

Clearinghouse Rule 13-026

STATE OF WISCONSIN
Department of Safety and Professional Services

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES,
PROFESSIONAL SERVICES : ADOPTING RULES

PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a) and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and 65.12 (1) (h) and (i) 6.; and to create chapter SPS 205 relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

ANALYSIS

1. Statutes Interpreted

Sections 440.03 (1), 440.08 (3) (b), 440.62 (5) (b) 2., 440.64 (1) (b), and 454.20 to 454.295.

2. Statutory Authority

Sections 227.11 (2) (a); 440.03 (1); 440.08 (3) (b); 440.62 (5) (b) 2.; 440.64 (1) (b); 454.23 (6) (b); 454.25 (1) (a), (2) and (3); 454.26 (3) (b); and 454.265 (1).

3. Explanation of Agency Authority

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Section 440.03 (1) of the Statutes authorizes the Department to promulgate rules defining uniform procedures for investigating complaints, commencing disciplinary proceedings, and conducting hearings. Section 440.08 (3) (b) authorizes the Department to promulgate rules requiring holders of licenses that have expired for five years or more to comply with requirements which are beyond the renewal requirements for within those five years. Section 440.62 (5) (b) 2. obligates the Department to establish the minimum curriculum for barbering schools and the minimum standards for instruction, materials, and equipment at barbering schools. Section 440.64 (1) (b) requires the Department to promulgate marketing, educational and fiscally-related rules for barbering schools.

Section 454.23 (6) (b) of the Statutes obligates the Department to establish, by rule, the limits of minimal barbering work, for inactive licensees. Section 454.25 (1) (a) authorizes the Department to promulgate rules for providing barbering services outside of a licensed barbering establishment. Sections 454.25 (2) and (3) allow the Department to establish, by rule, requirements for licensing

barbering establishments; and require the Department to establish, by rule, minimum health and safety standards for such establishments, respectively. Section 454.26 (3) (b) obligates the Department to prescribe, by rule, the practical training and schooling that a barbering apprentice must receive. Section 454.265 (1) obligates the Department to promulgate rules establishing limited continuing-education requirements for licensed barbers.

4. Related Statute or Rule

Sections 454.01 to 454.16 of the Statutes address the practice and licensure of cosmetology, as overseen by the Cosmetology Examining Board. Chapters BC 1 to 11, as promulgated by the Board, interpret and implement those statutory provisions. Under those statutory provisions and the rules in BC 1 to 11, licensed cosmetologists can perform barbering, in licensed cosmetology establishments.

5. Plain Language Analysis

These rules address the elements needed to implement the barbering components of 2011 Wisconsin Act 190. This Act primarily separated the previously combined barbering and cosmetology professions, through comprehensive changes to chapter 454 of the Statutes, and transferred the authority for regulation of the barbering profession from the Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services. Act 190 also changed the education requirements for initial licensure of barbers, and the continuing-education (CE) requirements for renewal of barber licenses – and these rules are consistent with those changes. The rules also contain the changes that are needed in chapters SPS 60 to 65 for separating the curriculum requirements and licensure for schools of barbering, from the curriculum requirements and licensure for schools of cosmetology.

The rules also contain several new criteria that may be of interest to some stakeholders. These criteria include the following: (1) the barber-license syllabus is revised to require substantially fewer hours of instruction; (2) managers are allowed to delegate their supervision of an apprentice to a licensed barber who has at least 2,000 hours of licensed practice; (3) cosmetology apprentices are allowed to transfer their apprenticeship hours to a barbering apprenticeship, on a one-to-one basis; (4) inactive licensees are prohibited from receiving compensation and from practicing in a licensed establishment; (5) licensed cosmetologists and cosmetology establishments are allowed, until March 31, 2015, to convert to a barbering license; (6) reinstatement of a license that is expired for 5 years or more is clarified as always including reexamination, but not including compliance with CE requirements; (7) an 8-year length of licensed practice allows a licensee to stop acquiring CE credits; (8) a CE test-out exam is allowed in lieu of obtaining CE credits; (9) a cosmetologist who has been licensed for less than 8 years and who elects at the time of renewal in 2013 to be issued a barber license is required to complete 4 CE hours for the 2015 renewal; (10) a cosmetologist who has been licensed for less than 8 years and who elects at the time of renewal in 2015 to be issued a barber license is required to complete 4 CE hours for the 2017 renewal; (11) licensees are no longer limited to obtaining a maximum of 3 credit hours for teaching CE, and the prohibition against full-time faculty claiming CE credits for teaching is deleted; (12) instruction in a CE program must include amplification, evaluation, examples, and explanation of the course subject matter to the licensee; and (13) a request for a hearing on a citation must include reasons why the assessment of a forfeiture should be reviewed.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations

The federal government does not regulate barbering professions in the states. However, it does have regulations applicable to apprenticeships in all trades and professions registered with the United States Department of Labor. Such regulations are generally administered under state laws governing apprenticeship programs in a particular state. In Wisconsin, the Department of Workforce Development is charged with that responsibility.

7. Comparison With Rules in Adjacent States

An Internet-based search found the following requirements for barbering in the four adjacent states:

a. The Michigan Board of Barber Examiners regulates and licenses barbers, barber students, barber colleges, barber instructors, student instructors, and barbershops. Licensure of barbers and barber instructors is based on examination. Licenses typically are renewed every 2 years, apparently without any CE credits. Barber services must be provided only in a licensed establishment. To become licensed, a barbershop must submit an application, a fee and a self-inspection report attesting to meeting sanitation and establishment standards prescribed in the corresponding rules. A barbershop must be completely partitioned from any dwelling and must not be occupied for lodging or residential purposes. If the ownership or location of a shop changes, a new application and inspection is required. The licenses of the barbershop and all barbers working in the barbershop must be displayed in a prominent place visible to the public at all times.

b. The Illinois Department of Financial and Professional Regulation licenses barbers, barber teachers and barber schools – and registers barbershops – in cooperation with the Barber, Cosmetology, Esthetics and Nail Technology Board. Licensees are required to follow prescribed sanitation standards. Licensure of barbers and barber teachers is based on examination, and is subject to renewal every two years. Barber schools must comply with curriculum and recordkeeping requirements. No CE requirements were found.

c. The Iowa Department of Public Health, through its Board of Barbering, administers licensure of barbers, barber schools, barber instructors and barbershops – and inspects barbershops. Licensure of barbers is based on examination, and licensed cosmetologists are allowed to supervise licensed barbers. Barbers must complete 8 hours of CE credits every 2 years for license renewal, and on-line or independent study does not count toward those credits.

d. The Minnesota Board of Barber Examiners registers apprentices and barbers – and licenses instructors, barber schools and barbershops. Examinations are required for apprentices, barbers and instructors. Operation and sanitation standards are prescribed for barbershops, and shops are subject to inspection by the Board's inspectors. Barbers and barber instructors and schools must renew their credentials.

