

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
24.121.401 fees, 24.121.406)	ADOPTION
nonroutine applications, 24.121.407)	
premises and general requirements,)	
24.121.603 licensure by credentialing)	
with an out-of-state license,)	
24.121.605 application for)	
postsecondary school licensure,)	
24.121.607 application for instructor)	
license, 24.121.808 credited hours for)	
Montana-licensed individuals in a)	
cosmetology or barbering program,)	
24.121.1103 instructor requirements -)	
teacher-training programs,)	
24.121.1301 salons/booth rental,)	
24.121.1509 implements,)	
instruments, supplies, and equipment,)	
and 24.121.1511 sanitizing and)	
disinfecting implements and)	
equipment, and the adoption of NEW)	
RULE I foreign-educated applicants)	

TO: All Concerned Persons

1. On June 4, 2018, 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 and adoption 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 29, 2018, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; 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: As part of its periodic review of administrative rules, the board is proposing revisions throughout the rules. These amendments are intended to correct prior errors, improve readability, and better align the board's rules with statutory requirements.

Accordingly, the board has determined that reasonable necessity exists to amend certain rules at this time.

Additionally, the board has seen an increasing number of applicants who obtained a high school diploma, or its equivalent, or received professional training in a foreign country. Some of the documents submitted in support of these applications have later proven to be forgeries. Therefore, the board has determined it is reasonably necessary to amend certain existing rules and adopt one new rule to define foreign-educated applicants and require these applicants to obtain certification of their application documents by an approved third party prior to Montana licensure. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

24.121.301 DEFINITIONS (1) through (20) remain the same.

(21) and (22) remain the same but are renumbered (25) and (21), respectively.

(22) "Foreign-educated applicant" means an applicant seeking licensure by the board who obtained a high school diploma, or the equivalent of a high school diploma, or professional training in any country outside of the U.S. or Canada.

(23) and (24) remain the same.

(25) through (34) remain the same but are renumbered (26) through (35).

~~(35)~~(36) "Supplemental barbering course" means a course of study in a licensed school offering a barbering or barbering nonchemical course, which consists of at least 125 hours in clipper cuts and 25 hours in facial, neck, and outline shaving, to licensed cosmetologists only an individual licensed in Montana or another jurisdiction, in order to meet the required educational needs for a barber or barber nonchemical license prior to taking the board-approved exam.

(36) and (37) remain the same but are renumbered (37) and (38).

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: In 2015, the board amended its rules to recognize a "cafeteria approach" to evaluating licensure qualifications and scope of practice of applicants trained in other jurisdictions. Subsequently, the board has become aware that applicants licensed in other jurisdictions, such as licensed hair dressers, do not meet the qualifications for Montana licensure as a cosmetologist, barber, or barber nonchemical. The board concluded that such applicants should be allowed to take the supplemental barbering course to count toward educational requirements and is amending (36) accordingly.

24.121.401 FEES (1) through (11) remain the same.

~~(12) Renewal notices will be sent as specified in ARM 24.101.414.~~

(13) remains the same but is renumbered (12).

(13) Education evaluation and documentation verification fees for foreign-educated applicants must be paid directly to the approved credential-evaluating service as specified in [NEW RULE I].

(14) through (19) remain the same.

AUTH: 37-1-131, 37-1-134, 37-31-203, 37-31-323, MCA

IMP: 37-1-134, 37-1-141, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, 37-31-323, MCA

REASON: The board is striking (12) because the referenced rule was repealed in 2015. Renewal parameters for all boards now fall within the standardized department licensing procedures.

24.121.406 NONROUTINE APPLICATIONS (1) through (1)(a)(ii) remain the same.

(iii) a misdemeanor conviction relating to sex or violence, or three or more misdemeanor convictions if the sentence imposed for any such conviction has not been fully discharged or if the convictions were entered within the past five years;

(iv) through (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: Following questions from licensing staff, the board is amending this rule to establish a time restriction as to when the board considers certain misdemeanor convictions to be relevant to licensing applicants and therefore nonroutine. While the board previously set time restrictions as to relevancy of felony convictions or those involving use or sale of drugs, fraud, deceit, or theft, no such time restriction exists for applicants with three or more misdemeanor convictions or a single misdemeanor relating to sex or violence. The board concluded this may create an absurd result where the board must review as nonroutine every application involving three or more misdemeanor convictions or a single misdemeanor involving sex or violence, but not felony convictions or even those felony convictions involving sex or violence, under certain circumstances.

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) through (5) remain the same.

(6) Animals are permitted on the premises of a salon or shop as specified in 49-4-214, MCA. ~~only as follows:~~

~~(a) Animals assisting individuals with disabilities must be accompanied as specified in 49-4-214, MCA.~~

~~(b) Dogs may be permitted on the premises at any time at the discretion of the licensee, after the licensee:~~

- ~~(i) provides proof of current rabies vaccination records for each dog on the premises, and makes such proof available to the board inspector;~~
- ~~(ii) provides 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) posts a legible sign at or near the entrance of the salon or shop indicating that there is a dog present on the premises.~~
- ~~(c) Fish are permitted in enclosed tanks or aquariums only.~~
- ~~(d) All other animals are prohibited on the premises of salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule.~~
- (7) remains the same.

