

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 AND
24.121.406 nonroutine applications,) REPEAL
24.121.601 licensure by examination,)
24.121.603 licensure by credentialing)
with an out-of-state license,)
24.121.604 licensure equivalency for)
professional education, 24.121.605)
application for postsecondary school)
licensure, 24.121.801 inspection -)
school layout, 24.121.807 school)
curricula, 24.121.1105 teacher-)
training curriculum and teaching)
methodology coursework,)
24.121.1301 salons/booth rental, and)
24.121.1509 implements,)
instruments, supplies, and)
equipment, and the repeal of)
24.121.404 anonymous complaints)

TO: All Concerned Persons

1. On January 17, 2017, at 9:00 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 and repeal 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 no later than 5:00 p.m., on January 10, 2017, 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. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS (1) remains the same.

(2) "Approved school" means a school licensed or otherwise approved by a governmental agency of a state or Canadian jurisdiction that issues licenses to practice in the fields of barbering or cosmetology.

(2) through (36) remain the same but are renumbered (3) through (37).

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

IMP: 37-1-131, 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 define "approved school" as used in the board's rules regarding the training required for licensure. The department, relying on board rules, makes routine licensing decisions and must frequently determine if an applicant's training was provided in an approved school. Without a definition, routine applications may be delayed until a meeting where the board determines whether the training came from an "approved school."

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

24.121.406 NONROUTINE APPLICATIONS (1) The board shall review an application containing any of the following criteria:

(a) remains the same.

(b) other unprofessional conduct:

(i) and (ii) remain the same.

(iii) the applicant answered "yes" on the application regarding a diagnosis for a physical condition or mental health disorder involving a potential health risk to the public; or

~~(iv) the applicant was accused of unlicensed practice, unless the accusation has been resolved in favor of the applicant; or~~

(v) remains the same but is renumbered (iv).

(c) remains the same.

(d) application discrepancies:

(i) remains the same.

(ii) the department may, but is not required to, submit an otherwise "routine" application for board review if:

(A) remains the same.

(B) inconsistencies, irregularities, or other matters of concern, including but not limited to allegations of unlicensed practice, exist in the application or related documentation;

(e) and (f) remain the same.

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

IMP: 37-1-101, 37-1-131, 37-1-307, 37-31-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule and streamline the board's application process by aligning with the department's recently implemented nonroutine application and complaint procedures. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

- (e) For a manicurist license:
 - (i) remains the same.
 - (ii) proof of graduation from an approved school or course of manicuring with at least 400 hours of training as provided in ARM ~~24.121.608~~ 24.121.604;
 - (iii) through (6) remain the same.

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

IMP: 37-1-131, 37-31-303, 37-31-304, 37-31-308, MCA

REASON: This amendment is necessary to correct an erroneous internal citation. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

(4) An out-of-state applicant applying for a license by credentialing must also meet the following requirements:

- (a) remains the same.
- (b) To qualify for a barber nonchemical license the applicant must possess a license type in good standing that includes scope of training and practice equal to ARM 24.121.604(3) and either have completed a course of training of at least 800 hours in a school or attest to 1,000 hours of work experience as a licensed barber nonchemical.

~~(b)~~ (c) To qualify for a cosmetologist license the applicant must possess either:

- (i) a license type in good standing that includes scope of training and practice equal to the cosmetologist requirements in ARM 24.121.604~~(3)~~(4) and either have completed a course of training of at least 1,500 hours in a school or attest to 1,500 hours of work experience as a licensed cosmetologist; or

- (ii) a combination of licensure in good standing that includes scopes of training and practice equal to:

- (A) ARM 24.121.604~~(3)~~(4)(d) through (g) and have completed a course of training equal to or exceeding 900 hours in a school;

- (B) ARM 24.121.604(4)(7) and have completed a course of training equal to or exceeding ~~200~~ 400 hours in a school; and

- (C) ARM 24.121.604~~(5)~~(6) and have completed a course of training equal to or exceeding ~~400~~ 200 hours in a school.

- ~~(c)~~ (d) To qualify for an electrology license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604(4)(5) and either have completed at least 450 hours of electrology training in a school or attest to at least 750 hours of work experience as a licensed electrologist.

- ~~(d)~~ (e) To qualify for a manicurist license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604~~(5)~~(6) and either have completed at least 200 hours of

electrology manicurist training in a school or attest to at least 750 hours of work experience as a licensed manicurist.

(e) (f) To qualify for an esthetician license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604(5)(7) and either have completed at least 400 hours of esthetician training in a school or attest to at least 750 hours of work experience as a licensed esthetician.

(f) remains the same but is renumbered (g).

