

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
24.121.603 out-of-state applicants,)	
24.121.801 inspections, 24.121.803)	
school requirements, 24.121.805)	
school standards, 24.121.807)	
curricula, 24.121.1509 implements)	
and equipment, 24.121.1511)	
sanitizing equipment, 24.121.1517)	
salon preparation, and 24.121.2301)	
unprofessional conduct)	

TO: All Concerned Persons

1. On March 8, 2010, at 10:00 a.m., a public hearing will be held in room 430 301 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 March 4, 2010, 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. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS ~~The following definitions shall apply as used in this chapter:~~

(1) through (6) remain the same.

(7) "Clipper cuts" for barbering education are haircuts performed using the free-hand method with a universal electro-magnetic clipper.

(7) through (15) remain the same but are renumbered (8) through (16).

(17) "Facial shaving" means utilizing a disposable injector straight edge designed for barbering. Standard shaving positions and strokes are:

(a) free-hand;

(b) reverse free-hand;

(c) back-hand; and

(d) reverse back-hand.

(18) "Free-hand methods" for clipper cuts are:

(a) toe, middle, heel;

(b) arching;

(c) clipper over comb, to:

(i) blend;

(ii) remove bulk; and

(iii) remove cut lines; and

(d) blending with shear over comb.

(16) through (19) remain the same but are renumbered (19) through (22).

(23) "Needles" mean single-use, presterilized, and disposable needles of various sizes, which are stored in a manner that will maintain the sterile conditions of contents, away from wetness or extreme humidity. Needles may not be recapped, bent, or otherwise manipulated by hand prior to disposal, to avoid accidental puncture injury. Needles must be placed in a puncture-resistant sharps container immediately after use, when damaged, when contaminated before use, or when not used before the preprinted expiration date.

(20) through (24) remain the same but are renumbered (24) through (28).

~~(25)~~ (29) "Supplemental barbering course" means a course of study in a licensed school, consisting 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 exam.

(26) and (27) remain the same but are renumbered (30) and (31).

AUTH: 37-1-131, 37-1-319, 37-31-203, 37-31-204, MCA

IMP: ~~37-1-306~~, 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 amending this rule to set forth several definitions regarding the supplemental barbering course for cosmetologists. In 2008, the board amended its rules to clarify that cosmetology schools could offer a supplemental course to licensed cosmetologists to qualify for barber licensure. Following a recent review of the rules, the board determined it is necessary to define several terms to further clarify the supplemental barbering course requirements.

The board is adding a definition of "needles" following a recommendation from the board's electrology rules committee. The committee reviewed the electrology practice rules and recommended the board clarify the types of needles allowed and their appropriate use and disposal. The board is proposing the definition in response to current national electrology infection control standards that prohibit sterilization and reuse of electrolysis needles.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.121.603 OUT-OF-STATE APPLICANTS (1) through (2)(b) remain the same.

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

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

(3) through (b) remain the same.

~~(c) proof of high school graduation or equivalency~~ a certified state board transcript or verification from each state in which the applicant holds or has held a license; and

~~(d) a certified state board transcript or verification from each state in which the applicant holds or has held a license~~ 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.~~

(4) through (b) remain the same.

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

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

(5) through (b) remain the same.

~~(c) proof of high school graduation or equivalency~~ an original state board transcript or verification from each state in which the applicant holds or has held a

license; and

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

(6) through (b) remain the same.

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

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

(7) through (b) remain the same.

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

~~(d) an original state board transcript or verification from each state in which the applicant holds or has held a license~~ 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) and (9) remain the same.

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

IMP: ~~37-1-141,~~ 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: The board determined it is reasonably necessary to amend this rule to provide an exception to the high school diploma requirement for out-of-state applicants. The board previously amended ARM 24.121.601 to allow applicants for initial Montana licensure to petition the board for an exception to the high school diploma or equivalency requirement. The board is amending and reorganizing this rule to allow the same exception for out-of-state licensees seeking Montana licensure and to specify the required application documentation.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.121.801 INSPECTION - SCHOOL LAYOUT (1) and (2)(a) remain the same.

