

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
24.121.406 nonroutine applications,	)	
24.121.407 premises and general	)	
requirements, 24.121.601,	)	
24.121.603, 24.121.605, and	)	
24.121.607 pertaining to licensing,	)	
24.121.602 military training or	)	
experience, 24.121.801, 24.121.803,	)	
24.121.805, 24.121.807, and	)	
24.121.808 pertaining to school	)	
operations, 24.121.1301 salons/booth	)	
rental, 24.121.1514 disinfecting	)	
agents, 24.121.1517 salon	)	
preparation storage and handling,	)	
and 24.121.1522 blood spills	)	

TO: All Concerned Persons

1. On October 2, 2015, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, 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 September 25, 2015, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcos@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2015 Montana Legislature enacted Chapter 15, Laws of 2015 (House Bill 81), an act providing for a barbering nonchemical license and providing rulemaking authority for the board to implement the scope of practice and regulations for the barbering nonchemical license and schools that teach barbering nonchemical. The bill was signed by the Governor on February 17, 2015, and will become effective October 1, 2015.

With the advent of the barber nonchemical license, the board determined it is reasonably necessary to amend several rules to implement the legislation and the

new license type. 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) "Approved electrical appliances" are any electrical appliances that assist in the performance of services under ~~the~~ a defined ~~esthetics~~ scope of practice.

(2) "Barber" and "Barbering" include barber nonchemical and barbering nonchemical, unless otherwise specified in these rules.

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

~~(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 the performance of services under a defined scope of practice.

(8) through (35) remain the same, but are renumbered (9) through (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: After reviewing this rule, the board is amending the definitions of "approved electrical appliances" and "chemical compounds" to clarify that neither term is limited to the practice of esthetics. The board points out that these terms are, in fact, utilized in several licensed scopes of practice. The amendments will also make the language of the sections of this rule internally consistent.

24.121.406 NONROUTINE APPLICATIONS (1) and (1)(a) remain the same.

(i) ~~a felony conviction of any nature, or a misdemeanor conviction relating to sex or violence, if the sentence imposed for any such conviction has not been fully discharged or if the conviction was entered within the past ten years;~~

(ii) ~~any conviction involving use or sale of drugs, fraud, deceit, or theft, pursuant to 37-1-316(1), MCA, unless the conviction occurred more than five years before application and all court-ordered conditions have been satisfied, discharged, or dismissed if the sentence imposed for any such conviction has not been fully discharged or if the conviction was entered within the past five years;~~

(iii) a misdemeanor conviction relating to sex or violence, or three or more misdemeanor convictions; that have occurred within five years of application, which include, but are not limited to, the following traffic-related crimes:

~~(A) reckless driving;~~

~~(B) DUI; and~~

~~(C) hit-and-run; or~~

(iv) ~~a pending criminal charge if, as a conviction, it would cause the application to be "nonroutine" under any part of (a)(i) through (iii); or. A criminal charge resulting in a deferred sentence that has not been discharged as of the date of application is considered a conviction for purposes of determining whether the~~

~~application is nonroutine. Misdemeanor traffic convictions not involving alcohol or drugs will not cause an application to be considered nonroutine.~~

(v) for the purposes of this rule, a criminal charge resulting in a deferred sentence that has not been discharged as of the date of application is considered a conviction for purposes of determining whether the application is nonroutine. Misdemeanor traffic convictions not involving alcohol or drugs will not cause an application to be considered nonroutine.

(b) through (f) remain the same.

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

IMP: 37-1-101, 37-1-131, 37-1-307, MCA

REASON: The board recently adopted this rule in MAR Notice No. 24-121-12. The board is amending it now to provide a more efficient and understandable licensing process and to fulfill its statutory responsibility to clearly define what constitutes a routine license application which may be processed by staff without board review.

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) and (2) remain the same.

(3) ~~No other business, service, or practice may can be conducted or provided~~ in a salon, shop, or school, except those regulated by the board or related to the industries regulated by the board, unless separated by a full-length partition.

(4) through (6)(b) remain the same.

