

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.121.301 definitions,)	PROPOSED AMENDMENT
24.121.403 general requirements,)	
24.121.601, 24.121.603, 24.121.605,)	
24.121.607, and 24.121.611)	
licensing, 24.121.803, 24.121.805,)	
and 24.121.807 school requirements,)	
24.121.1103 and 24.121.1105)	
teacher-training, 24.121.1517 salon)	
preparation storage and handling,)	
24.121.2101 continuing education,)	
and 24.121.2301 unprofessional)	
conduct)	

TO: All Concerned Persons

1. On December 29, 2011, at 10:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on December 22, 2011, to advise us of the nature of the accommodation that you need. Please contact Shane Younger, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdcos@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2011 Montana Legislature enacted Chapter 100, Laws of 2011 (House Bill 94), an act that revised the barber and cosmetology laws regarding instructor training and licensing. The bill was signed by the Governor on April 1, 2011, and became effective on October 1, 2011. The board determined it is reasonably necessary to amend certain rules to implement HB 94 and align the rules with the revised statutory requirements, including requiring all instructor applicants to meet the same licensure criteria, regardless of the area of practice the applicant will teach.

Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules for consistency, simplicity, better organization, ease of use, and correct grammar and punctuation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS (1) remains the same.

(2) "Beauty culture" means, but is not limited to, hairdressing, manicuring, and esthetics.

(3) remains the same.

(4) "Board-approved exam" means the written and practical examinations, collectively, that are approved by the board.

(4) through (6) remain the same, but are renumbered (5) through (7).

(8) "Chemical compounds" means professionally formulated makeup or cosmetic preparations, tonics, lotions, creams, waxes, depilatories, antiseptics, and other skin care and beautification products used in approved esthetics courses in Montana.

(7) through (11) remain the same, but are renumbered (9) through (13).

~~(12)~~ (14) "Direct supervision" means the ~~on-site~~ onsite physical presence of a supervisor in the clinic and basic areas of the school, where students perform educational activities and services requiring licensure, and includes communication, direction, observation, and evaluation on a consistent basis.

(13) remains the same, but is renumbered (15).

~~(14)~~ (16) "Distance education" means education such as ~~computer-based~~ computer-based training, Internet, video tape, or other mode of distance delivery where the instructor and student are separated by distance and, in some cases, time.

(15) through (20) remain the same, but are renumbered (17) through (22).

~~(21)~~ (23) "Hairdressing" means performing any or all of the following on natural or artificial hair including, but not limited to, hairstyling (wet, dry, thermal, and braiding), chemical services (waving, relaxing, hair coloring, and lightening), hair cutting, and shampooing and scalp treatments.

(22) through (29) remain the same, but are renumbered (24) through (31).

~~(30)~~ (32) "Single use items" mean items which shall be discarded after being used one time. These items include, but are not limited to, emery boards, nonmetal files without documentation from the manufacturer stating the file is disinfectable, mandrels, and sanding bands for electric files, orangewood/birchwood sticks, wooden applicator sticks or spatulas, porous foot files, disposable gloves, paraffin liners, cotton balls, cotton strips, cotton swabs, neck strips or muslin strips, and any item that cannot be cleaned and disinfected and remain intact in its original condition.

(31) remains the same, but is renumbered (33).

~~(32)~~ (34) "Supplemental barbering course" means a course of study in a licensed school, which consists of at least 125 hours in clipper cuts and 25 hours in facial, neck, and outline shaving to licensed cosmetologists only, in order to meet the required educational needs for a barber license prior to taking a ~~national-written~~ the board-approved exam.

(33) and (34) remain the same, but are renumbered (35) and (36).

AUTH: 37-1-131, 37-1-319, 37-31-203, 37-31-204, MCA
IMP: 37-31-101, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309,
37-31-311, MCA

REASON: The board is incorporating the definition of "board-approved exam" from elsewhere in the rules for simplicity and better organization. The board is also amending the "board-approved exam" definition to include a practical exam. The practical exam is a board requirement, but was previously administered by the schools. Now, both the practical exam and the written exam are being administered through an exam provider that has contracted with the department.

The board is defining chemical compounds to further clarify the scope of practice for licensed estheticians and provide guidance to licensees by clarifying that approved chemical compounds are those used in schools. The board intends for estheticians to determine if a product is appropriate by establishing whether the product is used in an approved esthetics course.

