

**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
BARBERING AND COSMETOLOGY : CR 11-011
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

The only new form referenced in the proposed rules is the application form for continuing education providers to use to obtain the board's approval of a course or program. The board will provide a form for provider applications closer to the 2013-2015 effective date of these rules.

III. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The barbering and cosmetology examining board is authorized under s. 454.12 (2), Wis. Stats. to promulgate rules establishing continuing education (CE) requirements for its licensees. The purpose of such rules is to preserve the public health, safety, and welfare by ensuring the competency of those licensed by the board to practice the barbering and cosmetology professions. The board first implemented CE requirements by creating ch. BC 11, Wis. Admin. Code, which became effective on April 1, 2010. The need for CE was well demonstrated by the high number of complaints the board received from the consuming public against licensees. Many of those complaints arose from licensee violations of the laws and rules governing these professions, and many prompted full-blown disciplinary proceedings. Requiring CE on the governing laws, and on sanitation, safety and infection control will increase licensees' knowledge and understanding in those areas, and will help prevent such violations. Requiring continuing education in courses related to a licensee's particular practice will promote the licensee's increased competency in that practice. Both of those objectives serve the statutory purpose of preserving the public health, safety and welfare.

With the amendments proposed in the instant rule-making, the barbering and cosmetology board fleshes out the existing CE requirements, and responds to feedback the board has received from licensees, course providers, and others since the April 2010 institution of those requirements.

IV. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The barbering and cosmetology examining board held a public hearing regarding the proposed amendments to chs. BC 9, 11 on April 4, 2011. The following people either testified at the hearing, or submitted written comments:

- John Murray
- Cheryl Rebolz
- Kristen Allison
- Lauri Thomas
- Brett Hallongren
- John Waldhuether
- Jenny Vance
- Jerry Gardner

The board summarizes the comments received either by hearing testimony or by written submission as follows:

John Murray, the executive assistant for the department of regulation and licensing, presented the department's recommendations that the board reduce the proposed total credit hours required per biennium from 12 to 6, and that the effective date of the new rules be delayed until the start of the 2013-2015 biennium, April 1, 2013. Mr. Murray noted that a large number of licensees had not completed their CE requirements for the 2009-2011 biennium. This was evidenced by the significant percentage of licensees who had not submitted their renewal applications by the March 31, 2011 deadline for lack of CE compliance. Based on that widespread lack of compliance, the department concluded that licensees have not fully embraced the CE requirement for licensure renewal. Maintaining the total number of credit hours at 6 per biennium, instead of increasing it to 12 as indicated in this rule-making proposal, addresses that issue. Moreover, delaying the effective date of the proposal will allow the board to receive more feedback from stakeholders, and to continue to fine tune the requirements in response to such feedback.

Of the seven others who testified at the public hearing on this rule-making proposal, five expressly favored reducing the number of continuing education credit hours required per biennium to 6, while two did not directly address that point. One of the latter two supports requiring 2 credits on the governing laws and 4 on safety, sanitation, and infection control. One person suggested the following break-down for 6 credits: 1 hour on governing law, 2 on safety, sanitation, and infection control, and 3 elective. The same person added that if the board keeps the 12-credit rule, CPR/First Aid should be part of the total requirement, and also supports standardizing the written examination referenced in proposed new rule s. BC 11.03 (5). Another person noted that Wisconsin is one of only a few jurisdictions that do not require CPR/First Aid training of its barbering and cosmetology licensees. One person opined that 2 hours of law and 4 of safety, sanitation, and infection control are both excessive. Two oppose requiring domestic violence victim referral training. Another expressed concern about the costs, quality, and consistency of

CE programs, and pointed to a need for a means of verifying the identities of attendees. The same person asked about how enforcement of these rules will be accomplished. Finally, two of the seven specifically oppose delaying the effective date of this rule-making proposal, both citing confusion amongst licensees and providers as the reason.

The board explains modifications to its rule-making proposal prompted by public comments as follows:

The board adopts the department's recommendation, as expressed by Mr. Murray, to reduce the number of mandatory credits to a minimum of six, not twelve, noting that the majority of the seven members of the public who testified support the same. The board also adopts the suggestion of public members to require 1 credit on the governing laws, 2 on safety, sanitation, and infection control, and to allow licensees to fulfill the other three required hours with courses of their choosing that are directly related to their particular profession. The board also removed the requirements related to domestic violence-related courses and chose not to mandate CPR/First Aid training. Because the board reduces the total number of CE credits required from 12 to 6, it removes the 6-credit exemption for 30-year licensees in proposed s. BC 11.03 (3) (b). In addition, because it will be moot by the time these permanent rules become effective, the board eliminates the provision in proposed s. BC 11.03 (3) (c) specifying the CE requirement for the biennium that ended on March 31, 2011. The board concludes that the concerns about costs, consistency, and quality of CE programs, and for verification of program attendees' identities are adequately addressed in proposed s. BC 11.04.

