

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

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.101.413, 24.121.301,)	ADOPTION, AND REPEAL
24.121.403, 24.121.407, 24.121.410,)	
24.121.412, 24.121.604, 24.121.605,)	
24.121.606, 24.121.607, 24.121.610,)	
24.121.611, 24.121.805, 24.121.807,)	
24.121.808, 24.121.1103,)	
24.121.1105, 24.121.1501,)	
24.121.1509, 24.121.1511,)	
24.121.1517, 24.121.1522, and)	
24.121.1523, the adoption of NEW)	
RULES I through V, and the repeal of)	
ARM 24.121.405, 24.121.601,)	
24.121.602, 24.121.603, 24.121.608,)	
24.121.612, 24.121.801, 24.121.803,)	
24.121.806, 24.121.809, 24.121.1101,)	
24.121.1301, 24.121.1302,)	
24.121.1505, 24.121.1507,)	
24.121.1513, 24.121.1514,)	
24.121.1515, 24.121.1519,)	
24.121.1521, 24.121.2101, and)	
24.121.2301 pertaining to the Board of)	
Barbers and Cosmetologists)	

TO: All Concerned Persons

1. On June 7, 2024, the Board of Barbers and Cosmetologists (agency) published MAR Notice No. 24-121-18 regarding the public hearing on the proposed changes to the above-stated rules, at page 1292 of the 2024 Montana Administrative Register, Issue No. 11.

2. On June 27, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters supported many of the proposed changes to eliminate redundancy in statutes and rules.

RESPONSE 1: The board appreciates all comments received in the rulemaking process.

COMMENT 2: Several commenters opposed amending ARM 24.121.301(3) and stated the board should retain the limitation of using chemical compounds in a defined scope of practice. Commenters opined that the change was not adequately explained.

RESPONSE 2: The board is striking "under a defined scope of practice" and replacing it with the specific limitation for use of chemical compounds for esthetics services to align with 37-31-101(14), MCA. The board believes the change provides more clarity and is proceeding as proposed.

COMMENT 3: Several commenters suggested the board further amend ARM 24.121.301(3) "chemical compounds" to add that the term does not include fillers and Botox.

RESPONSE 3: The board did not propose any changes to the list of acceptable chemical compounds and believes the rule language is appropriate as proposed. Licensees' scopes of practice remain unchanged and limited to noninvasive procedures.

COMMENT 4: Several commenters opposed the elimination of dermaplaning from Montana's esthetics scope of practice to align with regulations in 18 other states. The commenters suggested the board maintain a definition of "dermaplaning" such as is used in California.

RESPONSE 4: The board is not eliminating any esthetics practice, nor altering the estheticians' and cosmetologists' scopes of practice which remain limited to noninvasive procedures as defined in ARM 24.121.301. Because of wide variation in terminology between and among regulatory entities, the board is amending the rules to clarify the actual practices that are allowed under Montana esthetician and cosmetologist licenses and will no longer assign specific terms or examples of such practices. The board addresses questions and complaints regarding scope of practice by analyzing the actual practice in the specific circumstance, regardless of what the practice may be called, or which implements and equipment are utilized.

COMMENT 5: Several commenters opposed the striking of "dermabrasion" and "dermaplane" from ARM 24.121.301 and requested the board either retain them or amend the unprofessional conduct rule to specifically prohibit the provision of these defined services by estheticians.

RESPONSE 5: See RESPONSE 4. Additionally, all board licensees have scopes of practice limited to noninvasive procedures per ARM 24.121.604(2).

COMMENT 6: Several commenters stated they have no issues with the proposed changes to "direct supervision" in ARM 24.121.603.

RESPONSE 6: The board appreciates all comments received in the rulemaking process.

COMMENT 7: Several commenters opposed adding ARM 24.121.604(4) to allow practical distance learning. The commenters stated that distance learning cannot replace or replicate the hands-on experience of practical demonstration and live feedback and correction, where physical movement and practice contribute to learning objectives.

RESPONSE 7: The board has allowed for two-way, interactive, and real time practical distance learning since March 2020 with no detrimental effects on practice or increase in complaints. The board is now adding the language to rule for clarity.