24.121.403 GENERAL REQUIREMENTS (1) remains the same.

(2) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has ~~90~~ 180 days in which to supply the remaining information or documents. If the application is not completed within ~~90~~ 180 days, the application is rejected, and the applicant shall be required to submit a new application package and fees.

(3) All licensees, including salons, shops, and schools, shall display all licenses conspicuously for members of the public to view. The address on the personal license may be covered.

(a) remains the same.

(b) Booth renters shall clearly label all other areas of the salon or shop maintained by the renter, including, but not limited to, retail, ~~roll-abouts~~ "roll-abouts", carts, and manicure tables.

(4) Licensees shall ensure that their correct name and current mailing address is on file with the board by notifying the board of changes in name or address in writing within 30 days, and including the licensee's name, profession, and license number.

(5) remains the same.

(6) Licensees shall immediately notify the board of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and appropriate fees to the board or through the board's ~~website~~ web site.

(7) All licensees practicing barbering, cosmetology, electrology, esthetics, or manicuring shall provide a suitable place equipped to provide adequate services to clients, as specified in rule, and subject to inspection by the department or board designee.

(8) through (10) remain the same.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309,
37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule and allow additional time for applicants to submit a complete application packet to the board office. Now that the practical examination is administered by an exam provider, it is only offered every other month. The board realized that it may take applicants longer than 90 days to schedule, take, and provide the results of the practical exam to the board office. The additional 90 days will allow applicants adequate time to complete the application, according to established timelines.

24.121.601 APPLICATIONS FOR LICENSURE (1) Applicants for licenses to practice shall ~~apply for licensure~~ obtain a license within three years of the applicant's graduation date from a licensed school.

(2) ~~Previously Applicants previously~~ licensed applicants may apply for licensure within ~~ten~~ three years of termination of license by meeting current board licensing requirements and successfully passing a ~~national written~~ the board-approved exam.

(3) through (3)(b) remain the same.

(c) proof of high school graduation or equivalency. A manicurist applicant may provide a certificate of completion from a vocational-technical program;

(d) through (10) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-303, 37-31-304, 37-31-308, MCA

REASON: The board is amending (2) to require that previously licensed applicants apply within three years of license termination instead of ten. The board concluded that someone applying after only three years will have the recent knowledge and experience to allow them to re-enter the profession and practice competently.

In reviewing the rules, the board discovered a discrepancy in requirements for manicurist applicants. The board is amending (3)(c) to reconcile with the statutory requirements in 37-31-304(5), MCA, which allow these applicants to substitute a certificate of completion from a vocational-technical program.

24.121.603 OUT-OF-STATE APPLICANTS (1) Applicants other than barbers tested and licensed in states administering a ~~board-approved~~ nationally recognized written and practical examination and having received a scaled score as required for licensure in Montana, may qualify for licensure by endorsement.

(a) ~~"Board approved" means the examination is written and administered by any nationally recognized examination service.~~

(2) ~~To qualify for licensure by endorsement, an out-of-state barber shall submit an application including the following documentation:~~ A barber applicant will qualify for licensure by endorsement without examination by submitting a complete application, all required documentation, by meeting the requirements of 37-31-304, MCA, and the following:

(a) remains the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for barbers means 1500 hours of formal training and successful completion of a ~~board-approved~~ board-approved examination by a passing score set forth in rule. Applicants who

have not completed 1500 hours of formal training shall be required to pass a ~~board approved~~ board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a barbering applicant's qualifications or credit for hours.

(ii) through (3)(a) remain the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for cosmetologists means 2000 hours of formal training and successful completion of a ~~board approved~~ board-approved examination by a passing score set forth in rule. Applicants who have not completed 2000 hours of formal training shall be required to pass a ~~board approved~~ board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a cosmetologist applicant's qualifications or credit for hours.

(ii) through (4)(a) remain the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for electrologists means 600 hours of formal training and successful completion of a ~~board approved~~ board-approved examination with a passing score set forth in rule. Applicants who have not completed 600 hours of formal training shall be required to pass a ~~board approved~~ board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an electrologist applicant's qualifications or credit for hours.

(ii) through (5)(a) remain the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for estheticians means 650 hours of formal training and successful completion of a ~~board approved~~ board-approved examination with a passing score set forth in rule. Applicants who have not completed 650 hours of formal training shall be required to pass a ~~board approved~~ board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an esthetician applicant's qualifications or credit for hours.