8. Summary of Factual Data and Analytical Methodologies

The methodology for developing these rules consisted primarily of (1) reviewing 2011 Wisconsin Act 190, including the non-statutory provisions; (2) incorporating the elements from chapters BC 1 to 11 that previously pertained to barbering; (3) incorporating best practices that have

evolved since chapters BC 1 to 11 were last updated; and (4) incorporating input from the Department's barbering advisory committee. The members of that committee represent various aspects of the barbering industry.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The Department used its advisory committee as a primary source for determining the potential impacts of both the technical and administrative elements of these rules. A responsibility of committee members is to bring forth any concerns they may be aware of or have with the current requirements and with these rule changes, and any concerns for any potential economic impacts from the changes.

10. Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

11. Effect on Small Business

These proposed rules do not have an economic impact on small businesses, as defined in section 227.114 (1) of the Statutes. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wi.gov or by calling (608) 266-8608.

12. Agency Contact Person

Sam Rockweiler, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 14427, Madison, WI, 53708-0427; telephone (608) 266-0797 or at Contact Through Relay; e-mail sam.rockweiler@wi.gov.

13. Place where comments are to be submitted and deadline for submission

Comments may be submitted to Sam Rockweiler, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 14427, Madison, WI, 53708-0427; telephone (608) 266-0797 or at Contact Through Relay; e-mail sam.rockweiler@wi.gov. Comments must be received on or before April 30, 2013, to be included in the record of rule-making proceedings.

(RULE TEXT BEGINS ON THE FOLLOWING PAGE.)

TEXT OF RULE

SECTION 1. Section SPS 60.01 is amended to read:

SPS 60.01 Authority. The rules in chs. SPS 60 to 62 and 65 are adopted by the department of safety and professional services under the authority of ss. 227.11 (2) (a), 440.62, and 440.64, Stats., to govern the licensing and regulation of schools of barbering, ~~and~~ cosmetology, aesthetics, electrology, and manicuring, and specialty schools of aesthetics, electrology, and manicuring.

SECTION 2. Sections SPS 61.02 (1) (a), (2) (a), (3) (a) and (4) (a) are amended to read:

SPS 61.02 (1) (a) Schools of barbering ~~and~~ or cosmetology, or both: \$300.

(2) (a) Schools of barbering ~~and~~ or cosmetology, or both: \$250.

(3) (a) Schools of barbering ~~and~~ or cosmetology, or both: \$100.

(4) (a) Schools of barbering ~~and~~ or cosmetology, or both: \$100.

SECTION 3. Section SPS 62.10 (title) and 62.10 are amended to read:

SPS 62.10 (title) Specialty topic instruction privileges and requirements for schools of ~~barbering and cosmetology~~. A licensed school of ~~barbering and~~ cosmetology may offer a specialty training program in aesthetics or in manicuring, or both, without being licensed as a specialty school or paying license fees beyond those required to maintain licensure as a school of ~~barbering and~~ cosmetology.

SECTION 4. In each of the following sections, substitute “barbering, cosmetology” for “barbering and cosmetology:” SPS 65.01, SPS 65.02 (1), SPS 65.07 and SPS 65.12 (1) (h).

SECTION 5. Section SPS 65.12 (1) (i) 6. is amended to read:

SPS 65.12 (1) (i) 6. Having a license to practice as a barber, ~~and~~ or cosmetologist, or aesthetician, or manicurist, or electrologist limited, suspended, or revoked, or being subject to any other disciplinary action by any licensing authority regulating the practice of barbering, ~~and~~ cosmetology, aesthetics, manicuring, or electrology.

SECTION 6. Chapter SPS 205 is created to read:

CHAPTER SPS 205

BARBERS

SUBCHAPTER I

GENERAL

SPS 205.100 Authority and scope. Pursuant to subch. II of ch. 454, Stats., this chapter applies to licensing of barbers, barbering managers and barbering establishments.

Note: Under section 454.22 (1) of the Statutes, “No person may engage in barbering unless the person is one of the following:

- (a) A licensed barber.
- (b) A licensed barbering manager.
- (c) An apprentice in barbering under s. 454.26.
- (d) A student in a barbering course of instruction.
- (e) A person who holds a temporary permit to practice barbering granted by the department under s. 454.23 (7).
- (f) A licensed cosmetologist.
- (g) A licensed cosmetology manager.
- (h) An apprentice in cosmetology under s. 454.10.
- (i) A student in a cosmetology course of instruction.”

SPS 205.110 Definitions. In this chapter:

(1) “Antiseptic” means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

(2) “Barber” has the meaning given in s. 454.20 (1), Stats.

Note: Section 454.20 (1) of the Statutes reads as follows: “ ‘Barber’ means a person who practices barbering.”

(3) “Barbering” has the meaning given in s. 454.20 (2), Stats.

Note: Section 454.20 (2) of the Statutes reads as follows: “ ‘Barbering’ means, for compensation, arranging, styling, dressing, shampooing, cleansing, curling, dyeing, tinting, coloring, bleaching, waving, cutting, shaving, trimming, relaxing, singeing, or performing similar work upon the hair of the head, neck, or face of any person by any means. ‘Barbering’ does not include the removal of a person’s hair at the root or the application of temporary or permanent eyelash extensions to the eyelashes of a person.”

(4) “Biennium” or “biennial reporting period” means a 2-year period beginning April 1st of each odd-numbered year and ending on March 31st of the next odd-numbered year, during which a licensee shall satisfy the continuing education requirements under this chapter.

(5) “Business day” means any day Monday to Friday, excluding Wisconsin legal holidays.

(6) “Chemical relaxing” means the process of straightening hair by use of chemical agents.

(7) “Chemical waving” means a system of permanent waving employing chemicals rather than heat.

(8) “Contagious” means capable of being transmitted by direct or indirect contact.

(9) “Continuing education” means the planned, professional development activities designed to contribute to the advancement, extension and enhancement of the professional skills or knowledge of the licensees in the practice of barbering.