(i) ~~provides the board with~~ proof of current rabies vaccination records for each dog on the premises, and makes such proof available to the board inspector;

(ii) ~~provides the board with~~ a certificate of insurance for liability insurance covering each dog on the premises and maintains a copy of the certificate on the premises; and

(iii) through (7) remain the same.

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

IMP: 37-31-204, 37-31-311, MCA

REASON: In response to repeated questions regarding the use of salons for more and more peripheral activities, the board is amending (3) to clarify the board's intent to strictly limit the use of salons for other activities. The board is amending (6) simply to clarify that the board has not and does not require that licensees submit proof of rabies vaccination and insurance to the board, but instead must continue to maintain the documentation.

24.121.601 LICENSURE BY EXAMINATION (1) through (3)(a) remain the same.

(b) For a barber nonchemical license:

(i) proof of age;

(ii) proof of graduation from an approved school or course of barbering with at least 1000 hours of training as provided in ARM 24.121.604(3);

~~(iii) proof of high school diploma or its equivalent as provided in ARM 24.121.610;~~

~~(iv) proof of passage of a board-approved examination in barbering or barbering nonchemical.~~

~~(b) through (e) remain the same, but are renumbered (c) through (f).~~

~~(f)(g) For an instructor license see ARM 24.121.607:~~

~~(i) proof of a current Montana license under this chapter for barbering, cosmetology, electrology, manicuring, or esthetics;~~

~~(ii) proof of graduation from an approved school or course of teacher training with at least 650 hours of training as outlined in ARM 24.121.1105, or three years of experience working in the area of practice pursuant to 37-31-305, MCA;~~

~~(iii) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and~~

~~(iv) proof of passage of a board-approved examination in teacher training.~~

~~(4) through (6) 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 recently amended its licensure rules and adopted new rules in MAR Notice No. 24-121-12 to implement changes to 37-31-305, MCA, by Senate Bill 343 (2013), and provide an alternative pathway to instructor licensure. Following the effective date of the rule changes, the board concluded the criteria for the instructor license would be better located in ARM 24.121.607. The board is now amending (3)(f) accordingly, to align this rule with 37-31-305, MCA, and improve the organization and understandability of the rules.

24.121.602 MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a barber, barber nonchemical, cosmetologist, electrologist, manicurist, or esthetician.

(2) remains the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a barber, barber nonchemical, cosmetologist, electrologist, manicurist, or esthetician. At a minimum, satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214) or other discharge documentation;

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: It has come to the department's attention that certain military personnel (reservists and national guardsmen who have never been activated), in fact, do not receive a DD 214 form upon their discharge from the military. Because the rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit

evidence of relevant military training, service, or education as part of the licensure process, the board is amending this rule to clarify that the board may consider other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE LICENSE (1) through (3)(a) remain the same.

(b) For a barber nonchemical license:

(i) proof of age;

(ii) proof of current unencumbered barber license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in barbering or barbering nonchemical.

(b) through (e) remain the same, but are renumbered (c) through (f).

(4) through (9) remain the same.

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

24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE

(1) through (2)(a) remain the same.

(b) barbering nonchemical school;

(b) remains the same, but is renumbered (c).

(i) remains the same.

(ii) barbering nonchemical;

(ii) through (iv) remain the same, but are renumbered (iii) through (v).

(c) through (f) remain the same, but are renumbered (d) through (g).

(3) School applicants shall present a bond or other security for each course in the amount of \$5000 and in a form and manner prescribed by the board. The bond or other security may only be used to provide a refund of prepaid tuition to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction.

~~(a) The bond or other security may only be used to provide a refund of prepaid tuition to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction.~~

~~(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) through (11) remain the same.

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

IMP: 37-31-101, 37-31-302, 37-31-311, 37-31-312, MCA

REASON: The board determined it is reasonably necessary to amend (3) and clarify that the \$5000 bond required by law is mandatory for all licensed schools, not just cosmetology schools, and must be posted for each course offered. This

inconsistency has been pointed out by school owners from time-to-time, and the board believes the language should be corrected at this time.

