

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a)(12) and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the intent to adopt, in not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register*, amendments to Chapter 37 (Barber and Cosmetology) of Title 17 of the District of Columbia Municipal Regulations.

This rulemaking action will reconfigure the current Esthetician license into a two-tiered license: a Basic Esthetician license and a Master Esthetician Manager's license. Current licensees that can demonstrate to the Board of Barber and Cosmetology that they have sufficient experience will have two years to obtain a Master Esthetician Manager's license by waiver. In addition, esthetician applicants for an instructor license will now be required to possess a Master Esthetician Manager's license prior to becoming eligible to sit for the instructor examination.

Proposed regulations were published in a Notice of Proposed Rulemaking on September 25, 2009, in the *D.C. Register* at 56 DCR 7647. In response to comments received, the regulations were revised to: (1) amend section 3711.1 to clarify licensure by reciprocity; (2) add section 3711.5 to a Board-recognized national certifying organization; and (3) amend the definition of "cosmetologist."

The changes to the originally proposed rules are relatively minor and the balance of the previously proposed rules received no adverse comment. Relevant stakeholders have participated in the comment process and it is not expected that there will be any further comment on these proposed rules. Therefore, there is good cause to shorten the comment period for this round of proposed rulemaking. Consequently, final rulemaking action to adopt the amendments shall be taken in not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register*.

Title 17 DCMR Chapter 37 is amended as follows:

Section 3702.1(c) is amended to read as follows:

- (c) Specialty cosmetology operators, which include:
 - (1) Braider;
 - (2) Electrologist;
 - (3) Esthetician Operator, Master Esthetician Manager, and Master Esthetician Instructor (only a Master Esthetician Manager may become an instructor of esthetics); and
 - (4) Manicurist;

Section 3703.17 is amended to read as follows:

- 3703.17 Applicants for an Esthetician Operator license by examination shall furnish proof, satisfactory to the Board, that the applicant has completed six hundred (600) hours of instruction at a licensed school, or school otherwise acceptable to the Board, in the following:
- (a) Infection control;
 - (b) Physiology and anatomy;
 - (c) Skin histology;
 - (d) Skin diseases and disorders;
 - (e) Hair and its growth cycle;
 - (f) Basic chemistry and cosmetic ingredients;
 - (g) Basic facials;
 - (h) Facial massage;
 - (i) Electricity and facial machines;
 - (j) Methods of hair removal;
 - (k) Make-up;
 - (l) Advanced topics and treatments; and
 - (m) Scope of practice and regulatory rules.

Section 3703.21 is amended to read as follows:

- 3703.21 Braider, Electrologist, and Manicurist applicants for a license by examination as a manager of a specialty cosmetology salon in the applicant's specialty shall furnish proof, satisfactory to the Board, that the applicant:
- (a) (1) Possesses at least two (2) years experience as a licensed operator within the applicant's limited specialty in a licensed cosmetology or specialty salon; or
 - (2) Served as a licensed operator within the applicant's specialty in a licensed cosmetology or specialty salon for six (6) months or more, completed five hundred (500) hours of training in a manager's course in a licensed school, and completed all of the hours of study necessary to become a specialty cosmetologist. The manager's course shall include:
 - (A) Shop management: 300 hours;
 - (B) Ethics and salesmanship: 50 hours; and
 - (C) Courtesy, conduct, and District law: 150 hours.

- (b) (1) Subject to the exception in paragraph (2) of this subsection, possesses a master esthetician manager license in addition to a specialty cosmetology manager license if they intend to manage a shop or salon that provides services requiring a licensed master esthetician manager.
- (2) If an esthetician operator who has an application pending for a specialty cosmetology manager's license, on the date that this paragraph becomes effective, and who obtains the license under the rules that existed on the date that the application was made, has obtained a master esthetician manager's license pursuant to § 3703.24 prior to managing a shop that provides services requiring a licensed master esthetician manager.
- (c) Possesses a master esthetician manager's license pursuant to the requirements of § 3703.24, if the esthetician is licensed as a specialty cosmetology manager on the date that this paragraph becomes effective, and manages a shop that provides services that must be provided by a master esthetician manager.

