

Clearinghouse Rule 02-058
STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE 02-058)

ORDER

An order of the Barbering and Cosmetology Examining Board to repeal BC 1.01 (9) (a) to (d) and (10m); to renumber BC 4.10 (1) (b), (c) and (2); to renumber and amend BC 1.01 (9) (intro.); to amend BC 1.01 (intro.) and (6), 2.06 (5), 2.07 (1g), 3.02 (1) (intro.), 3.04 (1), 3.06 (2), 4.01 (title) and (2), 4.03 (1) and (2), 4.04 (1), 4.07 (3), (4) and (5), 4.08 (1), 4.09 (1), (3) and (4); to repeal and recreate BC 3.02 (2) (b), 4.02 and 4.10 (1); to create BC 1.01 (3g), and (3r), a Note following BC 1.01 (6), (6r), (11m), (14m), (17) and a Note following BC 1.01 (17), 2.025, 2.03 (8), a Note following 2.03 (8), and (9), 4.01 (3), (4), (5), (6) and (7), a Note following BC 4.07, 4.09 (3m), 4.10 (5) and ch. BC 10, relating to, cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 454.15 (3), Stats.

Statutes interpreted: ss. 454.01, 454.04, 454.15 and 454.08, Stats.

In this rule-making order of the Barbering and Cosmetology Examining Board, the board made changes relating to laser hair removal, microdermabrasion and chemical skin peels, tattooing, body piercing and tanning booths, limitations on the use of lancets, massages for cosmetic purposes, and non-evasive cutting.

The rules define “manicuring” to include massaging that is limited to the hands, feet or nails of the human body; ant rules also define “manicuring” to include “cutting” that is limited to the hands, feet or nails of the human body.

The rules identify procedures, such as laser hair removal services, microdermabrasion and certain chemical skin peels that may only be done as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the client services provided. The rules prescribe formal written protocols.

This order clarifies the disinfection expectations for barbering and cosmetology, aesthetics, electrology and manicuring implements. They provide a clearer explanation of what disinfection will protect the health, safety and welfare of the citizenry of Wisconsin.

The rules prohibit the use of methyl methacrylate monomer (MMA) in liquid form, or any cosmetic or nail service product formulated with MMA as one of its ingredients. Methyl methacrylate monomer cannot be used by any manicurist, nail technician, practitioner, manager or in any establishment in providing services or products to patrons. Any use of MMA or any product containing MMA, as well as selling, stocking or storing such substance or product, can result in disciplinary action against all licensees involved. Increased

reports and complaints concerning MMA have prompted the board to prohibit the use of MMA in the practice of barbering and cosmetology and manicuring.

Section BC 3.02 currently requires a licensed manager to be identified for every establishment. This change will allow an establishment to operate temporarily without a manager if a manager resigns and the owner actively seeks a replacement.

Section BC 3.06 currently requires application for a new establishment license whenever an establishment changes ownership or location. Practitioners may now rent a chair or booth or relocate their business are not to obtain a new establishment license.

Chapter BC 10 is created relating to citations for administrative forfeiture. The citation procedures established by this section may be used as an action to recover a forfeiture under s. 454.15, Stats. The citation form provided may serve as the initial pleading for a disciplinary action and is an adequate process to give the board jurisdiction over the credential holder if the citation is served upon the credential holder and filed with the board.

TEXT OF RULE

SECTION 1. BC 1.01 (intro.) is amended to read:

BC 1.01 Definitions. (intro.) For the purposes of chs. BC 1 to ~~9~~ 10:

SECTION 2. BC 1.01 (3g) and (3r) are created to read:

BC 1.01 (3g) “Credential” means a license, permit or certificate or certification of registration that is issued under ch. 454, Stats.

(3r) “Cutting,” as used at s. 454.01 (13), Stats., means exclusively to cutting of human nails and cuticles, and does not refer to any other invasive procedure.

SECTION 3. BC 1.01 (6) is amended to read:

BC 1.01 (6) “Disinfectant” means a chemical ~~that is capable of destroying disease-causing organisms on inanimate objects, with the exception of bacterial spores~~ or product that destroys disease-causing bacteria.

SECTION 4. A Note following BC 1.01 (6) is created to read:

Note: Examples of disinfectants are: 1. A solution of household bleach (5 ¼ percent sodium hypochlorite) and water containing at least 500 parts per million (ppm) available chlorine (1:100 dilution, or 2 teaspoons of household bleach per quart of water made fresh each day prior to use); 2. A solution of at least 70% isopropyl alcohol; 3. A solution using a phenolic germicidal such as Lysol (brown bottle); 4. A solution using an iodophor germicidal agent such as iodine or Betadyne; and 5. A solution using a quaternary ammonium germicide agent such as Lysol (spray) or Barbicide Plus.