24.121.607 APPLICATION FOR INSTRUCTOR LICENSE (1) remains the same.

- ~~(a) record of hours showing the number of hours completed;~~
- ~~(b) a diploma issued for a teacher training course;~~
- ~~(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~~
- ~~(d) proof of passage of the board approved exam.~~
- (a) proof of high school diploma or its equivalent as provided in ARM

24.121.610:

- (b) proof of passage of the board-approved instructor exam; and
- (c) either:
  - (i) an attestation of having been employed and working for at least 1500 hours, in the particular area of practice that they will teach, during any one-year period prior to applying and a diploma evidencing completion of the 650-hour student teacher-training course required by 37-31-305, MCA; or
  - (ii) an attestation of having been employed and working for at least 1500 hours per year, in the particular area of practice that they will teach, for any three years prior to applying (a total of at least 4500 hours). An applicant granted a license based on this subsection may not renew the license for any period beyond two years after initial licensure, nor be granted a second license under this subsection, unless the applicant completes the board-approved coursework related to teaching methodology set forth in ARM 24.121.1105.
- ~~(2) Applicants shall obtain a license within three years of graduating from an approved teacher training course.~~
- ~~(3) (2) The board shall accept hours of instruction from out-of-state approved schools towards fulfillment of the hour requirements for licensure.~~
- (3) A licensee may not renew an instructor license, unless at the time of renewal, the licensee has at least one currently active license pursuant to which the licensee may engage in a particular area of practice.
- (4) A licensed instructor may only offer instruction in the particular areas of practice in which the instructor is currently and actively licensed to practice.

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

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

REASON: See REASON for ARM 24.121.601.

The board has always intended that instructors must maintain active licensure in each area of practice in which they will provide instruction, and believes this is at least implied in this rule. The board determined it is reasonably necessary to amend (3) and (4) to clarify this intent by requiring instructors to do so as a condition to renew their instructor license and by expressly limiting the instructor to teaching only those courses related to the areas of practice in which they are currently licensed.

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

(a) Barbering and cosmetology schools shall have floor space of at least 1500 square feet for the first 25 students and 60 square feet for each additional student, including ~~locker room and~~ office space.

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

(c) Esthetics schools shall have floor space of at least 900 square feet for the first ten students and 90 square feet for each additional student, including ~~locker room and~~ office space.

(d) Manicuring schools shall have floor space of at least 450 square feet for the first ten students and 45 square feet for each additional student, including ~~locker room and~~ office space.

(3) 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: After generally reviewing its rules, the board is amending this rule to strike references to locker rooms, which are neither required by rule, nor used in the industry.

24.121.803 SCHOOL REQUIREMENTS (1) through (3) remain the same.

(4) Schools shall display at the entrance a large legible sign with letters not less than two inches in size with the words "School of Barbering," "School of Barbering Nonchemical," "School of Cosmetology," "School of Electrology," "School of Esthetics," or "School of Manicuring" permanently affixed to the facility as to not be easily altered or removed by weather or individuals. Similar signs with the words "Student Work Only" shall be posted within each classroom and on the clinic floor.

(5) remains the same.

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

(a) through (11) remain the same.

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

IMP: 37-31-311, MCA

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

(b) barbering nonchemical students - 150 hours;

(b) through (e) remain the same, but are renumbered (c) through (f).

(13) through (16) remain the same.

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

IMP: 37-31-311, MCA

24.121.807 SCHOOL CURRICULA (1) and (2) remain the same.

(3) The required curriculum for barbering nonchemical students is as follows:

(a) 1000 hours of training, of which at least 100 hours is, in theory, distributed as follows:

(i) haircutting (including proper use of implements, e.g., shears, razors, clippers, and thinning shears), 250 hours;

(ii) shampoo, scalp treatment, and hair styling (thermal and air styling, and hair pieces to include weaves and extensions), 230 hours;

(iii) skin care (including facial shaving, facials, massage, essential oils, and facial masks), 60 hours;

(iv) chemistry, bacteriology, sanitation, sterilization, safety, skin, hair, and scalp anatomy, physiology, blood spill procedure, and diseases and disorders of skin, hair, and scalp, 85 hours; and

(v) shop management, business methods, customer service, appointment book, professional ethics, current state board laws and rules, business ethics, and personal grooming, 100 hours.