(ii) through (6)(a) remain the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for manicurists means 350 hours of formal training and successful completion of a ~~board approved~~ board-approved examination with a passing score set forth in rule. Applicants who do not possess 350 hours of formal training shall successfully pass a ~~board approved~~ board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a manicurist applicant's qualifications or credit for hours.

(ii) through (6)(e)(ii)(C) remain the same.

~~(7) To qualify for licensure by endorsement, an out-of-state instructor shall submit an application including the following documentation:~~

~~(a) proof of completion of the applicable minimum hours of teacher training required under 37-31-305, MCA;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for instructors means the minimum hours of formal teacher training specific to the applicant's area of instruction and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed either the applicable minimum hours of formal training or the work experience provisions of ARM 24.121.607 shall be required to pass the board~~

~~approved examination as specified in rule.~~

~~(ii) Applicants shall be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) an original state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(8) Out-of-state applicants who are not currently licensed in another state shall:~~

~~(a) meet the requirements for licensure in the state of Montana;~~

~~(b) satisfy the statutes and rules of the board with regard to the formal training hour requirements; and~~

~~(c) pass a board approved examination in the field in which the training hours were received.~~

~~(9) remains the same, but is renumbered (7).~~

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: Because the board concluded that any nationally administered exam is adequate to protect the public and ensure an applicant is qualified for licensure, the board is amending (1) to clarify that any nationally administered examination is acceptable for licensing and does not need specific board approval. The board is amending (1) and (2) to clarify the specific procedure for licensing barbers by endorsement as set forth in 37-31-304(2)(c), MCA, which is different than other out-of-state applicants.

The board is deleting (7) and (8) to remove all references to instructor endorsement applicants. As a result of HB 94, all instructor applicants must first be licensed to practice in Montana, and these requirements are unnecessarily repetitive.

24.121.605 APPLICATION FOR SCHOOL LICENSURE (1) through (3)(a) remain the same.

(b) Cosmetology schools offering courses in barbering, esthetics, manicuring, teacher-training, and/or supplemental barbering shall be required to post a \$5000 bond or other security for each course.

(4) Schools shall not allow the bond or other security to be cancelled or to expire as long as the school is licensed, and shall submit to the board proof of continuous annual renewal of the bond or other security.

(5) remains the same.

(6) Schools shall provide true and accurate copies of all current school policies, procedures, rules, student contracts, tuition costs, and required deposits, including, but not limited to, those policies, procedures, and rules addressing:

(a) through (7)(b) remain the same.

(8) As part of the inspection, investigation, or audit process, the board may use information found by or prepared for the Department of Education or other applicable national accrediting associations' or commissions' reviews.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-302, 37-31-311, 37-31-312, MCA

REASON: The board is amending (3)(b) to require that cosmetology schools post a performance bond for teacher-training courses offered. It was recently brought to the attention of the board that teacher-training courses are exempt from the bond requirement under current rule language. The purpose of a bond is to ensure that a school can meet its obligations to students if the school does not complete the offered curriculum program, and the board concluded that this should apply equally to teacher-training courses.

24.121.607 APPLICATION FOR INSTRUCTOR LICENSE (1) Applicants In addition to a complete application, an applicant for instructor's licenses an instructor license shall submit the following documentation:

~~(a) Applicants having completed the applicable minimum hours of teacher training required under 37-31-305, MCA, shall submit:~~

~~(i) hour records record of hours showing the number of hours completed;~~

~~(ii) (b) a diploma issued for a teacher teacher-training course;~~

~~(iii) a copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(iv) proof of current Montana licensure in barbering, cosmetology, electrology, esthetics or manicuring, in good standing; and~~

~~(c) an attestation that the applicant meets the requirement of being actively engaged in the particular practice as required in 37-31-305, MCA; and~~

~~(v) (d) proof of passage of the board approved examination board-approved exam.~~

~~(b) Pursuant to 37-31-305, MCA, if the applicable hours of teacher training have not been obtained, the applicant may provide documented proof, such as employer/contractor affidavits and proof of income, i.e., W-2 or 1099 forms, verifying the applicant's three years of continuous full-time practice immediately prior to the application submission.~~

~~(2) Applicants having graduated from a teacher-training course administered by a licensed school with an approved teacher's training program shall apply for obtain a license within five three years of the applicant's graduation date graduating from an approved teacher-training course.~~