(10) “Continuing education credit hour” means a unit of credit for continuing education courses, where one continuing education credit hour equals 50 minutes of actual instruction in a continuing education training program. In this definition “actual instruction” does not include any time spent for testing or assessment purposes.

(11) “Continuing education training program” means any course, program or activity meeting the requirements of s. SPS 205.421 and having a clear purpose and objective of maintaining, improving, or expanding the skills and knowledge relevant to the licensee’s professional practice.

(12) “Credential” means a license, permit or certificate or certification of registration that is issued under ch. 454, Stats.

(13) “Department” means the department of safety and professional services.

(14) “Disinfectant” means a chemical or product that destroys disease-causing bacteria.

Note: Examples of disinfectants are (1) a solution of household bleach (5¼ percent sodium hypochlorite) and water containing at least 500 parts per million (ppm) available chlorine (1:100 dilution, or 2 teaspoons of household bleach per quart of water made fresh each day prior to use); (2) a solution of at least 70% isopropyl alcohol; (3) a solution using a phenolic germicidal; (4) a solution using an iodophor germicidal agent such as iodine or Betadyne®; and (5) a solution using a quaternary ammonium germicide agent.

(15) “Disinfection” means application of a disinfectant following thorough cleaning of the utensil.

(16) “Division” means the division of legal services and compliance in the department of safety and professional services.

(17) “Establishment” has the meaning given in s. 454.01 (10), Stats.

Note: Section 454.01 (10) of the Statutes reads as follows: “ ‘Establishment’ means any place in which barbering, cosmetology, aesthetics, electrology, or manicuring is performed.”

(18) “Full time” means work that is performed for 30 hours per week or the maximum number of hours an establishment is open if the establishment is open less than 30 hours per week.

(19) “Infectious” means capable of being transmitted, with or without contact.

(20) “Licensee” means a person who holds a license, permit, certificate or registration issued by the department or who has the right to renew a license, permit, certificate or registration issued by the department.

(21) “Manager” means a person who holds either a current barbering manager license issued under s. 454.23 (3), Stats., and this chapter, or a current cosmetology manager license issued under s. 454.06 (3), Stats., and chapters BC 1 to 11.

Note: For a reprint of section 454.23 (3) of the Statutes, see the Note under section SPS 205.340 (1) (b).

(22) “Owner” means a person who holds an establishment license or right to renew an establishment license.

(23) “Patron” means a person to whom services from a barber are provided for compensation.

(24) “Physician” means a person licensed in Wisconsin to practice medicine and surgery.

(25) “Safety, sanitation, and infection control” means any topics or subjects which pertain to the barbering profession and which are designed to safeguard the public health, safety and welfare by providing instruction on and increasing knowledge and awareness of the identification, assessment, management, control and prevention of factors that may adversely affect the health, comfort, safety, or well-being of individuals. This could include courses dealing with first-aid, blood-borne pathogens, product selection, infection control, client safety, and proper techniques for cleaning, disinfection, and sterilization of equipment in accordance with acceptable state and federal standards.

(26) “Sterilization” means a process that destroys all forms of microbial life, including spores.

(27) “Supervision” means regular, on-premise coordination, direction and inspection of the practice of another.

(28) “Temporary permit” means a permit issued by the department under s. 454.23 (7), Stats.

Note: Under section 454.23 (7) of the Statutes, temporary permits allow applicants to perform barbering for up to 6 months while they are scheduled to take the licensure examination.

(29) “Wound” means an injury to the body in which the skin or other tissue is broken, cut, pierced or torn, such as through a scissors cut, razor cut or other laceration.

SUBCHAPTER II

PRACTICE OF BARBERING

SPS 205.200 Treatments prohibited, infectious and contagious diseases. (1) No licensee may treat any disease of the skin unless under the direction of a physician.

(2) No licensee may provide services to a patron suffering from an infectious or contagious scalp or skin disease unless the licensee takes appropriate precautions and uses safeguards to prevent the spread of the disease to other patrons and to the licensee.

(3) No licensee, having a known infectious or contagious disease, may provide a service to a patron if the licensee is, by reason of the disease, unable to safely and competently perform the service.

(4) No licensee may provide services to a patron if the licensee has a known infectious or contagious disease unless the licensee takes appropriate precautions and uses safeguards that prevent the spread of the disease to patrons.

SPS 205.210 Practice standards. (1) Services provided by any licensee shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all state statutes and department rules applicable to barbering.

(2) Licensees may provide only those services that they are competent to perform by training or experience and are licensed to provide.

(3) Licensees shall provide services to the best of their ability and make reasonable efforts to comply with requests in a manner that is satisfactory to a patron. Licensees may not provide services to a patron without first obtaining the consent of the patron or legal guardian of the patron.

(4) Licensees may neither consume alcohol nor take controlled substances during practice, unless prescribed by a physician.

(5) Licensees shall take adequate and necessary precautions to protect the patron from health and safety hazards when performing services. Licensees may not smoke while performing personal services on a patron.

(6) Licensees may not engage in sexual harassment or sexual assault of a patron, former patron, employee, employer, or co-worker. In this section, “sexual harassment” and “sexual assault” have the meanings defined in ss. 111.32 (13); 940.225 (1), (2), (3) and (3m) and 948.02 (1) and (2), Stats.

Note: Section 111.32 (13) defines sexual harassment as “...unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. ‘Sexual harassment’ includes conduct directed by a person at another person of the same or opposite gender. ‘Unwelcome verbal or physical conduct of a sexual nature’ includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially with an employee’s work performance or to create an intimidating, hostile or offensive work environment.”

Note: Body piercers, body piercing establishments, tattooists and tattoo establishments are regulated by the Department of Health Services under chapter DHS 173. Tanning facilities and tanning facility operators are regulated by the Department of Health Services under chapter DHS 161.

SPS 205.211 Unauthorized practice. (1) Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering.

(2) Licensees shall report to the department unauthorized or unlicensed practice or other violations of subch. II of ch. 454, Stats., and this chapter.

SPS 205.212 Barbering outside of a licensed establishment. Licensees may not provide barbering 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 barbering 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.

SPS 205.220 Advertising. (1) Advertising by licensees shall be truthful and accurate and may not mislead the public.

(2) An establishment shall either post a list of cost of services in a conspicuous place or display a sign that states "All establishment patrons have the right to be informed of the cost of services before the services are provided."