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

IMP: 37-1-131, 37-31-204, 37-31-311, MCA

REASON: The board has long recognized that having animals in salons, shops, and schools poses sanitation and safety concerns. Upon reviewing the rules, the board concluded that no valid reason exists to distinguish dogs from other animals in these situations. The board has determined it is reasonably necessary to amend (6) to prohibit any animals in salons, shops, and schools, other than service animals as allowed by law.

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE LICENSE (1) and (2) remain the same.

(3) To qualify for licensure by credentialing the applicant must submit the following documentation:

(a) For a barber license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

(v) either:

~~(iv)(A)~~ (A) proof of passage of a board-approved examination in barbering with appropriate passing scores; or

(B) proof of graduation from an approved school or course of barbering with at least 1,100 hours of training as provided in ARM 24.121.604.

(b) For a barber nonchemical license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

(v) either:

~~(iv)(A)~~ (A) proof of passage of a board-approved examination in barbering or barbering nonchemical with appropriate passing scores; or

(B) proof of graduation from an approved school or course of barbering or barbering nonchemical with at least 900 hours of training as provided in ARM 24.121.604.

(c) For a cosmetology license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in cosmetology with appropriate passing scores.

(d) For an electrology license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in electrology with appropriate passing scores.

(e) For a manicurist license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in manicuring with appropriate passing scores.

(f) For an esthetician license:

(i) and (ii) remain the same.

(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 high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in esthetics with appropriate passing scores.

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

(a) To qualify for a barber license the applicant must possess a license type in good standing that includes scope of training and practice equal to ARM 24.121.604(2) and either have completed a course of training of at least 1,100 hours in a school or attest to ~~4,250~~ 2,200 hours of work experience as a licensed barber.

(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~~ 900 hours in a school or attest to ~~4,000~~ 1,800 hours of work experience as a licensed barber nonchemical.

(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(4) and either have completed a course of training of at least 1,500 hours in a school or attest to ~~4,500~~ 3,000 hours of work experience as a licensed cosmetologist; or

(ii) remains the same.

(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(5) and either have completed at least ~~450~~ 600 hours of electrology training in a school or attest to at least ~~750~~ 1,200 hours of work experience as a licensed electrologist.

(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(6) and either have completed at least ~~200~~ 400 hours of manicurist training in a school or attest to at least ~~750~~ 800 hours of work experience as a licensed manicurist.

(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(7) and either have completed at least ~~400~~ 650 hours of esthetician training in a school or attest to at least ~~750~~ 1,300 hours of work experience as a licensed esthetician.

(g) For any other combinations or types of licensure such as hairstyling, braiding, or make-up artists, applying for licensure will be individually assessed by ~~review of~~ reviewed by the board to assess the respective licensing requirements, course curricula, and transcripts and ~~may require further review by the board.~~

~~(5) Applicants with foreign training will be considered nonroutine for the purposes of evaluating the education and qualifications and must:~~

~~(a) submit copies of their training and education curricula to the board;~~

~~(b) provide acceptable official translations of all supporting documents required for licensing and evaluation by the board. Acceptable translations are prepared by a reliable source such as a third party company or certified translator authorized to provide official translations to English, but translations prepared by the applicant or the applicant's relatives, coworkers, or friends are not acceptable. Documentation and contact information of the translator must be attached to the translation for the board to review and contact if necessary; and~~

~~(c) take and pass the board-approved examination. Proof of passage of the examination must be received from the source or another state licensing jurisdiction through a license verification.~~

~~(6) Applicants who obtained their training from Canada are not considered foreign for purposes of this rule.~~

~~(7) through (9) remain the same but are renumbered (5) through (7).~~

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

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

REASON: In 2015, the board substantially revised the license application rules. Since implementing the changes, the board has realized that Montana applicants might be at a disadvantage compared to out-of-state applicants since examination

applicants must show proof of a high school diploma or equivalent and complete more training than credentialing applicants. The board also examined the statutory requirements for licensure and determined all licensees should have a high school diploma or equivalent. The board is therefore amending (3) and (4) to better align credentialing licensure requirements with those for licensure by examination.

The board also determined it is reasonably necessary to amend (3)(a) and (b) to accurately reflect 37-31-304(2)(c), MCA. The statute provides that the board must license a barber or barber nonchemical license applicant without examination if the applicant holds an unencumbered license in another state and that state's course of study hour requirement is equal to or greater than Montana's.

The board also continues to recognize that relevant work experience should be considered toward licensure. However, the board has concluded that training in a licensed school provides intensive, directed education that is directly applicable to a person's ability to practice, while general work experience lacks these rigorous learning qualities. As such, the board has determined it is appropriate to amend (4) to require individuals who cannot meet the course of training requirement to attest to work experience of twice the number of hours required for in-school training.