(5) 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

REASON: The 2015 legislature enacted Chapter 15, Laws of 2015 (House Bill 81), which created a barber nonchemical license. The board previously adopted rules to implement House Bill 81, but has not yet set criteria for licensure by credentialing for out-of-state license holders. The board is amending (4)(b) to establish this criteria.

Other amendments are necessary to correct several references to ARM 24.121.604, which is being renumbered in this notice. Additionally, the board is amending the rule to correct an inaccurate "electrology" reference to "manicurist," and ensure the courses reference the correct required hours.

24.121.604 LICENSURE EQUIVALENCY FOR PROFESSIONAL EDUCATION (1) and (2) remain the same.

(3) The scope of training required for the practice of barbering nonchemical is as follows:

(a) haircutting with proper uses of tools (e.g., shears, razor, clippers, and thinning shears);

(b) shampooing and scalp treatments;

(c) hairstyling, including weaves, braiding, and extensions;

(d) wet setting, blow drying, curling, and flat ironing; and the arranging of dry hair;

(e) facial shaving with straight razor; and

(f) skin care.

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

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

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

REASON: The 2015 legislature enacted Chapter 15, Laws of 2015 (House Bill 81), which created a barber nonchemical license. The board previously adopted rules to implement House Bill 81, but has not yet set the scope of training requirements for the barber nonchemical license. The board is now adding (3) to address the omission.

24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE (1) remains the same.

(2) Applicants shall designate the type of school and which courses are to be offered as follows:

(a) and (b) remain the same.

(c) school of cosmetology, consisting of a cosmetology course and one or more of the following:

(i) remains the same.

(ii) barbering nonchemical course;

(iii) through (11) remain the same.

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

IMP: 37-1-131, 37-31-101, 37-31-302, 37-31-311, 37-31-312, MCA

REASON: The board is amending (2)(c)(ii) for consistent use of "course" throughout the rule. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.121.801 INSPECTION - SCHOOL LAYOUT (1) through (4) remain the same.

(5) Schools shall address all inspection report violations and provide a detailed written response, including all corrective action taken, to the board office within ~~30~~ ten days of the inspection date.

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

IMP: 37-1-131, 37-31-311, 37-31-312, MCA

REASON: The board determined it is reasonably necessary to amend this rule to require that schools correct violations within ten days of an inspection date. Because such violations pose an ongoing hazard to public health, the board is decreasing the time period from 30 to ten days to better protect public health, safety, and welfare. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.121.807 SCHOOL CURRICULA (1) remains the same.

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

(a) 1500 hours of training, of which at least 150 hours is, in theory, distributed as follows:

(i) through (v) remain the same.

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

(b) remains 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) through (iv) remain the same.

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

(b) remains the same.

(4) The required curriculum for cosmetology students is as follows:

(a) 2000 hours of training, of which at least 200 hours is in theory, distributed as follows:

(i) through (v) remain the same.

(vi) salon management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, and current state board laws and rules, 150 hours; and

(vii) and (b) remain the same.

(5) The required curriculum for electrology students is as follows:

(a) 600 hours of training, of which at least 120 hours is, in theory, distributed as follows:

(i) through (v) remain the same.

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

(b) remains the same.

(6) The required curriculum for esthetics students is as follows:

(a) 650 hours of training, of which at least 65 hours is in theory, distributed as follows:

(i) through (iii) remain the same.

(iv) salon management, general facility sanitation and cleanliness, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, 70 hours.

(b) remains the same.

(7) The required curriculum for manicuring students includes 400 hours of training, of which at least 40 hours is in theory, distributed as follows:

(a) 300 hours of training, distributed as follows:

(i) salon management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, and current state board laws and rules, 60 hours;

(ii) bacteriology, sanitation, sterilization, safety, anatomy, physiology, diseases and disorders of skin and nails, basic chemistry, nail product chemistry, and electricity, 55 hours;

(iii) through (8) remain the same.

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

IMP: 37-1-131, 37-31-101, 37-31-304, 37-31-305, 37-31-311, MCA

REASON: The board is adding "general facility sanitation and cleanliness" to the required curriculum based on requests for clarification from school owners. School owners have reported that some students lack training in this area and question whether it is a required part of the curricula. The board is amending this rule to clarify that such instruction is an integral part of the preparation for Montana

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

24.121.1105 TEACHER-TRAINING CURRICULUM AND TEACHING METHODOLOGY COURSEWORK (1) through (2)(c) remain the same.

(d) prior to renewal of the instructor license, documentation of completed coursework must be submitted to the board for board approval on a form provided by the department to include:

(i) coursework taken;

(ii) date taken;

(iii) coursework offered by;

(iv) topics covered;

(v) hours or credits received for each topic;

(vi) hours certified by;

(vii) signed completion certificate or transcript for coursework; and

(viii) total hours completed.