Section 3703.22 is amended to read as follows:

3703.22 An applicant for a license as an instructor of individual specialties shall furnish proof, satisfactory to the Board, that the applicant qualifies for the examination under either (a) or (b) of this section:

- (a) Applicants for licensure by examination shall demonstrate to the Board that they have served as a licensed barber, cosmetology operator, master esthetician manager, braider, electrologist, or manicurist, in a licensed salon or barbershop for at least six (6) months, and have completed one thousand (1,000) hours of training in an instructor's course as set forth in the following paragraphs:
 - (1) Barbering or Cosmetology Instructor:
 - (A) Barbering or cosmetology practical procedures and theory: 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Shop management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;

- (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in cosmetology and barbering: 65 hours.
- (2) Braiding, Electrology, or Manicuring Instructor:
- (A) Specialty cosmetology practical procedures and theory (electrology, braiding, and manicuring): 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Shop management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;
 - (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in electrology, braiding, or manicuring: 65 hours.
- (3) Master Esthetician Instructor:
- (A) Esthetics practical procedures and theory: 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Facility management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;
 - (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in esthetics: 65 hours.
- (b) Applicants for licensure as an instructor without examination shall demonstrate to the Board that they hold a current, master esthetician manager, braider, electrologist, or manicurist, barber manager, cosmetology manager, or specialty cosmetology manager's license and

have completed a course of study in teaching techniques at the post-secondary educational level.

- (1) Notwithstanding the foregoing, unless qualifying under the grace period set forth in § 3703.24, an esthetics instructor candidate must hold a current master esthetician manager license.
- (2) An esthetician instructor who has taught esthetics at a school for at least two (2) of the past five (5) years and who obtains a master esthetician manager license within the grace period set forth in § 3703.24 shall qualify for an instructor's license without examination.

A new Section 3703.23 is added to read as follows:

3703.23 Applicants for a Master Esthetician Manager license may apply for licensure by examination pursuant to the requirements set forth in paragraph (a) or without examination by meeting the requirements set forth in paragraph (b).

- (a) Applicants for licensure by examination shall furnish proof, satisfactory to the Board, that the applicant has the training necessary to sit for the Master Esthetician Manager's Examination. Applicants shall furnish such proof by completing the application provided by the Board and providing all information requested by the Board. Proof shall include documentation that the applicant has completed the Basic Esthetician training set forth in § 3703.17, passed the basic esthetics examination, and completed six hundred (600) hours of Master Esthetician Manager training in the following subjects:
 - (1) Advanced sciences:
 - (A) Skin histology;
 - (B) Anatomy and physiology;
 - (C) Chemistry and biochemistry;
 - (D) Skin analysis (classification systems);
 - (E) Cosmetic ingredients (health, lifestyle, and nutrition);
 - (F) Physics (advanced modalities);
 - (2) Esthetics:
 - (A) Advanced facials;
 - (B) Advanced facial massage;
 - (C) Advanced body treatments;
 - (D) Advanced make-up;
 - (E) Advanced facial machines;

- (3) Medical:
 - (A) Surgical procedures
 - (i) Plastic surgery procedures; and
 - (ii) Pre- and post-operation care;
 - (B) Non-surgical procedures;
 - (C) Medical terminology and intervention;
 - (4) Business:
 - (A) Business plan;
 - (B) Marketing;
 - (C) Business operations;
 - (D) Industry relations; and
 - (E) Compliance and safety.
- (b) The training and examination requirement for a master esthetician license may be waived by the Board if the applicant holds either a current District of Columbia Esthetician Operator license or a Cosmetology Operator license and is NCEA-certified.

A new section 3703.24 is added to read as follows:

3703.24 Esthetician Operators, Cosmetology Operators, and Specialty Cosmetology Managers who have been providing services or managing a shop that provides services which must now be provided by and supervised by individuals who possess a master esthetician license must obtain a master esthetician manager license no later than two (2) years from the date that this section is published in the *D.C. Register* as a final rulemaking. Individuals will qualify for licensure as a master esthetician manager if they provide the Board with documentary proof that they have at least two (2) years of experience in providing master level esthetician services.

Section 3711.1 is amended to read as follows:

3711.1 An applicant for a license by reciprocity or endorsement shall furnish proof satisfactory to the Board that the applicant has paid the applicable fee and:

- (a) If applying for licensure by reciprocity the applicant must provide a letter of good standing from a jurisdiction with requirements which, in the opinion of the Board, were substantially equivalent at the time of the applicant's licensure to those of the District of Columbia, and which jurisdiction admits barbers and cosmetologists licensed by the District in a like manner; or

- (b) If applying for licensure by endorsement the applicant must provide the Board with written certification that he or she:
 - (1) Passed an examination acceptable to the Board that is applicable to the license sought in the District;
 - (2) Has an active certification from a recognized national certifying organization that is listed in § 3711.5 of this chapter; and
 - (3) Has not been disciplined or otherwise disqualified by the national certifying organization relied upon for the application for licensure by endorsement.