Finally, the board decided to adopt the department's recommendation to delay the effective date of the proposed permanent rules until the start of the 2013-2015 biennial reporting period, although it noted public comment in opposition to the same. Accordingly, these rules will first apply to licensure renewal applications submitted on or before March 31, 2015 for the biennium ending on that date. The board concurred with Mr. Murray's assessment that the delay will provide the board with the opportunity to carefully consider all of the issues raised regarding the CE rules first established by the board in April 2010, along with the emergency rules that became effective on December 23, 2010.

V. CHANGES TO THE ANALYSIS PREPARED UNDER s. 227.14 (2), STATS., OR TO THE FISCAL ESTIMATE PREPARED UNDER s. 227.14 (4), STATS.

None

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5.b.: Simplify the plain language analysis section of the proposed order.

Response: Accepted in part, rejected in part. The board made all specifically suggested changes except for the suggestion in Comment 5.b.(2), which reiterates the simplifying comment with specific respect to SECTION 2 of the plain language analysis. The board

otherwise found it unnecessary to implement such a change in the current proposal, and that doing so would take scarce staff time and delay the promulgation process.

Comment 5.e.(1): Clarify the definition of “biennium” in s. BC 11.02 (1), and use that word or the definition’s synonymous term, “biennial reporting period,” consistently throughout the proposed new rules. Also, review s. BC 9.01 for consistency with the definition.

Response: Accepted in part, rejected in part. The board clarified the definition of “biennium,” and made changes throughout the rule for consistency with that definition. The board determined that s. BC 9.01 is consistent with the definition of “biennium,” and therefore made no changes to that section.

Comment 5.e.(2) Determine whether defining the term “continuing education” is necessary. If retained, rewrite the end of the first sentence as suggested.

Response: Accepted in part, rejected in part. The board retains the definition of the term “continuing education,” because it is aware of a need for clarity in these rules. The board otherwise made the suggested change in the first sentence of the definition.

Comment 5.e.(4): Eliminate definition of “safety, sanitation and infection control,” and incorporate it into s. BC 11.03 (2) (b).

Response: Rejected in whole. As with the definition of “continuing education,” the board retains the definition of “safety, sanitation and infection control,” due to a need for clarity in these rules.

Comment 5.g.: Replace the term “credit hours” in s. BC 11.03 (2) (a), (b), and (c) with “continuing education credit hours” per the suggestion in Comment 5.e.(3).

Response: Accepted in part, rejected in part. The board made the suggested change in s. BC 11.03 (2) (a) and (b), but found it unnecessary to do so in s. BC 11.03 (2) (c).

Comment 5.h.: Clarify the meaning of s. BC 11.03 (2) (c) as to whether licensees holding multiple credentials must obtain separate credit hours under s. BC 11.03 (2) (a) and (b) for each profession in which they are licensed. Consider whether the approach in par. (c) conflicts with the note following the provision.

Response: Accepted in part, rejected in part. The board reduced the number of required elective credit hours from 6 to 3, eliminated the language regarding domestic violence victim referral training, and eliminated the note following the provision. With respect to elective credit hours required of licensees holding more than one license, the board simplified the language, and concluded that the requirement is clear as modified.

Comment 5.i.: Insert the word “license” before the word “renewal” in the introduction to s. BC 11.01 (3) (a). Rewrite par. (b) as indicated.

Response: Accepted in part, rejected in part. The board added the word “license” before the word “renewal” in the provision regarding CE requirements for new licensees. However, because the board reduced the total number of required CE credits to 6, it eliminated the provision regarding licensees of 30 years or more. In addition, the board omitted the provision in s. BC 11.03 (3) (c), as it will be moot by the time these rules become effective.

Comment 5.k.: Replace the term “continuing education requirement” in s. BC 11.03 (4) with the phrase “continuing education credit hours required under this section” for consistency with Comment 5.e.(3). Specify the time period referred to in the phrase “any other period.”

Response: Accepted in part, rejected in part. The board concluded that the term “continuing education requirement” is sufficiently clear, especially given the definition of “continuing education” in s. BC 11.02 (2). The board rephrased the second sentence clarifying the meaning of “any other period.”

Comment 5.l.: Remove the word “one” from s. BC 11.03 (5) (intro.), and replace the term “continuing education” with the phrase “continuing education credit hours.”

Response: Accepted in whole. The board also added the word “means” at the end of the introduction.

Comment 5.p.: Replace the phrase “for CECs” in s. BC 11.04 (1) (intro.) with “as a continuing education program” for consistency with the definition of the latter term. Replace the phrase “a continuing education program or course” with “the program.”

Response: Accepted in part. The board replaced the phrase “for CECs” as suggested. To simplify the entire subsection, the board restructured the introduction, and used the phrase “the program shall:” as the ending. The board then modified the beginnings of pars. (a) through (d) accordingly.

Comment 5.x.: Add the word “requirement” to the end of the title to s. BC 11.07. Replace the word “biennium” in sub. (3) with “licensing periods.”

Response: Accepted in part, rejected in part. The board added the word “requirement” to the end of the title of s. BC 11.07. However, instead of replacing the word “biennium” in sub. (3) as suggested, the board simply changed the word biennium to its plural form, maintaining consistency with the definition of that term.

All other recommendations in the clearinghouse report were accepted in whole.