(3) remains the same.

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

IMP: 37-1-131, 37-31-305, 37-31-311, MCA

REASON: In the past, the board has received the documentation of completed teacher-training coursework in an array of different formats, often without needed information, making it difficult and inefficient for the board to review. To improve the process, the board determined it is reasonably necessary to amend this rule to outline the required format of the documentation. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.121.1301 SALONS/BOOTH RENTAL (1) remains the same.

(2) The board shall initially and annually, or when a complaint is received, inspect and approve all salons, shops, and booths.

(a) remains the same.

(b) Within ~~30~~ ten days of an annual or complaint-driven inspection, the salon or shop owner, booth renter, or manager shall respond to all inspection report violations by submitting a detailed written response, including any corrective action taken, to the board office.

(3) through (7) remain the same.

(8) A new salon or shop may be granted a temporary operating permit pending an initial inspection. No prior notice of the inspection is required. A temporary operating permit shall terminate and a license shall not be granted without board review, unless the salon or shop provides the board with a response within ~~30~~ ten days of the date of the inspection that indicates all the inspection violations have been corrected to the inspector's satisfaction. If the scope of the correction requires additional time, the additional time must be approved by the inspector, but in no case shall the time be extended beyond 30 days of the date of the inspection. If a temporary permit terminates, the salon or shop must cease operation until the application is granted by the board and a license issued. A subsequent temporary

operating permit is not available, unless the application times out pursuant to ARM 24.121.403 and a new application is filed.

(9) ~~Salon~~ Holders of salon or shop owners licenses shall be responsible for safety and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter taking place in the working area.

(10) remains the same.

(11) It is the responsibility of the licensee salon or shop to ensure that all personnel comply with the board's statutes and rules.

(12) A practice license is a condition to holding a booth rental license. All alleged violations arising against the booth renter shall be processed against the practice license, and a separate action against the corresponding booth rental license is unnecessary. Any final orders resulting from formal disciplinary action or an administrative suspension of an individual's practice license shall also be reflected against the individual's booth rental license.

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

IMP: 37-1-131, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: The board determined it is reasonably necessary to amend (2) to clarify that schools may be inspected for three reasons and align with newly implemented department complaint procedures. Moreover, the board has concluded that most inspection violations can be corrected within ten days of an inspection date. Because such violations pose an ongoing hazard to public health, the board is decreasing the time period from 30 to ten days to better protect public health, safety, and welfare, while recognizing some initial inspection violations may require longer than ten days to correct.

The board is amending this rule to clarify accountability for alleged licensee misconduct. Department compliance staff processes complaints against licensees and must frequently determine which licensee should answer the allegations and which of the licensee's licenses should be placed at issue. The proposed changes align with recent updates to the department's standardized complaint procedure. In addition, a case-by-case basis determination of accountability for alleged misconduct is an inefficient approach that needs to be addressed.

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

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) through (4) remain the same.

(5) Only microdermabrasion machines specifically manufactured for use in esthetics services are permitted. Modified or medical machines may not be used.

(a) and (b) remain the same.

(c) The use of abrasive tips are allowed if used and sterilized in accordance with specific manufacturer directions.

(d) remains the same.

~~(e) Microdermabrasion machines that have tips that are multiuse, according to specific manufacturer directions, must be sterilized by use of an autoclave.~~

(f) remains the same but is renumbered (e).

(6) through (9) remain the same.

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

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

REASON: The board determined it is reasonably necessary to amend this rule to update the provisions for sterilizing microdermabrasion tips. New technology has produced tips which are not required to be autoclaved, and in fact may be damaged by autoclaving.

4. The rule proposed to be repealed is as follows:

24.121.404 ANONYMOUS COMPLAINTS

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

IMP: 37-1-308, MCA

REASON: The board concluded that some anonymous complaints may bear consideration. It is reasonably necessary to repeal this rule because it prohibits all anonymous complaints, including those submitted by persons with legitimate reasons to remain anonymous.

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, and must be received no later than 5:00 p.m., January 20, 2017.

6. An electronic copy of this notice of public hearing is available at 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; 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, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.406, 24.121.601, 24.121.603, 24.121.604, 24.121.605, 24.121.801, 24.121.807, 24.121.1105, 24.121.1301, and 24.121.1509 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.121.404 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; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdcos@mt.gov (board's e-mail).

10. Dylan Gallagher, Board Counsel, 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 December 12, 2016