SPS 205.230 Responsibilities of owners. (1) The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and this chapter. The owner shall do all of the following:

(2) Provide supplies and equipment necessary to maintain safe and sanitary establishment conditions.

(3) Ensure the provision of supervision and training of apprentices and temporary permit holders.

Note: See section SPS 205.310 for additional requirements for owners who have apprentices.

(4) In the absence of a manager, maintain and provide appropriate records for apprentices, temporary permit holders, and barbers, including employment records, to enable apprentices or barbers to meet the requirements of s. 440.63 (3) (a) 2., 454.23 (2) or 454.23 (3), Stats., for credentialing as an instructor, barber or manager, respectively.

(5) Employ a manager who shall have direct authority over the operations of the establishment. If the 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 manager. The owner shall notify the department that the manager is no longer employed or has become otherwise unavailable within 10 business days following the manager's last day of employment.

SPS 205.231 Responsibilities of the manager. (1) A manager of a barbering establishment shall be responsible for the daily operations of the establishment and ensure that the establishment is in compliance with ch. 454, Stats., and this chapter. The manager shall maintain supplies and equipment necessary to ensure safe and sanitary establishment conditions.

(2) A manager shall train and supervise any apprentices in accordance with s. SPS 205.310 (3) and shall supervise any temporary permit holders.

(3) A manager shall maintain and provide appropriate records for apprentices, temporary permit holders, and barbers, including employment records, to enable apprentices or barbers to meet the requirements of s. 440.63 (3) (a) 2., 454.23 (2), or 454.23 (3), Stats., for credentialing as an instructor, barber or manager, respectively, except as provided in s. SPS 205.230 (4).

(4) A manager shall post all required licenses, permits and notices within the establishment in a conspicuous location where they are readily visible to the public.

SPS 205.232 Responsibilities of licensees. Licensees holding current licenses or permits granted under ch. 454, Stats., shall be responsible for all of the following:

(1) Compliance with the sanitation and safety precautions contained in ss. SPS 205.270 to 205.290.

(2) Their own professional practice, conduct and compliance with ss. SPS 205.200 to 205.220.

SPS 205.240 Establishment requirements. (1) Barbering may not be practiced outside the confines of a licensed establishment except as provided in s. SPS 205.212.

(2) Establishments where apprentices are trained shall provide equipment, supplies and products for all barbering services.

(3) Where an establishment is located in the same building as a residence, the business and living quarters shall be separate.

(4) Establishments shall provide a basin that has hot and cold running water, and a chair that is designed for the service to be provided. At least one basin shall be constructed and available to permit licensees to wash their hands prior to serving each patron and following removal of gloves. Establishments shall provide the equipment and supplies necessary to perform services offered. Basins may be shared with other establishments located on the same premises.

Note: See chapters SPS 361 to 366 or 320 to 325 for ventilation requirements in commercial buildings or one- and two-family dwellings, respectively.

SPS 205.241 Establishment management and leasing requirements. (1) **MANAGER REQUIRED.** The owner of a barbering establishment may not operate the establishment unless a manager is employed for the establishment, subject to the exception for temporary unavailability of a manager in s. SPS 205.230 (5). The manager shall be responsible for supervising and managing the operation of the establishment. The owner and the manager shall ensure that the establishment operates in compliance with ch. 454, Stats., and rules of the department including all of the following:

(a) The owner of more than one establishment shall employ a sufficient number of managers to satisfy the requirement that a manager be present full time in each establishment.

(b) The owner of a barbering establishment may satisfy the requirement in this section by employing a manager who also works at an establishment owned by a different person, provided the manager works full time at each establishment where he or she is employed as manager.

(c) A manager is required to be present in an establishment full time except if an establishment is open for more than 30 hours per week, the manager is not required to be present in the establishment at all times when the establishment is open for business, and the manager may be absent for reasonable brief periods during a day.

(2) CHAIR OR BOOTH LEASING. An individual who is neither employed by nor otherwise hired by an owner may perform barbering or cosmetology with a chair or booth in the owner's establishment only if all of the following are complied with:

(a) A lease agreement between the owner and individual, for the chair or booth, shall be executed in writing.

(b) The lessee shall be responsible for ensuring that the leased chair or booth operates in accordance with ch. 454, Stats., and the rules of the department.

(c) The lessee shall be a manager and shall hold an establishment license.

(d) The lessee may not supervise an apprentice who has an apprenticeship contract with another establishment.

Note: "Lease agreement" in this section includes chair and booth "rental" agreements. To avoid unintended insurance and tax consequences, all parties to a lease or rental agreement are advised to consult with appropriate business advisors and government agencies.

SPS 205.242 Establishment licensure. (1) Before a person may open a new establishment, or change the ownership of an existing establishment, or relocate and create a new establishment as specified in s. SPS 205.260 (2), the person shall submit an application to the department on a form specified by the department.

Note: The application form is available on the Department's Web site at www.dsps.wi.gov/Home.

(2) The department shall require identification of the owner, business address, manager, and type of business, in addition to other information that may be needed to approve the issuance of a license.

(3) Upon approval of the application and issuance of the license, the establishment may open for business.

(4) Falsification of any information on the application may be grounds for denial, suspension or revocation of the establishment license, as provided in s. 454.29, Stats., and subject the applicant to penalties as indicated in s. 454.295, Stats.

Note: Section 454.295 of the Statutes reads as follows: "Any person who violates this subchapter [III] or any rule promulgated under this subchapter shall be fined not less than \$100 nor more than \$5,000 or imprisoned for not less than 10 days nor more than 90 days or both."

SPS 205.250 Inspections. (1) Inspections by field representatives or agents of the department may be conducted to assure compliance with ch. 454, Stats., and ss. SPS 205.100 to 205.320.

(2) Upon notification of violation, licensees shall respond within 10 business days either by notifying the department of correction of the violation or presenting a proposed plan of correction for department approval.

(3) Failure to respond to a notice of violation or to comply with a plan of correction approved by the department is subject to the provisions for misconduct under s. 440.205, Stats., and to the disciplinary proceedings and actions under s. 454.29, Stats.

SPS 205.260 Change of ownership or location. (1) Change of ownership of any establishment constitutes the creation of a new establishment and shall include submission of an application to the department for a new establishment license.

(2) Change of location of any establishment constitutes the creation of a new establishment and shall include submission of an application to the department for a new establishment license. Relocation of a leased chair or booth that is licensed as an establishment and housed within a lessor establishment shall include written notification to the department identifying the change of chair or booth.