~~(3) Pursuant to 37-31-305, MCA, "immediately" means the last day of employment as a barber, cosmetologist, electrologist, esthetician or manicurist being not more than 90 days prior to taking the teacher's examination and "continuous years" means full-time employment of not less than 32 hours per week.~~

~~(4) remains the same, but is renumbered (3).~~

~~(5) Out-of-state student applicants shall meet the same requirements as in-state instructor students.~~

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-302, 37-31-303, 37-31-305, 37-31-308, ~~37-31-324~~, MCA

REASON: The board is amending (1) to no longer require that instructor applicants provide copies of their birth certificates and Montana licenses. Instructors must hold personal licenses in Montana in the area of practice the person intends to instruct, and would have already submitted a birth certificate or other documentation verifying age. Further, the board can verify Montana licensure without requiring the applicant to provide information. Tax records and similar documents rarely assure that the applicant has been actively practicing prior to making application. The board believes an attestation of practice will be just as effective as these records, and will remove unnecessary documentation and delays from the process.

The board determined that instructor applicants should apply for a license within three years of completing the education requirements to be consistent with applicants for licenses to practice. Noting that the teaching profession evolves, the board concluded that someone with more than a three year gap between education completion and licensure would not be current in updated methods and materials instructed. The board is also striking (5) as it is a redundant statement that out-of-state applicants must meet the same requirement as in-state applicants.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

24.121.611 EXAMINATION REQUIREMENTS AND PROCESS

(1) Applicants sitting for the ~~examination~~ board-approved exam shall adhere to the standards and requirements for admission to the ~~examination~~ examinations, including the payment of appropriate fees.

(2) Applicants shall obtain a scale score of at least 75 percent to pass the written examination and 75 percent to pass the practical examination for licensure to practice or for an instructor's license.

~~(3) In addition to the requirements of 37-31-308, MCA, candidates~~ Applicants who have ~~taken the~~ failed either the written or practical examination and ~~failed~~ shall apply to be ~~reexamined~~ retake the failed examination and pay the necessary examination fees as required.

(4) Applicants who fail the written examination three times must wait 60 days before each subsequent reexamination.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-304, 37-31-305, 37-31-308, ~~37-31-324~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule and establish a passing score and reexamination requirement for each of the examinations that constitute the board-approved exam. Because each examination is administered independently, it is necessary to establish a separate passing score for each. The board is amending (3) to clarify that initial examination fees only cover the initial examination and that each subsequent exam administration must be accompanied by an examination fee.

The board is adding (4) to require a 60-day waiting period for applicants to retake the written examination after failing three times. Because the written examination is given daily, it is possible for an applicant who fails the exam to schedule and retake it repeatedly over a very short period of time. The board determined it is in the public's best interest to require the applicant to wait 60 days after failing a third time to allow the applicant to study and prepare for reexamination, and to ensure that the applicant actually knows the material, rather than simply mastering the examination.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

24.121.803 SCHOOL REQUIREMENTS (1) through (8)(g)(i) remain the same.

(ii) ~~two~~ one stationary or ~~roll-about~~ "roll-about" portable hair ~~dryers~~ dryer;

(iii) through (9)(a) remain the same.

(b) one sink, with hot and cold running water for hand washing, not used for restroom facilities;

(c) through (12) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule and eliminate the need for a school to provide two hair dryers per 15 students. Many of the procedures and products currently used in the industry no longer require the use of a dryer. Schools are still required to provide the necessary materials and equipment to teach their approved course. This amendment will allow the schools to determine the need, rather than the board.

24.121.805 SCHOOL OPERATING STANDARDS (1) through (14) remain the same.

(15) Upon completion by students of at least 90 percent of the required ~~hours~~ of a course of study, in ~~barbering, cosmetology, electrology, esthetics, manicuring, instructing, or supplemental barbering course~~ and prior to graduating and receiving a diploma, the student ~~shall~~ may take the school's board-approved final practical examination. The final practical examination must include all components for evaluation as provided in ARM 24.121.807 for each course of study. ~~The final practical examination passing score shall be at least equal with the school's academic passing requirements.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board determined this amendment is necessary to clarify that students may register for and complete the practical examination prior to completing the formal training course, but only after completing 90 percent of the course. The practical examination is not given as frequently as the written examination, and the ability of a student instructor to take the practical exam before completing the formal training will allow them to obtain their instructor license as soon as possible, after completing the formal training and passing both exams that constitute the board-approved exam. The board is removing references to school examinations from (15) to reflect the recent decision to use a national examination.

