



Dora
Department of Regulatory Agencies

Office of Barber and Cosmetology Licensure

DIRECTOR'S POLICIES

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***Consumer protection
is our mission***

OFFICE OF BARBER AND COSMETOLOGY LICENSURE POLICIES

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POLICY 1: Waxing by Manicurists

Date Adopted: January 1, 2006

On May 26, 2005, the Governor signed SB05-146 that continued the regulation of the barbering and cosmetology professions until July 1, 2015. One statutory change was expanding the scope of practice for manicuring to permit manicurists to wax clients' arms up to the elbows and legs below the knees.

Effective July 1, 2005, the scope of manicuring is now defined as follows:

"Manicuring," means any one act or practice, or combination of acts or practices, when done for direct or indirect payment or when done without payment for the public generally. "Manicuring" includes, but is not limited to, the filing, buffing, polishing, cleansing, extending, protecting, wrapping, covering, building, pushing, or trimming of nails or any other similar work upon the nails of any person by any means, including the softening of the hands, arms, ankles, or feet of any person by use of hands, mechanical or electrical apparatus or appliances, cosmetic or chemical preparations, antiseptics, lotions, or creams or by massaging, cleansing, stimulating, manipulating, or exercising the arms, hands, feet, or ankles of any person. Manicuring also includes waxing or the use of depilatories on the leg up to the knee, and the waxing or the use of depilatories on the arm up to the elbow.

Section 12-8-103(10.5), C.R.S. (emphasis added).

As noted in the above statutory definition, the scope of waxing by manicurists is limited to the client's leg up to the knee and the arm up to the elbow. The Director considers the hands and feet to be within the scope and appropriate areas for waxing. Hair removal on any other part of the body, such as eyebrows, lips, bikini areas, etc., is not permitted by manicurists and must be performed by licensed cosmetologists or estheticians. The Director considers the use of soft and hard waxes, sugar, depilatories, and tweezers as appropriate methods to remove superfluous hair.

Similar to other advanced procedures practiced within the scope of manicuring, but not necessarily taught in an entry-level educational program, the Director expects manicurists to obtain the necessary training prior to providing waxing services. The Director finds such training should address the following subjects:

1. Skin Histology 1 hour
 - A. Anatomy of the Skin
 - B. Functions on the Skin
 - C. Disorders on the Skin

2. Client Safety and Protection 1 hour

- A. Client Consultation
- B. Contraindications of hair removal
 - a. Minor contraindications: sensitive skin, sunburn, pustules and papules, chemical peels, botox or collagen injection, surgery
 - b. Major contraindications: Retin-A, Renova, hydroquinone, blood-thinning medications, topical or cortisone medication, Accutane
- C. Release Forms
- D. Product testing

3. Types of Products for Hair Removal and Application 3 hours Techniques

- A. Tweezing
- B. Depilatories (e.g., Neet and Nair)
- C. Waxing:
 - 1. Hard wax
 - 2. Soft wax
 - 3. Sugaring

4. Disinfection, Sanitation, State Rules, & Safe Work Practices 1 hour

The above training recommendations should be obtained from an educational provider that is product neutral such as a CCCS or DPOS school, continuing education provider, or other educational entity recognized under Colorado law. Courses offered by manufacturers will not be recognized.

Once the waxing education is obtained, the licensed manicurist shall make the educational certificate available upon request. Educational entities are encouraged to maintain a list of waxing certificates issued to ensure the authenticity of such training.

The Director warns that the failure to obtain such training as outlined in this policy may subject a manicurist to disciplinary action pursuant to section 12-8-132(1)(c), C.R.S., for being incompetent to practice a profession licensed under the Barbers and Cosmetologists Practice Act, "which shall include performing services outside of person's area of training, experience, or competence."

<p>POLICY 2: Medical Devices for Esthetic Services Date Adopted: May 8, 2006</p>
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Medical spas and advanced aesthetic services are becoming more popular and commonplace in cosmetology salons and medical offices. There are several machines being used to improve the aesthetic appearance and health of one's skin. The most common machines are microdermabrasion, electrolysis, intense pulse

light (IPL) therapy, LED light, extreme super-luminous LEDs, and lasers. However, depending on the machine's classification by the U.S. Food and Drug Administration (FDA), all of these devices have different restrictions on who can use such device and under what circumstances. This policy sets some basic parameters regarding the use of medical devices for aesthetic services.