Finally, the board recognizes foreign-educated applicants may apply either by examination or by credentialing, and is relocating (5) and (6) from this rule to establish all relevant requirements for foreign-educated applicants in NEW RULE I.

24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE

(1) through (4) remain the same.

(5) As part of the application, the school applicant shall submit a financial report prepared by a certified public accountant (CPA) ~~indicating the financial solvency of the school.~~ The CPA must affirm that the financial statements and documentation provided by the applicant to the CPA show that the school is reasonably projected to be solvent.

(6) through (10) remain the same.

(11) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan as part of the application for licensure. Floor plans lacking detailed scaled dimensions, including square footage, will not be accepted.

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

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

REASON: The board intends school licensure applications to be rigorous to ensure students and the public served by the students are adequately protected. The board has determined, based on recently reviewed applications, that documents submitted in support of school applications were not meeting the intent of this rule. The board concluded that if schools are required to be solvent, it is reasonable to require an evaluation of such solvency from a qualified professional. As well, some floor plan drawings so lacked in detail the board had difficulty determining school layout, location of equipment, or school square footage. The board is amending (5) and (11) to provide more specificity in the required documentation.

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

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

(b) through (4) remain the same.

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

IMP: 37-1-131, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: In a 2015 rule project, the board inadvertently added the reference to ARM 24.121.610 in this rule. While board statutes require practitioners and instructors to have a high school diploma or its equivalent, 37-31-304, MCA, provides exceptions to this requirement for practitioners. The licensure statute for instructors, 37-31-305, MCA, does not allow instructor applicants to obtain an exemption from this requirement. Therefore, the board has determined it is reasonably necessary to remove the errant reference to the rule to comply with statutory requirements and reduce confusion for instructor license applicants.

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

(2) A Montana-licensed cosmetologist may apply for a barber license after completion of ~~an additional 150 hours in barbering;~~ a supplemental barbering course.

~~(a) 125 hours in clipper cutting; and~~

~~(b) 25 hours in straight razor shaving.~~

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

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

REASON: Because "supplemental barbering course" is defined in ARM 24.121.301, the board is amending this rule to remove the redundant language in (2) and instead reference the defined term.

24.121.1103 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (5) remain the same.

(6) Upon completion by the student of at least 90 percent of the required course of study, and prior to graduating and receiving a diploma, the student may take the board-approved exam. ~~The final practical examination must include all components for evaluation as provided in ARM 24.121.1105.~~

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

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

REASON: While reviewing and updating the rules, the board recognized that it is unreasonable and unnecessary to require the instructor practical examination to include all components provided for in ARM 24.121.1105. The current board-approved instructor exam tests in areas such as lesson plan content, use of teaching

aids, communication skills, and classroom interaction. The board is amending this rule to remove any conflict with the actual current practical examinations.

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) The most current inspection report must be made available to the inspector or designee upon request.~~

~~(b) Within 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 (12) remain the same.

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: Board inspectors now have immediate electronic access to a licensee's past inspections. The board has therefore determined it is no longer necessary to require licensees to produce these reports to inspectors upon request and is striking the provision from this rule.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) through (5) remain the same.

(6) Any and all implements, equipment, and instruments used to perform dermaplane and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond friezes are prohibited. This does not include single-use lancets used during noninvasive procedures.

(7) 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 recently learned that licensees consistently ask inspectors and the board office whether lancets are a prohibited item. The board concluded that current instruction and common practice in the industry allow lancets to be used in noninvasive procedures and is amending this rule to address the confusion.

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.

(6) through (12) remain the same.

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

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

REASON: During the rule review process, the board concluded that language in (5) is clear enough on its face and the examples listed in parentheses create more confusion than would exist without the list. As such, the board has determined it is reasonably necessary to remove those examples from this rule.

5. The proposed new rule is as follows:

NEW RULE I FOREIGN-EDUCATED APPLICANTS (1) Foreign-educated applicants shall fulfill all requirements for licensure as stated in this chapter.

(2) All documents submitted by a foreign-educated applicant in support of applying for licensure must be certified by a board-approved credential-evaluating service.

(3) Foreign document evaluations must be delivered directly from the credential-evaluating service to the board.

(4) Applicants shall pay the credential-evaluating service for all costs of the evaluation.

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

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

REASON: See the general statement of reasonable necessity regarding foreign-educated applicants.

6. 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., June 8, 2018.

7. An electronic copy of this notice of public hearing is available at www.cosmetology.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. 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.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.401, 24.121.406, 24.121.407, 24.121.603, 24.121.605, 24.121.607, 24.121.808, 24.121.1103, 24.121.1301, 24.121.1509, and 24.121.1511 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I 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) 841-2390; facsimile (406) 841-2305; or to dlibsdcos@mt.gov.

11. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
ANGELA PRINTZ, ACTING PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 1, 2018.