

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT,
24.121.301 definitions, 24.121.401 fees,	)	ADOPTION, AND REPEAL
24.121.405 variances, 24.121.601 applications	)	
for licensure, 24.121.603 out-of-state applicants,	)	
24.121.803 school requirements, 24.121.805	)	
school operating standards, 24.121.809	)	
student withdrawal, transfer, or graduating,	)	
24.121.1105 teacher-training curriculum,	)	
24.121.2101 continuing education-instructors/	)	
inactive instructors, 24.121.2301 unprofessional	)	
conduct, the adoption of NEW RULE I fee	)	
abatement and NEW RULE II continuing	)	
education-licensees/inactive licensees, and the	)	
repeal of 24.121.811 field trips	)	

TO: All Concerned Persons

1. On March 9, 2006, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-3 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 629 of the 2006 Montana Administrative Register, issue no. 5.

2. On March 31, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Members of the public spoke at the public hearing. Several comments were received by the April 10, 2006, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows, arranged by the rule being commented upon:

ARM 24.121.301(10) Definitions – “Distance Education”

COMMENT 1: A commenter expressed opposition against distance learning the way the rule is written.

RESPONSE 1: The board believes it is taking a proactive stance by moving into distance learning by making more education options available through distance education, thereby by allowing licensees the opportunity to search out other avenues of continuing education.

ARM 24.121.401(13) Fees – Student Enrollment/Reenrollment

COMMENT 2: A commenter questioned the deletion of student enrollment fees in conjunction with the proposed amendment to ARM 24.121.805 to delete the current requirement that schools must report student registrations to the board office.

RESPONSE 2: The board has proposed deleting the requirement for schools to submit student registrations to the board office. Since this requirement will be deleted from ARM 24.121.805(4), there is no reason to require the fee. The board has determined other professions do not report educational progress to the state and the board has concluded it should not be maintaining such information.

ARM 24.121.803(7)(k)(i) - (xxiv), (8)(l)(i) - (xxvii), (9)(b)(i) - (x), (12)(k)(i) - (xv), (13)(k)(i) - (xix) School Requirements

COMMENT 3: Several commentors commented in favor of deleting the requirement of specific kit items stated that they were in favor of the deletion as one felt the students should provide their own items and another stated they paid \$500.00 for their supply kit and priced it out at only \$83.00.

RESPONSE 3: The board believes this amendment is a benefit to both the students and the schools. The amendment, deleting the list of required equipment, will allow schools to be more responsive to the changing profession and what equipment is necessary to meet current student needs, rather than needing a rule change each time the equipment list needs to be modified.

COMMENT 4: Some other commenters opposed the deletion of the student equipment kits, expressing concern that the deletion meant the school would not be able to "sell" kits to students and students would not have sufficient supplies to leave school and enter the work force with. Some commenters stated that kits are not affordable unless schools provide them.

RESPONSE 4: This amendment does not necessarily eliminate the kit requirement. It allows schools alternatives to provide dispensary tools and equipment or require a kit. The amendment is intended to address the changing profession and to allow schools to determine what student's equipment/tools are needed rather than require students to purchase outdated items or obtain an amendment to the rules every time new or different tools or equipment are needed.

ARM 24.121.805 School Operating Standards

COMMENT 5: A commenter was unsure how the board will determine who and how many students are registered with a particular school and believes the board is being very naïve to think that everyone is going to be truthful and not make mistakes. It is the commenter's opinion that if the amendment is adopted, dishonesty and corruption are only a matter of moments and board oversight was necessary to ensure proper accountability.

RESPONSE 5: The board believes it should no longer have to be “policemen” for records. The board notes that colleges and other post-secondary educational institutions do not report student registration and hours to other state agencies. The board concludes that it has the means necessary to determine if a school is systematically falsifying student records, and to take appropriate action if that is the case.

#### ARM 24.121.2301(1)(v) Unprofessional Conduct

COMMENT 6: A commenter stated that the passing of this rule and New Rule II will cause people to suffer both financially and professionally.

RESPONSE 6: Since the board is not adopting New Rule II, ARM 24.121.2301(1)(v) is being amended so that it will apply to instructor licensees only. Please also see the comments and responses with respect to New Rule II.

#### NEW RULE II Continuing Education Licensees/Inactive Licensees

COMMENT 7: Several commenters stated they support the adoption of this rule and feel continuing education is very important.

RESPONSE 7: Although some members of the board believe continuing education is important to have, the board has decided not to adopt New Rule II.

COMMENT 8: Numerous commenters felt this rule does nothing by way of protecting the public health, safety, and welfare, nor is it necessary in order to provide the consuming public with professional services. A commenter stated the rule fails to recognize the differences between the five different disciplines regulated by the board and the individual needs and requirements of each. There was some concern regarding the fact that there are no licensed barber schools in Montana and obtaining out-of-state continuing education would be prohibitive including the loss of income from having to close a shop or booth. There was also concern regarding the procedure for preapproval of the continuing education courses.

RESPONSE 8: The board does not agree with all of the comments that were made; however they feel that at this time it is best not to adopt this new rule. Although the board does not necessarily agree with all of the points made by the commenters, the board has concluded that in light of the comments, it would not adopt New Rule II and therefore continuing education will continue be required only for licensed instructors.

4. The board has amended ARM 24.121.401, 24.121.405, 24.121.601, 24.121.603, 24.121.803, 24.121.805, 24.121.809, 24.121.1105, 24.121.2101, and 24.121.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.121.402) exactly as proposed, but is not adopting NEW RULE II.

6. The board has repealed ARM 24.121.811 exactly as proposed.

7. The board has amended ARM 24.121.301 with the following changes, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS The following definitions shall apply as used in this chapter:

(1) through (13) remain as proposed.

(14) "Inactive" means the status of any ~~licensee or~~ instructor who fails to meet the continuing education requirement.

(15) through (22) remain as proposed.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-306, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

BOARD OF BARBERS AND COSMETOLOGISTS  
WENDELL PETERSEN, PRESIDING OFFICER

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 22, 2006