(b) 275 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.

(3) through (7) remain the same, but are renumbered (4) through (8).

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

IMP: 37-31-101, 37-31-304, 37-31-305, 37-31-311, MCA

24.121.808 CREDITED HOURS FOR MONTANA-LICENSED INDIVIDUALS IN A COSMETOLOGY OR BARBERING PROGRAM (1) and (1)(a) remain the same.

(b) licensed barber nonchemical 1000 hours;

(b) through (d) remain the same, but are renumbered (c) through (e).

(2) remains the same.

AUTH: 37-1-131, 37-31-203, 37-31-304, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, MCA

24.121.1301 SALONS/BOOTH RENTAL (1) through (4)(c) remain the same.

(d) one covered garbage container; and

(e) one enclosed dust free cabinet for the storage of cleaned towels; and

(f) a mechanical ventilation or air purifier system;

~~(i) providing the total cubic square feet of the salon or shop with at least four air changes per hour; and~~

~~(ii) operating continuously during business hours. Doors and windows are not acceptable for the ventilation requirement.~~

(5) through (11) remain the same.

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

IMP: 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: In MAR Notice No. 24-121-12, the board amended ARM 24.121.605, 24.121.803, and 24.121.1301 regarding standards for buildings occupied as salons, shops, and schools. The board is amending this rule now to align with changes made to ARM 24.121.803 in the prior rules project.

24.121.1514 DISINFECTING AGENTS (1) and (2) remain the same.

(3) All equipment and implements used in barbering, cosmetology, electrology, esthetics, or manicuring must be cleaned and disinfected, ~~at a minimum,~~ by complete immersion in a an EPA-registered, bactericidal, virucidal, and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions, ~~as follows:~~

~~(a) a disinfectant that is effective against HIV-1, human Hepatitis B virus, or Tuberculocidal for equipment and implements that have come in contact with blood, bodily fluids, and/or mucous membrane; and~~

~~(b) a bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant for equipment and implements that have not come in contact with blood, bodily fluids, and/or mucous membrane.~~

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

IMP: 37-31-204, MCA

REASON: The board has historically aligned its sanitation standards with the standards and procedures adopted by the National-Interstate Council of State Boards of Cosmetology (NIC) regarding blood exposure and the use of disinfecting agents. The board is amending this rule and ARM 24.121.1522 to update to the current blood exposure procedure amended by the NIC in August 2014.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING

(1) remains the same.

(2) ~~Material Safety Data Sheets (MSDS)~~ (SDS) 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.

(3) through (10) remain the same.

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 reflect the current terminology used by the Occupational Safety and Health Administration, referencing "material safety data sheets" as simply "safety data sheets."

24.121.1522 BLOOD SPILLS (1) through (1)(c) remain the same.

~~(d) blood-stained tissue, cotton, or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded~~ bagged and disposed of in the trash;

(e) through (2) remain the same.

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

REASON: See REASON for ARM 24.121.1514.

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) 841-2305, or e-mail to [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov) and must be received no later than 5:00 p.m., October 9, 2015.

6. An electronic copy of this notice of public hearing is available at [www.cosmetology.mt.gov](http://www.cosmetology.mt.gov) (department and board's web site). 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 that 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) 841-2305; e-mailed to [dlibsdcos@mt.gov](mailto: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 14, 2015, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendments of ARM 24.121.301, 24.121.406, 24.121.407, 24.121.601, 24.121.602, 24.121.603, 24.121.605, 24.121.607, 24.121.801, 24.121.803, 24.121.805, 24.121.807, 24.121.808, 24.121.1301, 24.121.1514,

24.121.1517, and 24.121.1522 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov).

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

BOARD OF BARBERS AND  
COSMETOLOGISTS  
WENDELL PETERSEN, PRESIDENT

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 31, 2015