24.121.807 SCHOOL CURRICULA (1) through (6) remain the same.

(7) Students seeking licensure in a state ~~other than Montana~~ that requires additional more hours of training, ~~who do not possess a than Montana license,~~ may remain enrolled in the school and be permitted to work on members of the public without obtaining a license.

(8) The board shall not grant credit for hours earned by students for postsecondary education, under any circumstances.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-304, 37-31-305, 37-31-311, MCA

REASON: The board is amending this rule to address confusion among applicants by clarifying that students seeking licensure in jurisdictions requiring more training hours than Montana, may continue in school and work on the public as students, while obtaining the necessary additional hours of training, and without being required to obtain a license.

24.121.1103 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (3) remain the same.

(4) Upon application by the student or cadet instructor enrolled in a licensed school of barbering, cosmetology, electrology, esthetics, or manicuring, the board may grant credit for hours toward the teacher-training curriculum when the student or cadet instructor has completed, with not less than a "C" grade, a teacher-training course offered by an accredited postsecondary educational institution.

(5) and (6) remain the same.

(7) Upon completion by the student of at least 90 percent of the teacher-training course, and prior to graduation and issuance of a diploma, the ~~school shall administer a final~~ student may take the board-approved practical examination ~~that.~~ The final practical examination must:

~~(a) include all components for evaluation as provided in ARM 24.121.1105;~~
and,

~~(b) be consistent with the school's academic passing requirements.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: To align with recent changes to a nationally administered practical examination, the board is amending this rule to clarify that a student instructor may register for and complete the board-approved practical examination prior to completing the formal training course, but only after completing 90 percent of the course. The practical examination is not given as frequently as the written exam, and the ability of a student instructor to take the practical examination before completing the formal training will allow the applicant to obtain the applicant's license as soon as possible after completing the formal training and passing both parts of the board-approved licensing examination.

24.121.1105 TEACHER-TRAINING CURRICULUM (1) Cosmetology, esthetics, and manicuring ~~The teacher-training courses course~~ shall consist of 650 hours and include the following:

(a) through (1)(c)(vii) remain the same.

(d) advanced theory of cosmetology, esthetics, ~~or~~ barbering, or electrology, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - 75 hours; and

(e) 140 hours of instruction shall be at the discretion of the school ~~provided that the hours are within the applicable curriculum.~~

~~(2) Barbering teacher-training courses shall consist of 500 hours and include the following:~~

~~(a) teaching methods - 185 hours including:~~

~~(i) task analysis;~~

~~(ii) developing instructional objectives;~~

~~(iii) visual aids and their construction;~~

~~(iv) motivational tools;~~

~~(v) preparation of instructive materials;~~

~~(vi) lesson planning including:~~

~~(A) practical theory classes; and~~

~~(B) practical demonstration classes.~~

~~(vii) fundamentals of speech and public speaking;~~

~~(viii) methods of test construction;~~

~~(ix) methods of evaluation or grading; and~~

~~(x) curriculum planning and development.~~

~~(b) general psychology - 50 hours including:~~

~~(i) general principles in relation to teaching and counseling;~~

~~(ii) conflict resolution;~~

~~(iii) student counseling;~~

~~(iv) student and teacher relationships; and~~

~~(v) public relations.~~

~~(c) business methods - 90 hours including:~~

~~(i) recruitment;~~

~~(ii) job analysis;~~

~~(iii) student registration, withdrawal, and hours (tracking, completing, calculating, and verifying);~~