COMMENT 8: Several commenters opposed amending the definition of "exfoliation" at ARM 24.121.301(7).

RESPONSE 8: See RESPONSE 4.

COMMENT 9: Several commenters opposed the amendments to the definition of "microdermabrasion" at ARM 24.121.301(10).

RESPONSE 9: See RESPONSE 4.

COMMENT 10: Several commenters opposed the amendments to "noninvasive" at ARM 24.121.301(13) and requested the board retain the rule's current language as "practical and effective." The commenters provided an alternate definition as well.

RESPONSE 10: See RESPONSE 4.

COMMENT 11: Several commenters opposed striking the definition of "very superficial" at ARM 24.121.301(39).

RESPONSE 11: See RESPONSE 4. Because the board is amending the definition of "noninvasive" as used within the definition of microdermabrasion, the board concluded it is not necessary to retain the "very superficial" definition.

COMMENT 12: Several commenters suggested the board add a definition for "chemical exfoliation" as the term is used in ARM 24.121.1517.

RESPONSE 12: The board is unable to accommodate this addition in a final notice of adoption as it exceeds the scope of the proposed changes. The board may consider the suggestion in a future rulemaking.

COMMENT 13: Several commenters suggested amending the definition of "exfoliation" at ARM 24.121.301(7) to add "mechanical or chemical" exfoliation.

RESPONSE 13: See RESPONSE 12.

COMMENT 14: Several commenters suggested the board retain the prohibition on modified or medical machines in ARM 24.121.1509(3) regarding estheticians' acceptable equipment.

RESPONSE 14: The rule's language is clear that only microdermabrasion machines specifically manufactured for esthetics' services are allowed. There is no need to provide specific prohibitions. Licensees with microdermabrasion endorsements utilizing any machine manufactured for esthetics purposes remain limited to noninvasive procedures as defined in ARM 24.121.301.

COMMENT 15: Several commenters asked the board to hold estheticians to the same standard as physicians and amend NEW RULE II to require schools to keep a log of student competency with lasers and procedures and submit it to the board.

RESPONSE 15: The board is unable to accommodate this addition of new equipment monitoring or new curriculum requirements in a final notice of adoption as it is beyond the scope of the proposed changes. The requirements in NEW RULE II are not new, but rather relocated from ARM 24.121.803 which is proposed for repeal. Additionally, the board did not propose any changes to the minimum esthetics curriculum requirements in ARM 24.121.807. The board may consider the suggestion in a future rulemaking.

COMMENT 16: Several commenters asked the board to amend ARM 24.121.1522 on blood exposure to address a needlestick if the patient tests positive for HIV.

RESPONSE 16: Licensees under this board are not healthcare professionals, do not have patients, and do not test for HIV or have access to HIV test results from medical professionals when providing services to clients at salons, shops, or schools. The blood exposure procedure is consistent with procedures required by other states that license these professions.

4. The agency has amended ARM 24.101.413, 24.121.301, 24.121.403, 24.121.407, 24.121.410, 24.121.412, 24.121.604, 24.121.605, 24.121.606, 24.121.607, 24.121.610, 24.121.611, 24.121.805, 24.121.807, 24.121.808, 24.121.1103, 24.121.1105, 24.121.1501, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, and 24.121.1523, as proposed.

5. The agency has adopted NEW RULE I (24.121.418), NEW RULE II (24.121.818), NEW RULE III (24.121.2110), NEW RULE IV (24.121.2310), and NEW RULE V (24.121.425), as proposed.

6. The agency has repealed ARM 24.121.405, 24.121.601, 24.121.602, 24.121.603, 24.121.608, 24.121.612, 24.121.801, 24.121.803, 24.121.806, 24.121.809, 24.121.1101, 24.121.1301, 24.121.1302, 24.121.1505, 24.121.1507, 24.121.1513, 24.121.1514, 24.121.1515, 24.121.1519, 24.121.1521, 24.121.2101, and 24.121.2301, as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
PAULA EVANS,
PRESIDING OFFICER

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.