(b) Electrology schools shall have floor space of at least 1000 square feet for the first ten students and ~~60~~ 80 square feet for each additional student, including locker room, office space and reception area.

(c) through (5) remain the same.

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

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

REASON: The board determined it is reasonably necessary to amend this rule to align with proposed changes to school requirements also in this notice. The proposed amendments to ARM 24.121.803 increase both the electrology workstation size and the equipment required for the workstations. The board is amending this rule to increase the minimum additional floor space required per student when schools enroll more than ten students from 60 to 80 square feet.

24.121.803 SCHOOL REQUIREMENTS (1) through (6) remain the same.

(7) Barbering schools or cosmetology schools offering a separate barbering course or supplemental barbering course, regardless of the number of students enrolled, shall provide the following certain equipment as follows:

(a) and (b) remain the same.

(c) a fire extinguisher; ~~and~~

~~(h)~~ (d) one locker per two students;

~~(i)~~ (e) one protective covering per student; ~~and~~

~~(j)~~ (f) one current board law and rule book per student; ~~and~~

~~(d)~~ (g) the following equipment shall be provided for schools enrolling one to 15 students shall provide the following equipment, which. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) and (ii) remain the same.

(iii) one hot lather machine; ~~and~~

(iv) two covered wet sanitizers; ~~;~~

~~(e)~~ (v) one closed cabinet for clean linens;

~~(f)~~ (vi) one covered soiled linen container; ~~and~~

~~(g)~~ (vii) two covered garbage containers; ~~;~~

(8) Cosmetology schools, regardless of the number of students enrolled, shall provide the following certain equipment as follows:

- (a) and (b) remain the same.
- (c) a fire extinguisher; ~~and~~
- ~~(j)~~ (d) one locker per two students;
- ~~(j)~~ (e) one protective covering per student; ~~and~~
- ~~(k)~~ (f) one current board law and rule book per student; ~~and~~
- ~~(d)~~ (g) the following equipment shall be provided for schools enrolling one to 15 students shall provide the following equipment, which. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:
 - (i) and (ii) remain the same.
 - (iii) two manicure tables; ~~and~~
 - (iv) two covered wet sanitizers; ~~;~~
 - ~~(e)~~ (v) one closed cabinet for clean linens;
 - ~~(f)~~ (vi) one facial chair;
 - ~~(g)~~ (vii) one covered soiled linen container; ~~and~~
 - ~~(h)~~ (viii) two covered garbage containers; ~~;~~
- (9) Electrology schools, regardless of the number of students enrolled, shall provide the following certain equipment as follows:
 - (a) a practice workroom including: one serviceable school first aid kit;
 - ~~(i) one bead sterilizer; and~~
 - ~~(ii)~~ (b) one sink, with hot and cold running water for hand washing- , not used for restroom facilities;
 - ~~(b)~~ a minimum of two stations for the first three students enrolled, with one station added for each additional two students;
 - ~~(c)~~ needles of various sizes per student upon completion of 50 hours of basic training; and
 - ~~(d)~~ (c) one locker per two students; ~~;~~
 - (d) an autoclave or dry heat sterilizer;
 - (e) stainless steel and gold needles of various sizes per student; ~~and~~
 - (f) one current board law and rule book per student.
- (10) Electrology schools shall provide a clinical area divided into a minimum of two workstations for the first three students enrolled, with one station added for each additional two students, which shall be enclosed by partitions or curtains, and measure at least ten feet by eight feet in area. Each workstation must include the following:
 - (a) one treatment table or chair;
 - (b) one magnifying lamp;
 - (c) an epilator or epilators offering either thermolysis, electrolysis, and the blend;
 - (d) one puncture-resistant sharps container;
 - (e) schools enrolling one to 15 students shall provide the following equipment, which shall be doubled for 16 to 30 students and tripled for 31 to 45 students:
 - (i) two covered wet sanitizers;
 - (ii) one covered soiled linen container; ~~and~~
 - (iii) one covered garbage container.
 - (f) the number of sinks, treatment tables or chairs, and lamps must be increased by one for each additional five students (e.g. six to ten, 11 to 15, etc.); ~~and~~

~~(40)~~ (g) ~~Only~~ only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed school, unless a properly installed, serviced, and ~~operated~~ operational autoclave is utilized for sterilization of reusable needles.