The FDA's Center for Devices and Radiological Health (CDRH) is responsible for regulating firms who manufacture, repackage, relabel, and import medical devices sold in the United States. Medical devices are classified into categories of Class I, II, and III. Regulatory control increases from Class I to Class III. The device classification regulation defines the regulatory requirements for a general device type. A description of device classification and a link to the Product Classification Database can be found at: <http://www.fda.gov/cdrh/devadvice/313.html>.

In conjunction with the Colorado Board of Medical Examiners, the Director deems it appropriate for licensed cosmetologists and estheticians to use any Class I device such as electrolysis, red light LED, and microdermabrasion. Class II devices such as intense pulse light (IPL), blue light LED, and laser are more invasive than Class I, and as a result, the risk of injury is greater. Medical knowledge is needed in order to appropriately use the machine. Therefore, the Director determines that Class II devices are beyond the scope for licensed cosmetologists and estheticians. Cosmetologists and estheticians can only use a Class II device when under the delegation of a Colorado-licensed physician in compliance with Medical Board Rule 800, which can be found at <http://www.dora.state.co.us/medical/rules/800.pdf>.

All medical device manufacturers have a FDA manufacturer and product number. Cosmetologists and estheticians can only use Class I devices properly registered with the FDA. Device and manufacturer registration numbers can be found and verified at the FDA Web site, <http://www.fda.gov/cdrh/>, or by contacting the FDA at 1-800-638-2041 or via Email at DSMICA@cdrh.fda.gov.

The Director warns that the failure to comply with this policy may subject a licensee to disciplinary action pursuant to section 12-8-132(1)(c), C.R.S., for being incompetent to practice a profession licensed under the Barbers and Cosmetologists Practice Act, "which shall include performing services outside of person's area of training, experience, or competence." In addition, licensees may be subject to an injunction initiated by the Colorado Board of Medical Examiners for practicing medicine without a license as well as criminal prosecution for violating state law.

<p>POLICY 3: Concerning Felony Convictions Date Adopted: August 13, 2007</p>
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Pursuant to section 12-8-132 of the Colorado Revised Statutes, it is a violation of the Barbers and Cosmetologists Act to have a felony conviction. The Director has the authority to determine the qualifications of applicants and licensees and to grant or deny licenses. When an applicant for licensure has a felony conviction, the

Director will consider several factors, including but not limited to the severity of the felony, the circumstances surrounding the felony conviction, the number of felony convictions, whether the applicable sentence(s) has/have been discharged, and evidence of rehabilitation. In general, if an applicant for licensure has one or more felony convictions, the following policies will follow:

- a) **Applicant is still incarcerated in the Department of Corrections.** If the applicant is still in prison, the applicant will be denied licensure. An individual does not need a license to practice as a barber or cosmetologist while in the Department of Corrections. The Director recommends that the applicant apply after the individual is released from incarceration.
- b) **Applicant is not incarcerated but has not yet completed his or her sentence.** If the applicant is not in prison, but has not yet completed his or her sentence, the Director will, in appropriate circumstances, grant a conditional license and require the individual to enter into a stipulation, prior to licensure, processed by the Office of Expedited Settlement. The factors considered by the Director, in some circumstances, could result in the denial of a license for an applicant until the applicant has completed the sentence.
- c) **Applicant has successfully completed his or her sentence.** If the applicant has successfully completed his or her sentence, the following policies will follow:
 - I. The Director will, in appropriate circumstances, grant a conditional license if the sentence has been completed within 5 years of the time of the application for licensure. The conditional license would last for at least one year and would require compliance with all state laws, federal laws and any other conditions that the Director might deem appropriate. The factors considered by the Director, in some circumstances, could result in the denial of a license for such an applicant.

<p>POLICY 4: Concerning Permanent Tinting for eyelashes and eyebrows Date Adopted: August 13, 2007</p>
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The Director of the Division of Registrations neither encourages nor endorses the use of permanent tinting of eyelashes and eyebrows. At this time, the Federal Drug Administration (FDA) has not approved any color additives for use in permanent tinting. Moreover, the FDA has banned certain color additives, as discussed in the attached link:

<http://www.cfsan.fda.gov/~dms/cos-toc.html>.

