e-mail or telephone.

The proposed changes to the existing apprentice supervision requirement were prompted by legislative action that allows licensed barbering and cosmetology managers to delegate authority for apprentice supervision to licensed barbers and cosmetologists who meet certain minimum qualifications.

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

Pursuant to s. IV, 3. a., EO # 50, the rules proposed herein were posted on both the state's and the department's administrative rules websites for 14 days to solicit comments regarding the rule's potential economic impact on businesses, business sectors, professional associations, local government units, or potentially interested parties. In addition, e-mails solicitations were sent to several potentially interested parties. No responses to any of the solicitations were received.

The department concludes that the proposed rules will have no economic impact on small businesses. This proposal tracks legislation that was effective on March 29, 2010, almost two years ago. The statutory change has thus been in place long enough to produce the resulting economic or fiscal impact experienced by private businesses or public entities, if any, for any such impact to have been fully absorbed by those entities as a part of routine operations.

Anticipated costs incurred by private sector:

The department finds that these proposed rules will have no significant fiscal effect on the private sector.

Fiscal estimate:

The department finds that the proposed rule will have little to no fiscal impact.

Effect on small business:

These proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@Wisconsin.gov, or by phone at (608) 266-2112.

Public hearing not required:

Under s. 227.16 (2) (b), no public hearing is required on the proposed amendments to ss. BC 2.07 (1g) and 6.04, Wis. Admin. Code. The purpose of the amendments is to bring existing rule s. BC 6.01 (1) into conformity with s. 454.10 (3), Stats., as that statute was amended in 2009 Wis. Act 189. The amendment to s. BC 2.07 (1g), Wis. Admin. Code, is also necessitated by the statutory change.

Agency contact person:

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TEXT OF RULE

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

(1g) The manager shall train and supervise an apprentice in accordance with s. BC 6.04 (1), and shall supervise temporary permit holders and training permit holders. Supervision and training shall be conducted by a currently licensed manager, except when a licensed manager delegates supervisory authority to a licensed barber or cosmetologist in accordance with s. 454.10 (3) (a), Stats.

SECTION 2. BC 6.04 (1) is amended to read:

BC 6.04 Practical training for apprentices. (1) The establishment owner to whom an apprentice is indentured shall employ a licensed manager to be responsible to supervise the training of the apprentice. Apprentices shall ~~not only work without~~under the supervision of a licensed manager, or a licensed barber or cosmetologist to whom supervisory authority has been delegated by a licensed manager in accordance with s. 454.10 (3) (a), Stats.

SECTION 3. BC BC 6.04 (1m) is created to read:

BC 6.04 (1m) Delegation of supervisory authority under sub. (1) shall also comply with all applicable provisions of ch. 106, subch. I, Stats., and ch. DWD 295, Wis. Admin. Code.

SECTION 4. 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)

Dated _____

Agency _____

Chairperson
Barbering and Cosmetology
Examining Board