SECTION 5. BC 1.01 (9) (intro.) is renumbered BC 1.01 (6h) and amended to read:

BC 1.01 (6h) ~~“Intermediate level disinfection”~~ “Disinfection” means application of a ~~process that may be accomplished by any of the following:~~ disinfectant following thorough cleaning of the utensil.

SECTION 6. BC 1.01 (6r) is created to read:

BC 1.01 (6r) "Division" means the division of enforcement in the department of regulation and licensing.

SECTION 7. BC 1.01 (9) (a) to (d) are repealed.

SECTION 8. BC 1.01 (10m) is repealed.

SECTION 9. BC 1.01 (11m), (14m), (17) and a Note following BC 1.01 (17) are created to read:

BC 1.01 (11m) "Massaging," as used at s. 454.01 (2), (5) (b) and (13), Stats., means massage for cosmetic rather than therapeutic purposes.

(14m) "Sterilization" means a process which destroys all forms of microbial life, including spores.

(17) "Tuberculocidal" means a disinfectant capable of destroying tubercle bacterium.

Note: Immersion of the object to be disinfected in a solution of household bleach (5 ¼ percent sodium hypochlorite diluted to 2 teaspoons per quart of water).

SECTION 10. BC 2.025 is created to read:

BC 2.025 Delegated medical procedures. (1) Licensees may provide client services constituting medical procedures only as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the client services provided in licensed establishments.

(2) Delegated medical procedures include the following:

(a) Laser hair removal services.

(b) Microdermabrasion services.

(c) Chemical skin peels, except for nonmedical facial peels for exfoliation purposes.

(3) Delegated medical procedures shall be undertaken only pursuant to formal written protocols setting forth the nature and scope of the procedures delegated, describing the supervisory plan, and indicating any contraindications to undertaking the procedure.

(4) A licensee providing client services constituting delegated medical procedures shall upon request make available to the client and to the board a copy of the formal written protocols.

(5) Should a client service constituting a delegated medical procedure be contraindicated based either upon the written protocol or some other basis, the licensee shall decline to carry out the procedure and shall explain to the client the basis for the licensee's inability to provide the service.

SECTION 11. BC 2.03 (8), a Note following 2.03 (8), and (9) are created to read:

BC 2.03 (8) Licensees may not provide the following services unless both the licensee and the establishment are properly licensed by the department of health and family services:

(a) Body piercing, except for piercing of ears.

(b) Tattooing, including permanent cosmetics.

(c) Operation of a tanning booth.

Note: Body piercers, body piercing establishments, tattooists and tattoo establishments are regulated by the Department of Health and Family Services under ch. HFS 173, Wis. Admin. Code. Tanning facilities and tanning facility operators are regulated by the Department of Health and Family Services under ch. HFS 161, Wis. Admin. Code.

(9) Licensees may not use methyl methacrylate monomer, commonly referred to as MMA in liquid form, and may not use any cosmetic or nail product formulated with MMA as one of its ingredients.

SECTION 12. BC 2.06 (5) is amended to read:

BC 2.06 (5) In the case of an owner of a barbering and cosmetology establishment, employ a manager who shall have direct authority over the operations of the establishment. If the manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a manager. The owner shall notify the board that the manager is no longer employed or has become otherwise unavailable within 10 days following the manager's last day of employment.

SECTION 13. BC 2.07 (1g) is amended to read:

BC 2.07 (1g) The manager shall train and supervise an apprentice in accordance with s. BC 6.04 (1), and ~~to shall supervise~~ temporary permit holders and training permit holders. Supervision and training shall be conducted by a currently licensed manager or practitioner with sufficient education, training and experience to provide the supervision and training.

SECTION 14. BC 3.02 (1) (intro.) is amended to read:

BC 3.02 Other establishment requirements. (1) MANAGER REQUIRED. (intro.) The owner of a barbering and cosmetology establishment shall not operate the establishment unless a licensed manager has been employed for the establishment, subject to the exception for temporary unavailability of a manager in s. BC 2.06 (5). The manager shall be responsible for supervising and managing the operation of the establishment. The owner and the manager shall ensure that the establishment operates in compliance with ch. 454, Stats., and rules of the board as follows:

SECTION 15. BC 3.02 (2) (b) is repealed and recreated to read:

BC 3.02 (2) (b) The lessee of a chair or booth shall be responsible for ensuring that the leased chair or booth operates in compliance with ch. 454, Stats., and the rules of the board, and the lessee shall hold a manager's and an establishment license. Lessees of chairs or booths leased prior to the effective date of this paragraph shall come into compliance with this paragraph by October 1, 2004.