SPS 205.270 Equipment and sanitation. (1) All areas of an establishment and the equipment, tools and implements used by licensees for services in an establishment shall be maintained in a clean, sanitary and safe condition.

(2) Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves. Waterless hand washing agents that kill 99.99% of germs are an acceptable substitute for using soap and running water to wash hands that are not visibly soiled.

(3) Contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.

(4) All liquids, creams, powders and semi-solid substances shall be dispensed from a container in a manner that will prevent contamination of the unused portion of the substance.

(5) Shampoo bowls and basins shall be drained after each use and kept in a sanitary and safe condition.

(6) Clean towels shall be used for each patron. A neck strip or towel shall be placed around the neck of the patron to prevent contact with the cape. The head rest of any operating chair shall be covered with fresh linen or paper for each patron.

(7) All other equipment and instruments shall be clean to sight and touch.

SPS 205.271 Disinfection. (1) Unless sterilized, disinfection is required prior to reusing any personal care instruments on another patron.

Note: Examples of personal care instruments are scissors, razors and clipper blades.

(2) Disinfection for scissors, razors and clipper blades shall consist of cleaning with soap and water to remove all organic material, wiping with or spraying with a disinfectant, and air-drying.

(3) Disinfection for combs, lifts, brushes, rollers and any other contact equipment shall consist of cleaning with soap and water to remove all organic material, soaking in or spraying with a disinfectant, and air-drying.

(4) Clean and disinfected contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected.

(5) Disinfectant used for decontamination shall be changed as per manufacturer's recommendations and shall be kept in a covered container.

(6) Laundry shall be disinfected by washing with a solution containing a germicidal compound.

Note: Bleach and Lysol® (brown bottle) are examples of germicidal compounds.

SPS 205.272 Sterilization. (1) Sterilization shall be accomplished by use of a dry heat or steam sterilizer cleared for marketing by the food and drug administration, and shall be used according to the manufacturer's instructions. If steam sterilization, moist heat, is utilized, heat exposure shall be at a minimum of 121°C or 250°F, for at least 30 minutes. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171°C or 340°F, for at least 60 minutes.

(2) Sterilizers shall be maintained in working order. Equipment shall be checked in compliance with the manufacturer's recommendations at least monthly to ensure that it is reaching required temperatures.

SPS 205.280 Supplies. (1) All work stations shall be supplied with at least one of the antiseptics listed in s. SPS 205.290 for use by licensees in case of injury.

(2) All licensees working in a licensed establishment shall be supplied with bandages and disposable gloves.

SPS 205.290 Procedure for exposure to blood. (1) When any patron or licensee is exposed to blood by a wound or other exposure to broken skin or a mucous membrane, the licensee shall stop barbering and then comply with sub. (2) and then sub. (3), or then comply with sub. (3) and then sub. (4), or whichever are applicable, before resuming the barbering.

(2) Thoroughly wash the exposed area or wound on the licensee's body with soap and water; and then disinfect the exposed area or wound with a topical antiseptic such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.

(3) Put on protective gloves.

(4) Thoroughly wash the exposed area or wound on the patron's body with soap and water, and disinfect the exposed area or wound with a topical antiseptic such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.

SUBCHAPTER III

LICENSURE THROUGH SCHOOL OR THROUGH APPRENTICESHIP, EXAMINATIONS, AND LICENSING

SPS 205.300 Licensure through school. (1) GENERAL. Schools that provide instruction to students for a barber's or manager's license shall develop curricula for instruction which are based on the applicable syllabus approved by the department. A school may not deviate from the hours listed for subjects in the appropriate syllabus included in this section.

Note: See chapters SPS 60 to 65 for requirements relating to licensing and corresponding regulation of schools of barbering.

(2) **BARBER'S LICENSE SYLLABUS.** The syllabus for the barber's license is shown in Table 205.300-1.

**Table 205.300-1
Barber's License Syllabus**

	SUBJECTS	THEORY HOURS	PRACTICAL HOURS
I.	Hygiene, grooming and personal development.	5	0
II.	Bacteriology, sterilization and sanitation.	15	10
III.	Tools, equipment and implements.	3	10
IV.	Haircutting, hair tapering (clipper-cuts), razor cutting, hairstyling, curling, thermal waving, finger-waving, roller setting, pincurl placement, blow-drying, shampoos, scalp and hair treatments, conditioning, reconditioning, hair analysis, and care of hairpieces, wigs and wefts.	100	400
V.	Hair straightening, hair relaxing, thermal hair straightening, blow-outs, permanents, hair coloring, tinting, bleaching (lightening) and chemistry.	87	250
VI.	Shaving, beard and mustache shaping, trimming, men's facial, facial massages, and basic principles of electricity.	20	30
VII.	Anatomy and physiology of the hair, skin and disorders of the hair, skin, scalp.	15	0
VIII.	Product knowledge, product use and sales, preparing and consulting with customer for services.	15	0
IX.	Laws, rules, professional ethics and history of barbering.	18	0
X.	Individual student needs, industry trends and electives, such as recordkeeping, mathematics, communications, human relations, public relations, and first aid.	10	12
	TOTAL HOURS:	288	712

(3) **MANAGER'S LICENSE SYLLABUS.** The syllabus for a manager's license is shown in Table 205.300-2.

**Table 205.300–2
Manager’s License Syllabus**

	SUBJECTS	THEORY HOURS
I.	<u>Business management:</u> Retail management, advertising and marketing. Time management. Computer applications.	50
II.	<u>Communication:</u> Communications. Salesmanship. Human relations.	50
III.	<u>Supervision:</u> Supervision and personnel. Leadership and motivation. Chemical and tool safety. Sanitation safety.	50
	TOTAL HOURS:	150

SPS 205.310 Licensure through apprenticeship. (1) APPRENTICESHIP APPLICATIONS AND PERMITS. (a) The owner of an establishment seeking to train an apprentice shall contact the department of workforce development or the department for an application.

Note: The apprenticeship application form is available on the Web site for the Department of Workforce Development at <http://dwd.wisconsin.gov/>.

(b) An initial apprenticeship permit shall be issued for a period of 3 years. The permit shall be extendable for one additional 1-year period upon submittal of all of the following:

1. Payment of a \$10 fee.
2. Notification to the department from the department of workforce development of acceptable progress by the apprentice in theory instruction and practical training.

(c) An apprentice may not engage in any barbering work or attend school until a permit has been issued.