~~(11)~~ ~~The clinical area of an electrology school must be divided into workstations that are enclosed by partitions or curtains. Each workstation must measure at least ten feet by six feet in area.~~

~~(12)~~ (11) Esthetics schools or cosmetology schools offering a separate esthetics course, regardless of the number of students enrolled, shall provide ~~the following~~ certain equipment as follows:

(a) through (h) remain the same.

(i) the number of sinks, facial beds or chairs, and lamps must be increased by one for each additional five students (e.g., six to ten, 11 to 15, etc.); and

(j) ~~the following equipment shall be provided for schools enrolling one to 15 students~~ shall provide the following equipment, which. ~~The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:~~

(i) through (iii) remain the same.

~~(13)~~ (12) Manicuring schools or cosmetology schools offering a separate manicure course, regardless of the number of students enrolled, shall provide ~~the following~~ certain equipment as follows:

(a) through (e) remain the same.

(f) ~~the following equipment shall be provided for schools enrolling one to 15 students.~~ The equipment shall provide the following equipment, which shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) through (j) remain the same.

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

IMP: 37-31-311, MCA

REASON: The board is amending this rule throughout to reorganize and correct grammatical errors for clarity and ease of use. The board's electrology rules committee concluded that current requirements do not ensure the adequate and safe education and training of electrology students. The board is amending this rule to require that all electrology schools provide certain mandatory equipment including a first aid kit and an autoclave or dry heat sterilizer. The board is also amending this rule to set forth the equipment that electrology schools must provide in each clinical workstation and to require that schools double or triple certain items when enrolling more than 15 students.

The board is increasing the minimum workstation size from ten by six feet to ten by eight feet because extra room will be needed for the additional required equipment. The board is deleting the requirement for a bead sterilizer as this item has not been approved for marketing by the United States Food and Drug Administration. The board is also specifying the types of allowable needles and deleting the requirement that students complete 50 hours of basic training before handling needles in response to current national electrology infection control standards and for consistency among other U.S. electrology schools.

24.121.805 SCHOOL OPERATING STANDARDS (1) through (12)(b) remain the same.

(c) electrology students - ~~200~~ 150 hours for facial services and 50 hours for other services;

(d) through (15) 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 following a recommendation by the board's electrology rules committee that 200 total hours of basic training is adequate prior to allowing electrology students to practice on the public. Compared to students in barbering, cosmetology, manicuring, and esthetics, electrology students currently must complete a higher percentage of hours before practicing on the public and there is no justification for such an elevated requirement. The board concluded that reducing the hours would more closely align the electrology training hours with those of these other professions.

24.121.807 SCHOOL CURRICULA (1) Barbering, cosmetology, electrology, esthetics, manicuring, and instructor students shall complete the course of study within three years of the student's original enrollment date. Students enrolled in a supplemental barbering course shall complete the course within three months of the student's original enrollment date.

(2) through (4) remain the same.

(a) 600 hours of training, of which at least ~~200~~ 120 hours is ~~of technical instruction (demonstration, lecture, classroom participation, or examination); and in theory, distributed as follows:~~

(i) electrolysis five hours;

(ii) thermolysis 150 hours;

(iii) the blend 150 hours;

(iv) bacteriology, sanitation, sterilization, safety, anatomy, physiology, blood spill procedures, diseases and disorders of the skin, electricity, chemistry, and light therapy 70 hours;

(v) waxing (face, neck, hands, and superfluous hair anywhere on the body, including tweezing), 10 hours; and

(vi) salon management, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, 65 hours.