SECTION 16. BC 3.04 (1) is amended to read:

BC 3.04 Establishment applications. (1) Before a person may open a new establishment, ~~or relocate~~ or change the ownership of an existing establishment, or relocate and create a new establishment as specified in s. BC 3.06 (2), the person shall submit an application to the board on a form specified by the board.

SECTION 17. BC 3.06 (2) is amended to read:

BC 3.06 (2) Change of location of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license. Relocation of a leased chair or booth which is licensed as an establishment and housed within a lessor establishment requires only written notification to the department accompanied by a floor plan identifying the change of chair or booth.

SECTION 18. BC 4.01 (title) is amended to read:

BC 4.01 (title) ~~Sanitation~~ Equipment and Sanitation.

SECTION 19. BC 4.01 (2) is amended to read:

BC 4.01 (2) Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves. Waterless hand washing agents with alcohol as an active ingredient are ~~not~~ an acceptable substitute for washing hands with soap and running water.

SECTION 20. BC 4.01 (3), (4), (5), (6) and (7) are created to read:

BC 4.01 (3) Powder puffs, sponges, and emery boards and other contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.

(4) All liquids, creams, powders and semi-solid substances shall be dispensed from a container in a manner which will prevent contamination of the unused portion of the substance.

(5) Shampoo bowls and basins shall be drained after each use and kept in a sanitary and safe condition.

(6) Clean towels shall be used for each patron. A neckstrip or towel shall be placed around the neck of the patron to prevent contact with the cape. The head rest of any operating chair shall be covered with fresh linen or paper for each patron.

(7) All other equipment and instruments shall be clean to sight and touch.

SECTION 21. BC 4.02 is repealed and recreated to read:

BC 4.02 Disinfection. (1) Unless sterilized, disinfection is required prior to reuse on another patron of any personal care instruments, including scissors, razors, clipper blades and tweezers.

(2) Disinfection for scissors, razors, clipper blades and tweezers shall consist of cleaning with soap and water to remove all organic material, wiping with or soaking in a disinfectant as defined in s. BC 1.01, and air-drying.

(3) Disinfection for combs, lifts, brushes, rollers and any other contact equipment shall consist of cleaning with soap and water to remove all organic material, spraying with a tuberculocidal disinfectant as defined in s. BC 1.01, and air-drying.

(4) Clean and disinfected contact equipment shall be placed in one or more covered containers. One or more separate containers shall be provided for the immediate storage of soiled contact equipment until cleaned and disinfected.

(5) Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.

(6) Laundry shall be disinfected by washing with a solution containing a germicidal compound.

Note: Bleach and Lysol® (brown bottle) are germicidal compounds.

SECTION 22. BC 4.03 (1) and (2) are amended to read:

BC 4.03 (1) Sterilization, ~~as required by~~ in ss. BC 4.07, 4.09 and 4.10 shall be accomplished by use of a dry heat or steam sterilizer cleared for marketing by the food and drug administration, used according to manufacturer's instructions. If steam sterilization, moist heat, is utilized, heat exposure shall be at a minimum of 121° C., 250° F., for at least 30 minutes. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171° C., 340° F., for at least 60 minutes.

(2) Sterilizers shall be maintained in working order. Equipment shall be checked ~~periodically at least quarterly~~ to ensure that it is reaching required temperatures ~~based upon manufacturer's recommendations~~.

SECTION 23. BC 4.04 (1) is amended to read:

BC 4.04 Supplies. (1) All work stations shall be supplied with at least one of the ~~topical~~ antiseptics listed in s. BC 4.05 for use by licensees in case of injury.

SECTION 24. BC 4.07 (3) is amended to read:

BC 4.07 (3) Apply ~~a topical~~ an antiseptic to the skin surface of the area to be pierced and allow the antiseptic to air dry.

SECTION 25. A Note following BC 4.07 is created to read:

Note: Iodine and Betadyne® are acceptable antiseptics.

SECTION 26. BC 4.07 (4) and (5) are amended to read:

BC 4.07 (4) Sterilize earrings, needles, or any other piercing instruments prior to insertion. Pre-sterilized earrings may be utilized.

(5) Prior to each use all other surfaces that come into contact with the skin of the patron ~~should~~ shall be ~~subjected to intermediate level disinfection~~ disinfected.

SECTION 27. BC 4.08 (1) is amended to read:

BC 4.08 (1) Apply ~~a topical~~ an antiseptic to the skin surface of the area to be waxed and allow the antiseptic to air dry.

