

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : COSMETOLOGY EXAMINING BOARD
COSMETOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 22-085)

ORDER

An order of the Cosmetology Examining Board to amend Cos 2.025 (2) (c) 1. and 2.; to repeal and recreate Cos 5.01; to create Cos 2.01 (title), (1), (2), (3), (4), (5), and (6), Cos 2.02 (1m), and Cos 2.025 (2) (d), (e), and (2m), related to scope of practice, mobile establishments, and distance learning.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

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

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 440.62 (5) (b) 1., and 454.01 (2), Stats.

Explanation of board authority:

Section 15.08 (5) (b), Stats., provides that an examining board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., states that an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers if the proposed rule does not exceed proper interpretation of the statute.

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

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

Related statute or rule:

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

Plain language analysis:

The proposed rule creates definitions for “Chemical process,” “Dermaplaning,” “Impact,” “Microblading,” “Microneedling,” and “Stratum Corneum,” clarifies that licensees are not permitted to diagnose diseases of the skin, and modifies the acceptable pH of certain acids used as part of cosmetic or aesthetic procedures.

The proposed rule also provides that under specific circumstances the scope of practice for aesthetics includes dermaplaning, eyelash and eyebrow tinting, microblading, utilization of electromagnetic radiation, use of electric current, use of thermal energy, and microdermabrasion.

The proposed rule also clarifies that courses may be offered to students remotely as deemed appropriate by the school and approved by the Board. Schools may use simulated patrons for practical training upon prior written approval from the Board. The proposed rule makes other changes to definitions consistent with industry practice.

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

There are no existing or proposed federal requirements.

Comparison with rules in adjacent states:

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

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

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

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

Summary of factual data and analytical methodologies:

The Cosmetology Examining Board reviewed their rules to ensure statutory compliance and that the rules are consistent with current practices. Additionally, an advisory committee consisting of members licensed by both the Cosmetology Examining Board and the Medical Examining Board collaborated to provide a series of recommendations to guide the Board’s decisions.

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

The rule was posted for 14 days on the department's website to solicit economic impact comments from stakeholders. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis are attached.

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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-287-3748; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Cos 2.01 is created to read:

Cos 2.01 Definitions. For the purposes of this chapter:

- (1) "Chemical process" means the use of chemical reactions to change the texture, style, or length of hair, skin, or nails.
- (2) "Dermaplaning," also referred to as dermablading, means a skin resurfacing procedure that uses a scalpel and blade held at a 45-degree angle to the skin to remove hair and some of the stratum corneum.
- (3) "Impact" means to touch, change, alter, modify, or transform.
- (4) "Microblading" means a permanent makeup technique in which a handheld tool made of several tiny needles is used to cut into the skin in fine, short strokes to insert pigment to change its appearance.
- (5) "Microneedling," also referred to as collagen induction therapy, means a cosmetic procedure that involves repeatedly puncturing the skin with tiny sterile needles in a single use cartridge. The needle depth of the single use cartridge may be adjusted by the operator and is attached to a power-operated device that moves the needle up and down at a rapid pace.
- (6) "Stratum Corneum," also referred to as the horny layer of the skin, means the outermost layer of the epidermis, usually made up of 10-30 layers of corneocytes or dead cells.

SECTION 2. Cos 2.02 (1m) is created to read:

Cos 2.02 (1m) No licensee may diagnose any disease of the skin.

SECTION 3. Cos 2.025 (2) (c) 1. and 2. are amended to read:

Cos 2.025 (2) (c) 1. Alpha hydroxyl acids of 30% or less, with a ph of not less than ~~3-0~~ 2.0.

2. Salicylic acids of 20% or less, with a ph of not less than ~~3-0~~ 2.0.

SECTION 4. Cos 2.025 (2) (d), (e), and (2m) are created to read:

Cos 2.025 (2) (d) Microneedling.

(e) Any treatment impacting a skin layer below the stratum corneum.

(2m) The following are delegated medical procedures unless the licensee has received formal training in the procedure as part of a board-approved curriculum and the treatment, as performed, does not impact a skin layer below the stratum corneum:

(a) Dermaplaning, when performed by an aesthetician licensed under 454.06 (4).

(b) Eyelash or eyebrow tinting.

(c) Microblading.

(d) Utilization of electromagnetic radiation and electric current.

(e) Utilization of thermal energy.

SECTION 5. Cos 5.01 is repealed and recreated to read:

Cos 5.01 Courses.

(1) Schools that provide instruction to students for cosmetology practitioner, or specialty schools that provide instruction to students for aesthetician, electrologist, or manicurist licenses shall develop curricula for instruction that are based on the appropriate syllabus as approved by the board in this chapter.

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

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

(4) Simulated patrons, such as mannequins, may be used for practical training as deemed appropriate by the board.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)