

Report From Agency

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 22-085
COSMETOLOGY EXAMINING :
BOARD :

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 Board conducted an evaluation and update of ch. Cos 2, 3, 5 and 8 to ensure the definitions under s. Cos 2.01, and the criteria for allowing delegation of medical procedure under s. Cos 2.025 (2) (d), are consistent with current professional and academic practices and applicable Wisconsin statutes. As a result, the following updates have been made:

- Definitions of “Chemical process,” “Dermaplaning,” “Impact,” “Microblading,” “Microneedling,” and “Stratum Corneum” have been added to the definitions under s. Cos 2.01.
- Other provisions throughout ch. Cos 2.02 (1m) and Cos 2.025 (2) (d), (e), and (2m) have been revised to provide clarity and conform to current drafting 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 January 23, 2023. No comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The following is the Cosmetology Examining Board’s response to Clearinghouse Report Comment #5a. The response to this comment has been broken into pieces for clarity:

“In SECTION 1 of the proposed rule, consider defining “stratum corneum” in s. Cos. 2.01 in order to clarify references to the term in SECTION 4 of the proposed rule. Similarly, what does it mean to “impact” a skin layer?”

Definitions for “stratum corneum” and “impact” have been added to the rule to improve clarity.

“As used in the existing code and proposed rule, it appears possible that microblading, dermabrasion, eyelash and eyebrow tinting, dermaplaning, utilization of electromagnetic radiation and electric current, and utilization of thermal energy could all “impact” multiple skin layers in different instances.”

This is accurate. It is the position of the Board, based on the recommendations of the Board’s rules committee, that properly trained practitioners can perform these procedures in a manner that affects only the stratum corneum. The purpose of creating section Cos 2.025 (2) and (2m) is to recognize that fact and make clear that any practice of these procedures that does impact more than the stratum corneum is a delegated medical procedure, and that formal training is required if the procedure is performed in a manner that only affects the stratum corneum.

“Clarification is especially important if the intent of the rule is to allow microblading and other activities by certain licensees without direction or supervision by a physician. Review of medical texts indicates that the stratum corneum is the first layer of skin. Accordingly, note that the definition of dermaplaning, referring to removal of layers of skin (plural), is inconsistent with s. Cos 2.025 (2m) (intro.) and 2.”

The response to this question is addressed above. The procedures can be performed in multiple ways with differing effects. In the situation where a licensee uses a technique that only affects the stratum corneum there is no conflict between the definitions and the limitations in s. Cos 2.025 (2) (2m) and 2.

“The definition and treatment of microblading within the scope of practice of aesthetics under s. Cos 2.015 presents a similar conflict with the categorization of any treatment impacting a skin layer below the stratum corneum as a delegated medical procedure, requiring direction and supervision by a physician under s. Cos 2.025 (2) (e).”

This portion of the comment has been addressed by removing the potentially confusing express statement that microblading is within the scope of practice of aesthetics and moving microblading into the list of procedures under s. Cos 2.025 (2m). This also makes clear that microblading must be done in a way that does not impact a skin layer other than the stratum corneum, eliminating any potential conflict with s. Cos 2.025(2) (e).

The Cosmetology Examining Board would also like to note here that changes made to the rule draft based on comment #5a. also addressed the concerns raised in comments #2b., 2c., and 4a.

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