(d) Each apprentice shall enter an apprenticeship contract with an establishment owner or his or her designated agent who shall employ and make arrangements for training of the apprentice in accordance with ch. 454, Stats., and the rules of the department.

Note: Under section 454.26 (1) of the Statutes, every barber apprentice is also governed by section 106.01 of the Statutes and chapter DWD 295. Section 106.01 of the Statutes requires the Department of Workforce Development to also be a party to any contract under this paragraph.

(e) The owner or his or her designated agent shall provide the apprentice with the equipment necessary to learn all phases of practical barbering as listed in s. SPS 205.310 (3) and keep records of all apprentice practical work hours.

(f) An apprentice seeking to transfer his or her apprenticeship contract to another establishment owner shall contact the department of workforce development or the department for transfer procedures. An apprentice may not transfer without prior approval of the department.

(g) Cancellation of an apprenticeship contract by the department of workforce development shall result in an automatic suspension of an apprenticeship permit.

(h) An apprentice who has failed to complete an apprenticeship within 4 years from the date of issuance of his or her initial permit may apply for reentry into the apprenticeship program. Upon its review of the applicant’s apprenticeship records, the department may deny the application or issue another apprenticeship permit under specified terms and conditions. The department may allow an apprentice credit for theory and practical training actually obtained under a previous permit.

(2) APPRENTICESHIP INSTRUCTION AND TRAINING. (a) Following issuance of an apprenticeship permit, an apprentice shall enroll in the first available course of theory instruction at a school of barbering and shall maintain acceptable attendance and progress in instruction and practical training. The owner or manager shall pay the apprentice for the hours of school attendance and practical training.

(b) Schools that provide theory instruction for apprentices shall develop a curriculum based on the subjects and theory hours in Table 205.300–1.

(3) PRACTICAL TRAINING. (a) 1. The establishment owner with whom an apprentice contracts shall employ a manager to train and supervise the apprentice, except as provided in subd. 2. An apprentice shall only work under the supervision of a manager, except as provided in subd. 2.

2. A manager may delegate their supervisory duty to a licensed barber who has completed at least 2,000 hours of licensed practice.

(b) Each apprentice shall receive at least 3,712 hours of training and experience in the practical services of barbering to qualify for the examination as a barber. Training and experience shall include the subjects and practical hours of training shown in Table 205.310.

**Table 205.310
Apprentice Training and Experience**

	SUBJECTS	PRACTICAL HOURS
I.	Bacteriology, sterilization and sanitation in the establishment.	70
II.	Haircutting, hair tapering (clipper cuts), razor cutting, hair styling, curling, thermal waving, finger-waving, roller setting, pin curl placement, blow-drying, shampoos, scalp and hair treatment, conditioning, reconditioning, hair analysis and care of hairpieces, wigs and wefts.	1830
III.	Hair straightening, hair relaxing, thermal hair straightening, blowouts, permanents, hair coloring, tinting, bleaching (lightening) and chemistry.	250
IV.	Shaving, beard and mustache shaping, trimming, superfluous hair removal, men’s facial, and facial massages.	80
V.	General patron service and individual apprentice needs.	1,482
	TOTAL PRACTICAL HOURS	3,712

SPS 205.320 Transfers. (1) TRANSFER FROM A SCHOOL TO AN APPRENTICESHIP.

(a) Any student transferring from a school to an apprenticeship program shall be granted apprenticeship credit for school hours attained, at a ratio of one student theory hour to one apprentice theory hour, and one student practical hour to one apprentice practical hour.

(b) The department shall grant transferees to an apprenticeship program credit for calendar time spent in prior training.

(2) TRANSFER FROM AN APPRENTICESHIP TO A SCHOOL. Any apprentice transferring to a school program shall be granted school credit for apprenticeship hours attained, at a ratio of one apprentice theory hour to one student theory hour, and one apprentice practical hour to one student practical hour.

(3) TRANSFER FROM A COSMETOLOGY APPRENTICESHIP TO A BARBERING APPRENTICESHIP. Any cosmetology apprentice regulated under chs. BC 1 to 11 who transfers to a barbering apprenticeship shall be allowed to transfer all of their cosmetology apprenticeship hours that are related to barbering to the barbering apprenticeship, on a one-to-one basis.

Note: The Department of Workforce Development may grant transferees to an apprenticeship program credit for calendar time spent in prior training.

SPS 205.330 Examinations. (1) ADMINISTRATION. The department may do any of the following:

(a) Prepare, administer, or grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered, and graded by a test service provider.

(2) COMPETENCY TESTING. (a) The department shall determine the subject matters for each license and design the examinations to test for minimum competence in the subjects tested.

(b) The department shall make available general information describing the competencies upon which the examination is based.

(3) FORM OF EXAMINATION. (a) *Barber.* An applicant for licensure as a barber shall complete a written examination and a practical examination.

(b) *Manager.* An applicant for licensure as a manager shall complete a written examination.

(4) PASSING SCORES. The passing score of the examinations for licensure as a barber or manager shall be based on the department's determination of the level of examination performance needed for minimum competence in the profession.

(5) UNAUTHORIZED ASSISTANCE. The department may deny a license to an applicant who gives or receives unauthorized assistance during the examination, or withhold the applicant's score, and may schedule the applicant for reexamination at a future time at the applicant's expense.

(6) **FAILURE REPORTS.** Upon failure of an examination, the department shall provide the applicant with a report of the reasons for the failure.

(7) **REEXAMINATION.** An applicant may retake a failed written or practical examination, but only in its entirety.

SPS 205.340 Licensing. (1) DIRECT LICENSING. (a) An applicant for licensure as a barber shall satisfy the requirements in s. 454.23 (1) and (2), Stats.

Note: Sections 454.23 (1) and (2) of the Statutes read as follows: “(1) **APPLICATION.** An applicant for licensure under this section shall submit an application to the department on a form prescribed by the department.

(2) **BARBER LICENSE.** The department shall grant a barber license to any person who submits an application under sub. (1) and satisfies all of the following conditions:

(a) The applicant pays the initial credential fee determined by the department under s. 440.03 (9) (a), except as provided in s. 454.27 (1).

(b) Subject to ss. 111.321, 111.322, and 111.335, the applicant presents evidence satisfactory to the department that the applicant has not been convicted of a felony committed while engaged in the practice of barbering.