~~(b) 400 hours of practical operations (the actual performance by the student of a complete service on another person) to include:~~

~~(i) a minimum of 90 hours of practical operations obtained in the following subjects:~~

~~(A) electrolysis;~~

~~(B) thermolysis; and~~

~~(C) the blend.~~

~~(ii) 310 hours of practical operations shall be at the discretion of the school, provided they are within the applicable curriculum.~~

~~(c) Technical instruction and practical operations shall be obtained within the following topics:~~

- ~~(i) causes of hair problems;~~
- ~~(ii) structure and dynamics of hair and skin;~~
- ~~(iii) practical analysis of hair and skin;~~
- ~~(iv) neurology and angiology;~~
- ~~(v) bacteriology and disinfection;~~
- ~~(vi) dermatology;~~
- ~~(vii) principles of electricity and equipment;~~
- ~~(viii) electrolysis;~~
- ~~(ix) thermolysis;~~
- ~~(x) the blond;~~
- ~~(xi) the needle;~~
- ~~(xii) general treatment procedure;~~
- ~~(xiii) treatment of specific areas;~~
- ~~(xiv) current state board laws and rules; and~~
- ~~(xv) development of a practice.~~

(b) 150 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(5) through (8) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-304, 37-31-305, 37-31-311, MCA

REASON: In 2008, the board amended its rules to clarify that cosmetology schools could offer a supplemental course to licensed cosmetologists to qualify for barber licensure. Although the board intended to include the requirement for students to complete the supplemental barbering course in three months, the board recently discovered the change had been inadvertently overlooked and is adding it now.

Following requests by the electrology schools, the board's electrology rules committee recommended several changes to the curricula of electrology schools, including the courses, required subject matter, and individual course hours. The board is therefore amending this rule to reduce the required training in theory from 200 to 120 as the board agreed with the committee that requiring a third of the total hours in theory is excessive and unnecessary. The board is amending the rule to require schools include a course on waxing because waxing is necessary to be able to effectively carry out the practice of electrology. The board is not changing the total required hours per course of study.

The board is further amending this rule to broaden the course content required for electrology curricula. Following this amendment, electrology schools will no longer need to micromanage students' required hours in specific subcategories of instruction, only in broader overall categories. As part of these changes, the board is deleting the practical operations requirement from electrology curricula. The board previously removed the practical experience from the cosmetology, barbering, esthetics, and manicuring curricula requirements but unintentionally left the requirement in for electrology. These changes will allow instructors more discretion

in tailoring instruction for individual students in specific areas when needed to ensure each student has adequate overall training for safe practice.

Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) and (2) remain the same.

(3) Salons, shops, and schools must maintain copies of the manufacturers'/owners' manuals on-site for all equipment in service.

(3) through (10) remain the same, but are renumbered (4) through (11).

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

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

REASON: The board concluded it is reasonably necessary for the public's protection to amend this rule and require that licensed salons, shops, and schools keep equipment manuals on-site. Board inspectors request these manuals during inspections to verify that machines are being used and cleaned properly, but often the owners cannot produce them. The board determined that this amendment will help ensure that licensees are able to more safely and correctly operate their equipment and able to quickly consult a manual if problems arise.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.121.1511 SANITIZING AND DISINFECTING IMPLEMENTS AND EQUIPMENT (1) through (4) remain the same.

(5) Electrical equipment, whether professional or consumer designed, which provides circulating, whirlpool, or vacuum effects (for example, all pedicure stations, microdermabrasion machines, facial machines, nail drills, and body treatment equipment) shall be cleaned and disinfected after each use. Such equipment shall also be flushed, cleaned, and disinfected on a regular basis. A record of such cleaning shall be kept on forms provided by the board and available upon client request or any salon inspection.

~~(5)~~ (6) In addition to the above requirements, the following rules apply to the practice of electrolysis:

(a) ~~Chair~~ chair and table headrests must be covered with a single use ~~towel~~ protective covering;

(b) ~~Before~~ before each use, each electrolysis ~~needle or tweezers~~ and other nondisposable implements must ~~be first~~ first be cleansed with warm water and soap, rinsed thoroughly and placed into an ultrasonic cleanser or chemical sterilant presoak, and then sterilized by one of the following methods:

(i) and (ii) remain the same.