The Director, however, understands that the process of permanent tinting is allowed in other states and is pervasive within the professional industry in Colorado. The Director requires that MSDS sheets be kept for all substances used

in permanent tinting and failure to do so may be a violation of the rules. In addition, the Director requires that professionals providing permanent tinting services around the eyes follow the same precautions that would be used for any coloring or tinting, including but not limited to a predisposition test, also known as a "patch test." Consequently, it is the Policy of the Director of the Division of Registrations that allegations involving permanent tinting will be investigated and prosecuted only upon a showing of actual harm or use of substance banned by the FDA and/or subject to an import ban.

POLICY 5: Concerning Unsigned Complaints
Date Adopted: October 15, 2007

Anonymous or unsigned complaints are not preferred by the Division Director or the Office of Barber and Cosmetology. Often, the Office will need information concerning various indicia of proof, such as dates, names, locations and specific actions, in order to properly investigate a complaint. Many cases against licensees will go to a hearing before the Office of Administrative Courts. It is important that we have the name of the complaining witness in the event that we need that individual to provide an affidavit or testify at the hearings. It is extremely difficult for the Office to prevail in a disciplinary action if we do not have the identity and contact information of the complaining party. Moreover, unsigned or anonymous complaints are more time consuming and more expensive to prosecute.

Therefore, it is the Policy of the Director of the Division of Registrations that, subject to the discretion of the Director, the allegations contained in unsigned or anonymous complaints will be investigated and prosecuted only upon a showing of harm or potential harm.

POLICY 6: Concerning Public Records
Date Adopted: October 15, 2007

It is the Policy of the Director of the Division of Registrations that the following documents are a matter of public record:

1. Letters of Admonition
2. Stipulations between the Director and a licensee
3. Orders of Summary Suspension
4. Final Board Orders
5. All pleadings, initial decisions or orders, including any attachments, file or created in relation to a hearing held pursuant to the Barber & Cosmetology Act or the Administrative

Procedure Act shall be open to public inspections. Matters sealed by order of an Administrative Law Judge or the Director shall not be open to public inspection.

6. All material contained in the record of an appellate proceeding following a hearing held pursuant to Title 12, Article 8 of the Colorado Revised Statutes or the Administrative Procedure Act shall be open to public inspection unless sealed.

The following documents are also considered to be a matter of public record even though they are not considered to be a disciplinary action:

1. Licensing Agreements between the Director and applicants or licensees
2. Stipulations which are non-disciplinary in nature
3. Injunctions
4. Cease & Desist Orders

POLICY 7: Delegated authority from the Director of the Division of Registrations to the Program Director of the Office of Barber and Cosmetology Licensure
DATE Adopted: July 1, 2000, Amended January 2, 2009, Amended October 5, 2009

PURPOSE: Outline the authority delegated to the Program Director and Section Director in carrying out the Director's duty.

By this policy, the Director of the Division of Registrations delegates the following statutory powers, duties, and functions to the Section Director and Program Director of the Office of Barber and Cosmetology Licensure:

- Establish fees for registrations and licenses and renewal of such registrations and licenses
- Evaluate the qualifications of registrants or applicants for registration or licensure except for those with "yes" responses pursuant to the matrix established by the Director
- Issue and renew licenses and registrations that meet statutory requirements
- Initiate investigations and inspections with respect to any complaint against any registrant or licensee, or individual who provides a service which requires registration or licensure
- Issue subpoenas compelling the attendance and testimony of witnesses and the production of books, records, papers, or other substances and documents for investigation purposes
- Initiate actions to enforce subpoenas in District Court
- Employ administrative law judges on a full-time or part-time basis to conduct any hearings that are necessary