(c) The applicant graduates from high school or attains high school graduation equivalency as determined by the department of public instruction; is participating in a program approved by the department; or is at least 18 years old and meets the ability to benefit rule under 20 USC 1091 (d).

(d) The applicant graduates from a course of instruction in barbering of at least 1,000 training hours in barbering in not less than 10 months in a school of barbering licensed under s. 440.62 (3) (ag), a school of cosmetology licensed under s. 440.62 (3) (ar), or a school that is exempted under s. 440.61 or the applicant successfully completes an apprenticeship under s. 454.26.

(e) The applicant passes an examination conducted by the department to determine fitness to practice barbering.”

(b) An applicant for licensure as a manager shall satisfy the requirements in s. 454.23 (1) and (3), Stats.

Note: Sections 454.23 (1) and (3) of the Statutes read as follows: “(1) **APPLICATION.** An applicant for licensure under this section shall submit an application to the department on a form prescribed by the department.

(3) **BARBERING MANAGER LICENSE.** The department shall grant a barbering manager license to any person who satisfies all of the following conditions:

(a) The person is a licensed barber or licensed cosmetologist.

(b) The person completes 4,000 hours of practice as a licensed barber or licensed cosmetologist under the supervision of a licensed barbering manager or licensed cosmetology manager or completes 2,000 hours of practice as a licensed barber or licensed cosmetologist and 150 training hours of theoretical instruction in barbering in a school of barbering licensed under s. 440.62 (3) (ag) or school of cosmetology licensed under s. 440.62 (3) (ar) or exempted under s. 440.61.

(c) Pays the fee under s. 440.05 (1).

(d) Passes an examination conducted by the department to determine fitness to practice as a barbering manager.”

(2) **RECIPROCITY OR ENDORSEMENT LICENSING.** Pursuant to s. 454.27, Stats., the department may grant a license to practice barbering without examination, to a person from another state provided that all of the conditions in either (a) to (d) or (b) to (e) are met:

(a) The department has entered into a written reciprocal agreement with the licensing authority of another state, after determining that the education and services practiced are substantially equivalent to those in Wisconsin.

(b) The applicant holds a current license in the other jurisdiction.

(c) The applicant pays the appropriate fee as indicated in s. 440.05, Stats.

(d) The applicant passes a written examination conducted or approved by the department, that addresses this state's laws and rules governing the barbering profession and establishments.

(e) The applicant has at least 4,000 hours of experience in licensed practice.

(3) INACTIVE LICENSE. Any person who has been granted an inactive license, under s. 454.23 (6), Stats., may not receive compensation for barbering services and may not practice in a licensed barbering establishment.

Note: Activities permitted under this subsection include purchasing supplies – or cutting a resident's hair in a nursing home, without compensation.

SUBCHAPTER IV

RENEWALS, REINSTATEMENT, AND CONTINUING EDUCATION

SPS 205.400 License renewal. To renew a license, a licensee shall, on or before March 31st of every odd-numbered year, file with the department all of the following:

(1) An application for renewal on a form prescribed by the department.

Note: An electronic link to the renewal form is included in a renewal notice the Department sends to each licensee.

(2) The fee determined by the department under s. 440.03 (9) (a), Stats.

(3) Certification on the application for renewal that the licensee has, during the biennial reporting period immediately preceding application, complied with any applicable continuing education requirements in s. SPS 205.420.

SPS 205.401 Late renewal. If the application for renewal is filed after the deadline in s. SPS 205.400 but less than 5 years after the expiration of the applicant's last license, the applicant shall comply with the continuing education requirements in s. SPS 205.420, and pay the late renewal fee in s. 440.08 (3) (a), Stats., in addition to the renewal fee under s. SPS 205.400 (2).

SPS 205.402 Renewal that includes conversion from cosmetology. Until March 31, 2015, an active cosmetologist or cosmetology establishment licensed under chs. BC 1 to 11 may convert to a barbering license upon request to the department and satisfaction of the applicable renewal requirements for barbering.

SPS 205.410 Reinstatement of license. If an application for restoring a license occurs 5 years or more after expiration of the applicant's most recent license, the applicant shall pass the examination specified in s. SPS 205.330 (3) prior to reinstatement of the license, no continuing education requirements apply to that reinstatement, and the fees listed in s. SPS 205.401 shall be submitted to the department.

SPS 205.420 Continuing education requirements for license renewal. (1) Beginning with the biennial reporting period that starts on April 1, 2013, every licensee shall complete a minimum of 4 continuing education credit hours during each biennial reporting period, except as provided in sub. (2).

(2) (a) A licensee is not required to complete continuing education credit hours between initial licensure and the first license renewal period.

(b) A licensee who has completed 8 years of practice as a licensed barber, or as a licensed cosmetologist under chs. BC 1 to 11 – including combinations thereof – is not required to satisfy any continuing education requirements for barbering.

(c) A licensee may complete an education examination conducted by the department, in lieu of the educational programs specified in sub. (6), provided a score of at least 70 is achieved on the examination.

(3) A cosmetologist who has been licensed for less than 8 years under chs. BC 1 to 11 and who elects at the time of renewal in 2013 to be issued a barber license shall complete the continuing education hours for the 2015 renewal.

(4) A cosmetologist who has been licensed for less than 8 years under chs. BC 1 to 11 and who elects at the time of renewal in 2015 to be issued a barber license shall complete the continuing education hours for the 2017 renewal.

(5) (a) If a licensee fails to satisfy the continuing education requirements within a biennial reporting period, continuing education credit hours acquired on or after April 1st of any odd-numbered year will be first applied to the preceding biennium until the requirement is fulfilled. Continuing education credit hours may not apply to more than one biennium.

(b) A licensee who fails to meet the continuing education requirements by March 31st of any odd-numbered year may not engage in the practice of a barbering until the license is renewed, except as provided in s. SPS 205.424.

(6) Continuing education credit hours shall be obtained through any of the following means:

(a) Attending seminars, corporate in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences, that meet the requirements of s. SPS 205.421. Attendance may be in person or via remote classroom where a qualified provider is available to the participant to comment and answer questions.

(b) Teaching a continuing education program that meets the requirements of s. SPS 205.421. A person who teaches may only receive credit for the initial offering or presentation of a course or program during a biennium. Fifty minutes of actual instruction is equivalent to one continuing education credit hour.

(c) Participating in distance education that meets the requirements of SPS 205.421, including completion of interactive short courses or tutorials, delivery of educational programs and courses on CD-ROM or the Internet or correspondence courses.

