

Report From Agency

**STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
COSMETOLOGY EXAMINING BOARD : CR 20-025**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

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

The proposed rule is drafted to implement recent statutory changes, including 2017 Wisconsin Act 81, 2017 Wisconsin Act 82, and 2019 Wisconsin Act 143. The draft also incorporates changes to safety and sanitary provisions in ch. Cos 4, particularly in regards to blood-borne pathogen exposure protocol, to bring them into conformity with current industry standards.

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

The Cosmetology Examining Board held a public hearing on August 17, 2020. The following people either testified at the hearing, or submitted written comments:

David Hagemeyer, Small Business Owner
Amy Foster, Small Business Owner

The Cosmetology Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

Mr. Hagemeyer commented on the following:

- Expressed concern that proposed s. Cos 2.046 (1) (a) would allow employees to practice under the establishment's license without the permission of the owner,

possibly incurring damage to the reputation of the establishment, or liability for injuries.

- Pointed out the language within s. Cos 2.06 (5) that an establishment manager have “direct authority over the operations of the establishment” is too broad, and could possibly be interpreted as allowing the manager control over all aspects of a business, such as personnel decisions, negotiating with and selecting vendors, performing payroll, and repairing salon equipment.
- Finally, Mr. Hagemeyer expressed opposition to language in s. Cos 8.02 (1) regarding the ability of reciprocal license applicants to obtain a credential if there is a reciprocal agreement with the state, stating that a reciprocity agreement should not be required with the other state in order to issue a reciprocal license.

Ms. Foster stated opposition to requiring that an individual who seeks to practice exclusively outside of an establishment should have to be affiliated with a licensed establishment.

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

The Cosmetology Examining Board made the following changes in response to comments received at the public hearing:

- Cos 2.06 (5) is revised to require that the establishment manager ensure the “establishment operates in compliance with state statutes and administrative rules.” This language more closely mirrors the statutory language found in s. 454.08 (6), Stats. relating to establishment managers, as opposed to requiring the manager have “direct authority over the operations of the establishment.”

The Cosmetology Examining Board declined to make the following changes:

- The board will not revise s. Cos 2.046 (1) (a) as the statute on which the rule is based, s. 454.08 (1) (ar), Stats., does not require the practitioner to have the permission of the establishment owner in order to practice outside of the establishment.
- The board will not revise s. Cos 8.02 (1) as the text relating to reciprocal credentials in that provision mirrors the requirements in s. 454.13, Stats.
- The board will not revise its rules to allow a practitioner to practice outside of a licensed establishment without owning, managing, being employed by or affiliated with a licensed establishment. Section 454.08 (1) (ar) 1., Stats. requires the licensee to either own, manage, be employed by, or affiliated with, a licensed establishment in order to practice outside of a licensed establishment.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 1b.

Response: The Cosmetology Examining Board rejects this comment as ch. Cos 11 has already been repealed by CR 18-031.

Comment: 5a.

Response: The Cosmetology Examining Board will consider defining chemical process in a future rule project after more extensive research and consideration of whether a definition is needed, and what that language should look like, if necessary.

Comment: 5b.

Response: The Cosmetology Examining Board will retain the requirement in s. Cos 4.05 (2) (b) that the licensee excuse him or herself from the patron in the event of an exposure to blood as this is specifically included in the National-Interstate Council of State Boards (NIC) guidelines for exposure to bloodborne pathogens.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A