- Initiate the prosecution and enjoinder of all persons violating the organic acts upon the Director's approval
- Coordinate and conduct public rulemaking hearings
- Issue letters of concern, letters of admonitions, and fines/citations to licensees and/or registrants as disciplinary action for practicing with a lapsed license and/or registration for less than two years pursuant to Director's policy
- Issue Suspension Orders as required by the Child Support Enforcement Program
- Perform the initial review of complaints submitted to program area
- Initiate complaints against registrants currently under Stipulation or other Final Agency Action if the registrant has failed to comply with any of the terms of the Stipulation or other Final Agency Action
- Initiate complaints on behalf of the Director
- Utilize services of the Office of Investigations as warranted to carry out duties of the Director
- Grant or deny extensions to due dates set forth in rules related to Initial Decisions and respond to other procedural matters that may arise
- Perform additional delegated duties as set forth in other Director policies
- Grant an extension of time to allow a licensee or registrant to complete continuing education requirements upon a showing that the licensee or registrant has made reasonable efforts to complete the continuing education requirement within the probationary time period
- With the approval of the Director, issue letters of admonition, letters of concern, fines/citations, orders to cease and desist, and stipulated final agency orders. The Director reserves the responsibility for signature on all final agency orders issued as a result of an initial decision by an administrative law judge.
- Any action taken pursuant to this policy will be presented to the Division Director for review
- Perform education equivalency reviews for applicants who attended out-of-state education programs
- Issue cease and desist orders on behalf of Director for unlicensed activity
- Coordinate and lead advisory committee meetings

<p>POLICY 8: Subpoena Enforcement Date Adopted: October 5, 2009</p>
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PURPOSE: To provide written notice regarding the delegated authority provided to the Program Director to directly refer enforcement of a subpoena to the Office of the Attorney General.

It is the policy of the Director for the Office of Barber and Cosmetology Licensure that when, in the course of an investigation of a complaint, a subpoena needs to be enforced pursuant to the Barber and Cosmetology Practice Act and the Administrative Procedure Act (APA), the

Director specifically authorizes the Program Director, or designee, to refer such matter directly to the Office of the attorney General for enforcement.

POLICY 9: Process for Handling Complaints involving Advisory Committee Members
Date Adopted: October 5, 2009

PURPOSE: To provide written notice regarding the process by which specific types of complaints against advisory committee members, licensees who have served on the Committee within the past five years, or licensees who have an ongoing formal relationship (Consultants or Experts) with the Director/Office will be handled. The purpose of this policy is to assure the integrity of the disciplinary process and prevent any appearance of bias or preferential treatment.

It is the policy of the Director for the Office of Barber and Cosmetology Licensure that any signed complaint received by the Office against a current licensee who is a member of the Committee or one who has served on the Committee within the past five years, or a licensee who has an ongoing formal relationship with the Office will be handled as follows:

- If the complaint alleges a violation of the Barber and Cosmetology Practice Act or the Director's Rules, the complaint will be sent to the Office of Investigations within the Division of Registrations for a formal investigation.
- If the complaint alleges substandard practice, the Office of Investigations will also have the case reviewed by an independent consultant selected by the Office of Investigations.

Upon completion of the investigation, the report will be referred to the Director for appropriate action. If the complaint is against a current committee member, he or she shall recuse from all discussions regarding the complaint and physically leave the meeting room during these discussions.

All other customary procedures for the handling of a complaint by the Director will apply. These include but are not limited to issuance of a 30-day letter, notification to the licensee and complainant of the Director's decisions.

Anonymous complaints filed against a current licensee who is a member of the committee or one who has served on the committee within the past five years, or a licensee who has an ongoing formal relationship (Consultants or Experts) with the Director/Office will be evaluated by the Director "on a case by case basis".

POLICY 10: Disciplinary Action Regarding Expired Licenses
Date Adopted: October 5, 2009
Effective January 1, 2010
References: Section: 24-34-102, C.R.S.

PURPOSE: To provide written notice regarding disciplinary action when a licensee (Barber, Cosmetologist, Esthetician, Hairstylist or a Manicurist) practices with an expired license.

It is the policy of the Director to take disciplinary action when the Director finds that a licensee practiced or offered to practice as a Barber, Cosmetologist, Esthetician, Hairstylist or a Manicurist with an expired license.

(a) If a licensee fails to renew a license to practice by the license expiration date, a penalty fee will be due upon renewal of the license. From the date of expiration, a licensee will have 60 days within which to renew a license during which the license will be deemed active. The license will be deemed to have expired 61 days after expiration of the license,.

(b) If the Director finds that a licensee practiced or offered to practice with an expired license for a period of 61 days up to one year, it is the policy of the Director to issue a Letter of Concern stating that the Director cautions against such behavior.