SPS 205.421 Standards for continuing education programs. (1) A continuing education training program shall include, consist of or accomplish all of the following:

(a) Include instruction in an organized method of learning contributing directly to the professional competency of the licensee and pertaining to subject matters that integrally relate to the practice of the profession. The instruction shall include amplification, evaluation, examples, and explanation of the course subject matter to the licensee.

(b) Be conducted by individuals or entities which have specialized education, training or experience, and which are qualified in the subject matter of the program.

(c) Include any of the following content:

1. Business management that may be utilized in the barber profession, which may include such courses as financial business planning, customer service or computer courses.

2. Any topic covered in this chapter.

3. Any topic covering the principles and practices of barbering.

(d) Provide attendance or completion verification records in the form of completion certificates or other documents evidencing attendance at, or completion of, the continuing education training program. The certificate or other document shall include all of the following:

1. The name of the course.

2. The sponsor's name.

3. The student's name.

4. The date of completion.

5. The number of hours.

6. A signature from the instructor or provider.

(2) Continuing education programs offered by any of the following providers qualify for continuing education credit hours with no further approval needed from the department:

(a) Universities, technical colleges and schools licensed by the appropriate authority for the state in which the program is offered.

(b) State-licensed or state-certified instructors who have not had any disciplinary actions taken against them in the 3-year period preceding their planned instruction.

(c) Product distribution companies, state-level or national-level professional organizations, national salon chains, or other providers, that offer programs with significant professional educational benefits for licensees.

SPS 205.422 Certificate of completion, proof of attendance. (1) Each licensee shall certify on the license renewal application that they fully comply with the continuing education requirements in this chapter.

(2) The department may conduct a random audit of its licensees on a biennial basis for assessing compliance with the continuing education requirements in this chapter. It is the responsibility of each licensee to retain or otherwise produce evidence of compliance.

(3) If evidence of compliance is requested by the department or its designee, the licensee shall submit the requested information or documentation within 30 business days of receiving the written notice. Failure to do so may result in disciplinary action.

SPS 205.423 Recordkeeping. A licensee shall obtain a certificate of completion from the program provider for each continuing education training program completed. The licensee shall retain the certificates and any other required documentation for a minimum of 5 years.

SPS 205.424 Waiver of continuing education requirement. (1) A renewal applicant who is actively practicing in the profession and is unable to fully comply with the continuing education requirements due to temporary and extreme hardship, as determined by the department, may submit a written request for a waiver. The department or its designee will review the request, and in its sole discretion may grant a full or partial waiver, or an extension of time to comply with the requirements.

(2) A renewal applicant who prior to the expiration date of the license submits a request for a waiver, pays the renewal fee and provides a written statement setting forth the basis of the request, shall be deemed to be licensed and in good standing until the final decision on the application is issued by the department or its designee. If a finding of extreme hardship is not made, the applicant shall immediately discontinue engaging in the practice of barbering until the applicant meets the requirements of s. SPS 205.420 and submits evidence of compliance to the department or its designee.

(3) A renewal applicant may not receive a waiver under this provision for 2 consecutive biennia.

SUBCHAPTER V

FORFEITURES

SPS 205.500 Scope. (1) The citation procedures in this section may be used in an action to recover a forfeiture under s. 454.29, Stats.

Note: The forfeitures under section 454.29 of the Statutes may be assessed against any license holder or applicant who has committed any of the offenses listed in the section, and can be up to \$1,000 for each separate offense. Each day of continued violation is a separate offense.

(2) The citation form provided under this section may serve as the initial pleading for a disciplinary action and is adequate process to give the department jurisdiction over the credential holder, if the citation is served upon the credential holder.

SPS 205.510 Citation for administrative forfeiture. A citation under this section shall be issued by one of the department's investigators and shall contain substantially all of the following information:

- (1) The name, address and credential number of the credential holder.
- (2) The name and signature of the individual issuing the citation.
- (3) A description of the violation alleged, the time and place of its occurrence, a statement that the respondent committed the violation, and the statute or administrative code provision violated.
- (4) Notice that the credential holder may submit a response contesting the citation and requesting a hearing. The notice shall include the date and address for the timely submission of a request, and shall state that the request for a hearing must be in writing.
- (5) The forfeiture assessment requested by the department.
- (6) A summary of the citation procedure, including the provisions for deposit and stipulation in lieu of an appearance before an administrative law judge or the department.

SPS 205.520 Service. Service of a citation under this section may be accomplished by mailing a copy of the citation to the credential holder at the last known address of the credential holder or by any procedure described in s. 801.14 (2), Stats.

SPS 205.530 Effect of payment. The credential holder may deposit the amount of forfeiture identified in the citation by mailing the deposit and a copy of the citation to the division. Payment shall be treated as a plea of no contest and submission to an order of forfeiture, not to exceed the amount of the deposit.

SPS 205.540 Request for hearing. (1) Within 20 calendar days of the date of service of the citation, the licensee may enter a plea contesting the violation cited and request a hearing on the alleged violation cited.

(2) A plea contesting a violation and requesting a hearing shall be in writing and submitted to the division. The submission shall include a statement of the specific reasons why the licensee believes the forfeiture assessment and the grounds for assessment should be reviewed.

SPS 205.550 Default. (1) If the credential holder does not make a deposit or otherwise respond to the citation in a timely fashion, the department may without further proceedings issue an order of default against the credential holder. A default order issued under this section may assess a

forfeiture, not to exceed the amount identified in the citation. Violation of an order issued under this section may result in assessing a forfeiture, not to exceed the amount identified in the citation. Violation of an order issued pursuant to this section may also result in a refusal to renew credentialing or additional disciplinary action.

(2) If the credential holder requests a hearing pursuant to s. SPS 205.540 but fails to appear at the hearing at the time scheduled, the credential holder is in default and the department may make findings and enter an order on the basis of the citation. The department may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the department enters an order, or within a reasonable time.

Note: See sections 440.19 to 440.23 and 454.29 of the Statutes for other disciplinary proceedings and actions – such as administrative warnings, and suspension or revocation of a license, respectively.

SECTION 7. EFFECTIVE DATE. Pursuant to s. 227.24 (1) (d.), Stats., these rules shall become effective upon publication in the official state newspaper.

(END OF RULE)

Dated: _____

Agency: _____

Dave Ross, Secretary of the
Department of Safety and
Professional Services

File reference: SPS 205/P order and rules4