Section 3711.5 is added to read as follows:

- 3711.5 The following organizations are recognized by the Board as national certifying organization acceptable to the Board whose standards for certification are at least as high as the education and experience standards set forth in this chapter for the same profession or occupation in the District:
- (a) Master Estheticians - National Coalition of Estheticians, Manufacturers/Distributors & Associations (NCEA).

A new section 3729 is added to read as follows:

3729 FACIAL PROCEDURES, DEVICES, AND EQUIPMENT

- 3729.1 Cosmetic exfoliating substances may include alpha hydroxy acids, glycolic and lactic acids, beta hydroxy acids, salicylic acid, Jessner's Solutions, resorcinol, and other substances intended to exfoliate the stratum corneum.
- 3729.2 Licensees are prohibited from performing procedures using cosmetic exfoliating substances or devices that affect more than the top layer of the epidermis or outermost layer of dead cells. A cosmetic exfoliation substance or device is not intended to remove viable (living) skin below the stratum corneum. Use of such substances and devices are deemed beyond the scope of practice of persons and establishments licensed by the Board.
- 3729.3 Licensees shall be permitted to use devices registered or approved by the U.S. Food and Drug Administration that are intended to be used for cosmetic skin care purposes, including, but not limited to, beautifying and improving the appearance of the skin.

Section 3799 is amended by adding or amending the following definitions:

Cosmetologist – any licensed person, whether as an owner, manager, operator, instructor, demonstrator, manicurist, or student, who engages in hair styling or the cosmetic arts, such as hair styling and skin care, and any other practice of

cosmetology, including the practice of esthetics and other specialty cosmetology practices regulated by the Board, but does not include shaving or trimming the beard or moustache of an individual or engaging in the practice of master-level esthetics without obtaining the applicable license.

Course of study in teaching techniques – A single course that spans one (1) semester at the college level and requires students to pass an examination in order to receive credit.

Esthetician operator – a person who engages in the practice of basic esthetics for compensation.

Practice of basic esthetics – any one of the following skin care procedures done on the head, torso, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

- (a) Cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comedone extractor, depilatories, waxes, and tweezing;
- (b) Chemical exfoliation;
- (c) Removing superfluous hair by means other than electrolysis, laser procedures, or intense pulsed light; or
- (d) Other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.

Esthetics instructor – means a licensed master esthetician that has completed an approved instructor license curriculum and who meets the competency standards of the Board as an instructor of esthetics.

Instructor – any person who is authorized to teach barbering, cosmetology, or any specialty cosmetology operator as a profession as provided for in this chapter.

Master esthetician manager – an individual who is licensed under this chapter to engage in the practice of master-level esthetics and authorized to manage an esthetics establishment.

NCEA – means the National Coalition of Estheticians, Manufacturers/ Distributors & Associations.

NCEA-certified – the professional status awarded to a skin care professional that has met the competency standards as set forth by NCEA's 1200 Hour Esthetician Job Task Analysis. It represents the highest skin care credential available in the United States and adherence to the code of ethics of the profession.

Noncosmetic purposes – medically necessary.

Practice of master-level esthetics – means:

- (a) Any of the following when done for cosmetic purposes on the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes and not for the treatment of medical, physical, or mental ailments:
 - (1) Body wraps;
 - (2) Hydrotherapy;
 - (3) Chemical exfoliation;
 - (4) Sanding, including microdermabrasion;
 - (5) Advanced extraction with lancet; or
 - (6) Other esthetic preparations or procedures with the use of:
 - (A) The hands; or
 - (B) A mechanical or electrical apparatus which is approved by the Board for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; and
 - (C) Lymphatic massage by manual or other means.
- (b) Notwithstanding the foregoing, a master-level esthetician may perform procedures listed in subparagraph (a) for non-cosmetic purposes if the procedures are performed under the supervision of a licensed health care practitioner acting within the scope of his or her license.
- (c) The term “practice of master-level esthetics” includes the practice of basic esthetics.

Salon – a place, facility, shop, or establishment in which cosmetology, barbering, esthetics, electrology, manicuring, or braiding is practiced.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, NE, Suite 9500, Washington, D.C. 20002, or via e-mail at helder.gil@dc.gov, not later than fifteen (15) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “DCRA News” link and then clicking on the “Rulemaking” tab.