

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

In the matter of the amendment of)
ARM 24.121.301 definitions,)
24.121.1509 implements and)
equipment, 24.121.2101 continuing)
education, and 24.121.2301)
unprofessional conduct)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 10, 2010, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendments 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 May 6, 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) "Approved electrical appliances" are any electrical appliances that assist in the performance of services under the defined esthetics scope of practice.

(1) through (16) remain the same but are renumbered (2) through (17).

(18) "Hour" of education is equal to 50 minutes of instructional time.

(17) through (25) remain the same but are renumbered (19) through (27).

(28) "Trade show" is a show or class which offers specific product knowledge, product information, product sales, or retail of product.

(26) and (27) remain the same but are renumbered (29) and (30).

AUTH: 37-1-131, 37-1-319, 37-31-203, 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: It is reasonably necessary to amend this rule and define "approved electrical appliances" as used in the esthetics definition at 37-31-101(6), MCA. The

full board recently concluded that licensees should be responsible to utilize only those machines that are within the scope of their specific licensed practice. This definition will clarify this condition for estheticians and aligns with proposed amendments to ARM 24.121.1509 and 24.121.2301 to further implement the board's decision.

Following a recent review of the continuing education rule, the board is proposing several amendments to ARM 24.121.2101 in this notice. The board is adding definitions of "hour" and "trade show" to this rule to clearly delineate these terms used in the amendments and align with the other proposed rule changes.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) ~~The board shall approve all new machines and devices which utilize newly introduced technology and are used in the practice of barbering, cosmetology, electrology, esthetics, or manicuring prior to the use of such machines and devices by licensees~~ It is the responsibility of all licensees to ensure that the machines and devices they are using fall within their scope of practice.

(2) and (3) remain the same.

(4) ~~All microdermabrasion machines must be approved by the board prior to their use by licensees and only~~ Only microdermabrasion machines specifically manufactured for use in esthetics services ~~and approved by the board~~ are permitted. Modified or medical machines may not be used.

(a) through (ii) remain the same.

(iii) used only in accordance with specific manufacturer directions with the exception of plastic tips, which are single use items that require disposal after a one time use.

(5) through (10) remain the same.

(11) The use of any teeth whitening products is prohibited.

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

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

REASON: The board is amending (1) and (4) of this rule to remove the requirement for the board to approve all new machines for licensee use. The board has found that this approval process requires an inordinate amount of staff and board time, and has even required the board to consult with outside medical practitioners during the process. Therefore, the board recently decided that licensees should be responsible to utilize only those machines that are within the scope of their specific licensed practice.

The board is amending (4)(a)(iii) to clarify that plastic tips are not reusable, regardless of any different information contained in the manufacturer's directions for a specific microdermabrasion machine. The rule already specifies in (6) that only single use plastic tips are allowed in microdermabrasion services and the board is amending (4) to remove any potential conflict between the two sections.

The board is adding (11) to this rule to clearly delineate the board's intent to prohibit the use of teeth whitening products by its licensees. The board has recently received numerous complaints regarding licensees under this board's jurisdiction performing such services. Following discussion at several board meetings and

review of the statutes defining the practices licensed by the board, the full board concluded that teeth whitening is not within the scope of practice of any board licensee. Further, the board acknowledged that teeth whitening is within the scope of practice of licensed dentists. The board is adding (11) to make this determination clear in rule and eliminate any confusion among licensees or the public.

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

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) Active instructors shall complete 30 hours of board-approved continuing education (CE) per renewal period to maintain active status licensure.

~~(2) The board may approve, on a case-by-case basis, CE courses offered by providers not currently recognized by the board or not offered through attendance at an accredited academic college or university before credits are granted to any licensee for such course.~~

~~(3) (2) Courses taught via distance education must first be certified through an agency or organization approved by the board that certifies each course's instructional design and delivery before credits are granted to any licensee for such course approved by the board.~~

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

~~(5) (4) Requests for approval of CE courses for providers or subject matter not currently recognized by the board must be submitted on the appropriate form must be made on forms approved by the board or its designee.~~

~~(6) (5) A maximum of ten of the required 30 credits hours per renewal period may be obtained at trade shows where products are being promoted.~~

(6) All approved education must be open and available to all instructor licensees.

(7) CE courses must be completed prior to applying for renewal of an active instructor license. ~~Failure to meet the CE requirement will automatically result in the license being placed on inactive status.~~

~~(8) To activate an inactive instructor license, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to activating the license. Licensees shall also be required to complete an additional 30 hours of continuing education before the renewal date set by ARM 24.101.413.~~

~~(9) (8) Schools Licensees shall maintain records of their CE hours credits for their instructors for a minimum of three years. Individual instructors not affiliated with a school shall maintain records of their CE credits for a minimum of three years.~~

(9) Credit will be granted only for the actual hours attended. Attendance will be recorded in half-hour increments.

~~(10) The board shall audit for compliance with CE requirements Continuing education hours will not be granted to an instructor teaching the course.~~

(11) The course provider must supply each licensee with a course completion certificate and course evaluation form and must verify attendance of each licensee.

(12) No licensee shall repeat a course for credit in any three-year period.

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

(14) Course approval may be revoked for cause.

(15) An instructor may receive credit for attending board-sponsored events.

(16) A licensee may place their instructor license on inactive status by submitting a written request that the license be placed inactive.

(17) An inactive licensee has the sole responsibility to keep the board informed of any change of the licensee's mailing address during the period of time the instructor license remains on inactive status.

(18) In order to avoid lapse, expiration, or termination of the instructor license, an inactive licensee must renew the inactive license each renewal period.

(19) An inactive licensee does not need to report continuing education until converting the license to active status.

(20) To convert an inactive instructor license to active status, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to converting the license.

AUTH: 37-1-131, ~~37-1-141~~, 37-1-319, 37-31-203, MCA

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

REASON: The board determined it is reasonable and necessary to amend this rule following a recent continuing education (CE) rule review. It was noted during the review that the board and board staff had been using unwritten policies created over several years to process CE approvals. The board is proposing several amendments to this rule to clearly and adequately set forth the current CE requirements and processes, address confusion among licensees and providers, and alleviate questions to staff regarding CE approval.

The board is amending (2) to no longer require the certification of distance education courses because it is not economically feasible for CE providers to pay to become certified just so 70 licensees may utilize them. The board approves all CE, including online education, and will review the distance education courses taken.

The board is amending (7) because neither the board nor department has the authority to change a licensee's status to inactive. The board is amending (8) to reflect that licensed instructors must maintain their own CE records. The board concluded that it is not the school's responsibility to maintain CE records because CE is a requirement for the instructors' continued licensure.

The board is adding (16) through (20) to clearly set forth the CE requirements for inactive status licensees and for conversion back to active status. Although these are the current standards and processes in place, they were not previously set forth in rule. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

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

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

(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, 37-31-301, 37-31-331, MCA

REASON: It is reasonable and necessary to amend (1)(p) to specify that the board considers licensee use of machines and devices that are outside the licensee's training or scope of practice to be unprofessional conduct. This amendment is consistent with proposed amendments to ARM 24.121.301 and 24.121.1509 elsewhere in this notice.

The board is adding (1)(x) to this rule to specify that the board considers noncompliance with the CE requirements of ARM 24.121.2101 to be unprofessional conduct which could subject the licensee to disciplinary action.

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., May 18, 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 April 5, 2010