(c) ~~Equipment~~ equipment for steam, or dry heat, ~~and glass bead sterilization~~ methods must be checked weekly for determining equipment to be in proper working order and reaching required temperature;

d) each month a monthly log must be maintained consisting of date and sterile packet strip; and

(e) outside biological monitors shall be used to ensure proper mechanical function of sterilizers on no less than a quarterly basis. Results shall be maintained in a log.

(6) through (11) remain the same, but are renumbered (7) through (12).

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

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

REASON: The board is amending this rule to specify cleaning, disinfecting, and record keeping requirements for electrical equipment. Noting that violations regarding electrical equipment consistently appear on inspection reports, the board concluded it is reasonably necessary to delineate for licensees specific requirements for disinfecting and cleaning electrical equipment and to require that salons and schools maintain records of this cleaning for use during inspections.

The board is amending this rule to address coverings used on electrology headrests. The board concluded that specifying the use of towels is unnecessarily restrictive and that requiring single use protective coverings ensures the public's adequate protection.

The board is amending the requirements for cleaning electrology implements before use to align with the new definition of "needles" proposed in this notice. The new definition is broader and includes needles and other nondisposable implements. The board is striking reference to glass bead sterilization throughout the electrology rules as the method is not FDA approved for marketing.

The board is also amending this rule to require salons and shops to keep sterilization packet strips with their monthly equipment logs. The board determined that this will help ensure that sterilization requirements are being met and assist the board inspectors when conducting inspections.

The board is adding the requirement for the use of outside biological monitors and their documentation in logs in response to current national electrology infection control standards and to assist salons, schools, and board inspectors in determining whether sterilizers are working properly.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING (1) All salon, ~~and shop, and school~~ preparations must be:

(a) and (b) remain the same.

(2) Material Safety Data Sheets (MSDS) relative to product ingredients, proper use, storage, disposal, and hazards for products in use at salons, shops, and schools, shall be kept on the premises and available upon need or request by the public, the board, or the board inspector.

(2) through (6) remain the same, but are renumbered (3) through (7).

(8) Board inspectors may take a sample of a product used or sold in a salon, shop, or school for the purpose of examining or testing the sample on-site to determine whether this subchapter has been violated.

(9) If the board inspector obtains evidence that a product or item prohibited by this rule is being used in a salon, shop, or school, the inspector may seize the product or item and remove it from the facility immediately.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-312, MCA

REASON: The board is amending this rule to address licensee questions by clarifying that schools are also required to ensure the proper handling and dispensing of products. The board is adding (2) to require that licensees maintain MSDS sheets and present them upon request. The board concluded this amendment will help product users and board inspectors to identify products that contain hazardous substances.

The board is amending this rule to clarify the authority of inspectors to take product samples and remove prohibited items from salons, shops, or schools. The board has noticed a recent increase in inspection report violations regarding nail products containing methyl methacrylate monomers (MMA), even though the FDA chose to remove products containing 100% MMA from the market through court proceedings. Further, MMA use is prohibited under board rule at ARM 24.121.1517. Additionally, board inspectors have discovered that some hazardous chemicals can be either disguised as something else or not even included on a product's label. The board determined that allowing inspectors to sample and remove questionable or prohibited products will assist in determining chemical content of products and enhance public protection.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

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

(v) aiding or abetting unlicensed practice by intentionally or unintentionally encouraging, assisting, or failing to prevent the commission of unlicensed practice;
or

(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.

(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: It is unlawful to practice or teach any of the professions regulated by the board without holding a current, valid license. The board is amending this rule to add such prohibited conduct to those actions the board considers unprofessional

conduct. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

4. 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., March 16, 2010.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's 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.

6. 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.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Anjeanette Lindle, 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 February 1, 2010