SECTION 28. BC 4.09 (1) and (3) are amended to read:

BC 4.09 (1) Use sterilized needles, lancets and tweezers for each patron, in accordance with s. BC 4.03. ~~This may be accomplished through the use of pre-sterilized disposable needles or through sterilization of needles immediately prior to use.~~

(3) Thoroughly wash the skin area to be ~~pierced~~ treated with soap and water. Apply a ~~topical~~ an antiseptic to the skin surface of the patron and allow the antiseptic to air dry prior to commencing electrolysis.

SECTION 29. BC 4.09 (3m) is created to read:

BC 4.09 (3m) Utilize only pre-sterilized, single use, disposable lancets and only for the lateral piercing of raised whiteheads.

SECTION 30. BC 4.09 (4) is amended to read:

BC 4.09 (4) Dispose of needles and lancets in a puncture resistant container specifically designed for disposal. Full sharps containers shall be disposed of appropriately.

SECTION 31. BC 4.10 (1) is repealed and recreated to read:

BC 4.10 (1) Prior to use, all reusable manicure instruments shall be disinfected.

SECTION 32. BC 4.10 (1) (b), (c) and (2) are renumbered BC 4.10 (2), (3) and (4).

SECTION 33. BC 4.10 (5) is created to read:

BC 4.10 (5) Massaging by manicurists is limited to the hand, including the forearm and elbow, and the foot, including the lower leg and knee.

SECTION 34. Chapter BC 10 is created to read:

CHAPTER BC 10
FORFEITURES

BC 10.01 Authority and scope. (1) (a) The rules in ch. BC 10 are adopted pursuant to authority in s. 454.15, Stats.

(b) The citation procedures established by this section may be used in an action to recover a forfeiture under s. 454.15 (3), Stats.

(c) The citation form provided by this section may serve as the initial pleading for a disciplinary action and is adequate process to give the board jurisdiction over the credential holder, if the citation is served upon the credential holder and filed with the board.

BC 10.02 Citation for administrative forfeiture. (1) A citation under this section shall be issued by a consumer protection investigator and shall contain substantially the following information:

(a) The name, address and credential number of the credential holder.

(b) The name and signature of the individual issuing the citation and the name of the department.

(c) A description of the violation alleged, the time and place of its occurrence, a statement that the respondent committed the violation, and the statute or administrative code provision violated.

(d) Notice that the credential holder may submit a response contesting the citation and requesting a hearing. Notice shall include the date and address for the timely submission of a request. A request for hearing must be in writing.

(e) The forfeiture and costs assessment requested by the division.

(f) A summary of the citation procedure, including the following:

1. Provisions for deposit and stipulation in lieu of an appearance before an administrative law judge or the board.

2. Notice, including date, time and address, that the licensee may enter a plea of contesting the violations cited and request a hearing on the alleged violation.

(2) A citation shall be substantially in the form shown in Appendix I.

BC 10.03 Service. Service of a citation under this section may be accomplished by mailing a copy of the citation to the credential holder at the last known address of the credential holder or by any procedure described in s. 801.14 (2), Stats.

BC 10.04 Filing. Filing a citation with the board shall be accomplished by delivery of a copy of the citation to the offices of the board.

BC 10.05 Effect of payment. The credential holder may deposit the amount of forfeiture identified in the citation by mailing the deposit and a copy of the citation to the division. Payment shall be treated as a plea of no contest and submission to an order of forfeiture plus costs, not to exceed the amount of the deposit.

BC 10.06 Request for hearing. Within 20 days of the date of service of the citation, the licensee may enter a plea contesting the violation cited and request a hearing on the alleged violation cited and request a hearing on the alleged violation. Submission of a plea contesting violations and requesting a hearing shall be in writing and submitted to the division.

BC 10.07 Default. (1) If the credential holder does not make a deposit or otherwise respond to the citation in a timely fashion, the board may without further proceedings issue an order of default against the credential holder. A default order issued under this section may impose forfeiture and costs, not to exceed the amount identified in the citation. Violation of an order issued under this section may impose forfeiture and costs, not to exceed the amount identified in the citation. Violation of an order issued pursuant to this section may result in a refusal to renew credentialing or additional disciplinary action.

(2) If the credential holder requests a hearing pursuant to s. BC 10.05 but fails to appear at the hearing at the time scheduled, the credential holder is in default and the board may make findings and enter an order on the basis of the citation. The board may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the board enters an order or within a reasonable time.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Wis. Stats.

Dated _____ Agency _____

Chairperson
Barbering and Cosmetology Examining Board