- ~~(iv) ethical employee and employer relationship;~~
- ~~(v) salon/booth rental relationship;~~
- ~~(vi) professional ethics; and~~
- ~~(vii) current state board laws and rules.~~
- ~~(d) advanced theory of barbering, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - 45 hours; and~~
- ~~(e) 130 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.~~
- ~~(3) Electrology teacher training courses shall consist of 100 hours and include the following:~~
 - ~~(a) teaching methods - 55 hours including:~~
 - ~~(i) task analysis;~~
 - ~~(ii) developing instructional objectives;~~
 - ~~(iii) visual aids and their construction;~~
 - ~~(iv) motivational tools;~~
 - ~~(v) preparation of instructive materials;~~
 - ~~(vi) lesson planning including:~~
 - ~~(A) practical theory classes; and~~
 - ~~(B) practical demonstration classes.~~
 - ~~(vii) fundamentals of speech and public speaking;~~
 - ~~(viii) methods of test construction;~~
 - ~~(ix) methods of evaluation or grading; and~~
 - ~~(x) curriculum planning and development.~~
 - ~~(b) general psychology - five hours including:~~
 - ~~(i) general principles in relation to teaching and counseling;~~
 - ~~(ii) conflict resolution;~~
 - ~~(iii) student counseling;~~
 - ~~(iv) student and teacher relationships; and~~
 - ~~(v) public relations.~~
 - ~~(c) business methods - ten hours including:~~
 - ~~(i) recruitment;~~
 - ~~(ii) job analysis;~~
 - ~~(iii) student registration, withdrawal, and hours (tracking, completing, calculating, and verifying);~~
 - ~~(iv) ethical employee and employer relationship;~~
 - ~~(v) salon/booth rental relationship;~~
 - ~~(vi) professional ethics; and~~
 - ~~(vii) current state board laws and rules.~~
 - ~~(d) advanced theory of electrology and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - five hours; and~~
 - ~~(e) 25 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with statutory changes affected by the passage of HB 94, which make the 650 hours of instructor education uniformly required for each discipline.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING (1) and (2) remain the same.

(3) ~~Use Possession or use of the following items is prohibited:~~

(a) through (3)(e)(iv) remain the same.

(4) No salon, shop, or school shall have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products.

(4) through (9) remain the same, but are renumbered (5) through (10).

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-312, MCA

REASON: The board determined it is reasonably necessary to amend (3) and specify that not only is it inappropriate for licensees to use prohibited items, it is also inappropriate for them to have the items in the salon or shop. The board determined that this amendment will increase the board's ability to enforce the prohibition of certain items, since licensees at times claim that they are not using prohibited items, even though the items are found on the premises and within the work area.

The board is adding (4) to clarify the inappropriateness of licensees using products banned by the FDA. While the board attempts to keep the prohibited item list current, the licensees are responsible to ensure that products they use do not contain banned substances. Additionally, it is impossible for the board to list every product containing every hazardous substance. Licensees are responsible to research products they use and ensure the products are safe for their intended use.

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) and (2) remain the same.

(3) Continuing education courses must be germane to the practice of barbering, cosmetology, electrology, esthetics, manicuring, or instructing.

(4) through (12) remain the same.

(13) Course approval will be for the current calendar year. All courses will expire ~~December 31~~ March 1 of each year.

(14) through (20) remain the same.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: The board is amending the expiration date of instructors' continuing education course approval to align with the recent change to the instructor license renewal date. The board concluded that having different date for course approval

and continuing education will cause confusion as to whether a course is approved for the appropriate continuing education reporting period.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(m) remain the same.

(n) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(o) maintaining an unsanitary or unsafe salon, shop, booth, or school, or practicing under unsanitary or unsafe conditions;

(p) performing services or using machines and devices outside of the licensee's area of training, expertise, competence, or scope of practice or licensure, unless such services are not licensed or inspected by the state of Montana;

(q) through (1)(v) remain the same.

(w) failing to provide verification of completed continuing education when requested by the board; or

(x) engaging in or teaching the practice of barbering, cosmetology, electrology, esthetics, or manicuring when the license has expired or terminated, has been suspended or revoked, or is on inactive status, except as allowed in ARM 24.121.805;

(y) failing to comply with all completion and reporting requirements for continuing education as established by the board; and

(z) failing to use implements, equipment, instruments, machines, devices, or products according to the manufacturer directions, with the exception of using only single-use plastic tips on microdermabrasion machines.

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA

IMP: 37-1-136, 37-1-137, 37-1-141, 37-1-316, 37-31-301, 37-31-331, MCA

REASON: The board determined it is reasonably necessary to add (1)(z) to include as unprofessional conduct the use of implements or equipment inappropriately or for other than the intended purpose. The board intends that when licensees purchase equipment, they obtain the necessary knowledge and training to use the implements appropriately.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., January 6, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.cosmetology.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana

Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdcos@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 31, 2011, by regular mail.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 28, 2011