(c) If the Director finds that a licensee practiced or offered to practice with an expired license for a period of one to two years, the licensee must apply for reinstatement of the license. It is the policy of the Director to issue a Letter of Admonition, which is a disciplinary action recorded on the license history.

(d) If the Director finds that a licensee practiced or offered to practice with an expired license for more than two years, the licensee must apply for reinstatement of the license pursuant to the requirements in Rule 12 and the Director may levy a fine in addition to a Letter of Admonition, or such other disciplinary action as the Director deems appropriate.

(e) If the Director finds that a licensee was previously warned about such behavior, the matter will be reviewed by the Director on a "case by case" basis.

POLICY 11: Cases Dismissed with Letters of Concern: clarification of basis for dismissal, reopening of such cases and case retention period
Date Adopted: January 1, 2010

PURPOSE: To clarify the basis for this type of dismissal, when the Office of Barber and Cosmetology may reopen such a case and designation of a specific retention period for these types of cases.

It is the policy of the Director for the Office of Barber and Cosmetology that complaints that are dismissed with letters of concern are not dismissed as being without merit but rather are dismissed due to no reasonable cause to warrant further action at that time. Cases that are dismissed with a confidential letter of

concern will be retained in the Office of Barber and Cosmetology files for a period of 5 years.

The Office of Barber and Cosmetology may reopen a case that was dismissed with a letter of concern in the face of a change in circumstances. Such a change in circumstances would include but not be limited to:

- discovery of new evidence supporting the underlying charges
- evidence that the licensee has engaged in further unprofessional conduct/grounds for discipline following issuance of the letter of concern in which there is a nexus between the new conduct and that was addressed in the case that was dismissed with the letter of concern

After 5 years from the date of the letter of concern, the file will be disposed of in accordance with the Division's records management procedures. If the licensee has other active cases pending at the end of the 5 year retention period, the letter of concern may be kept for a longer period of time at the discretion of the Office of Barber and Cosmetology staff.

POLICY 12: Procedural Order Regarding Review of Initial Decisions

Date Adopted: October 4, 2010

Effective: October 4, 2010

References: Section: 24-4-105(14)(a)(II), C.R.S.

PURPOSE: To provide written notice regarding the issuance of a procedural order regarding review of initial decisions.

The Division Director delegates authority to the Program Director, Section Director or their designee to issue on the Director's behalf the adopted "Director's Procedural Order Regarding Review of Initial Decision" with the directive that the Order be issued upon receipt of all initial decisions.

POLICY 13: MULTIPLE LICENSES

Date Adopted: October 8, 2011

Pursuant to Section 12-8-119, C.R.S., the director shall issue a license to an applicant who has passed the required examinations to practice hairstyling, esthetics, manicuring or cosmetology, has paid the required fee and complies with the requirements set forth in the law for the specific license.

The Director will allow licensees who have all ACTIVE limited licenses (esthetician, hairstylist and manicurist) to also hold a cosmetologist license, upon request. They will be informed that each license type carries a separate fee.

The Director will allow licensees who have all ACTIVE limited licenses to, upon request, consolidate the limited licenses into a SINGLE cosmetologist license. These active

limited licenses will expire based on the established expiration date during the normal course of the renewal process.

The Director will allow licensees who have an ACTIVE cosmetologist license to, upon request, hold one or all three of the limited licenses after completion of the practical and written examination for the specific license type. Evidence of passing the examinations will be needed from the applicant.

Based on the situations above, a non-fee application will need to be completed and processed by the office of licensing and the program area when an authorization to test is needed. Fees for testing, will be assessed by the examination vendor.

Licensees who have lapsed limited licenses will not be allowed to consolidate into a cosmetologist license unless and until they take and pass the written and practical examination for the cosmetologist license. Licensees in this situation WILL be allowed to reinstate any of the limited licenses according to the established reinstatement requirements and the reinstatement application.

Licensees who have a lapsed cosmetologist license who request one or all three of the limited licenses RATHER than the cosmetologist license will need to complete the required examinations for the specific license type. Licensees in this situation WILL be allowed to reinstate the cosmetologist license according to the established reinstatement requirements and the reinstatement application.

This policy is also applicable to licensees who hold a barber and a cosmetologist license. A licensee in this situation would hold and pay for five separate licenses.