



Arkansas Department of Health

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PUBLIC COMMENT REPORT Proposed Rules for Cosmetology and Body Art in Arkansas

PUBLIC COMMENTS:

Public comment period expired July 10, 2024.

Comment #1: Angi Ozbun

Written Comment, received June 19, 2024

While reviewing the draft of the proposed rules may I first say blessed be the person who had to type this. They deserve a raise! I did come across a couple of things that I was wanting clarification on. First, under 115 on page 12, Temporary License. This was previously included as a subset of the Military License in our current rules making it clear it pertained to Military and out of state applicants. In the draft, it does not specifically state this and directs me to documentation required under 202. So my question is who does the temporary license section apply to? Is it still military/out of state applicants (neither of which are covered in 202) or is the Section now issuing temporary licenses to anyone, including students, who apply for testing? The reason I am asking and possibly my confusion is that since I am on a border, I do work with several students applying for licenses in Missouri and it is their practice to issue Temporary licenses while a student is awaiting testing. I was wondering if that was going to be the case for us now. Second, under the curriculum guidelines as follows; Manicure, (n) (8) on page 43 Aesthetic, (o) (8) on page 44 & Electrology (p) (10) on page 46 These all state that under Act 724, 50% of the hours may be done in class, online, or distance learning. The last instruction I received from the Section on 8/16/21 was that Act 724 only referred to the Cosmetology license. Manicure, Aesthetics, Instruction and Electrology were not included in the eligibility for online or distance learning. Has this been changed? Do Aesthetics now qualify to do 50% in an online or distance learning course? Last question is regarding (r) (1) on page 46, Discretionary Acceptance of Certified Courses from Related Educational Training, it refers to a conversion table in Appendix A. There was no Appendix A with the draft. Where do we find this information?

AGENCY RESPONSE:

The provisions for the Department to issue temporary licenses applies to both applicants under Military licensure and reciprocity. As the expediency of licensure has increased, the need for issuance of temporary licenses has decreased and therefore, the Department will review removing this provision in future rule promulgations.

After review of Act 724 of 2021 and the definition of the art of cosmetology under Ark. Code §17-26-102, the Department has determined that the legislative intent under Act 724 was to allow online or remote education up to 50% of the curriculum for cosmetology and any related branches. Each branch of manicure, aesthetics, and electrology fall within this and benefit from online or remote education, not to exceed 50% of each branch's required curriculum.

Appendix A is the conversion table established by the Department and previously available to members of the public and will be included in the draft of the proposed rule submitted for approval.

Comment #2: Shannon Ewald
Received July 1, 2024

Good morning! I was checking out the amended info before the July 10th deadline. I am reading chemical peel rules under the cosmetology rules and need clarification on the rules of PH. the % of allowed AHA/BHA and TCA are very straight forward and easy to follow. I am running into issues with the ph rules of 2 Most chemical peels that fall well within these guidelines have a PH of 1 or 1.5 Having a rule of 2ph makes it difficult to follow and I'm discovering that most common peels or AHA enzyme masks that myself and probably other Estheticians are using may not fall with this 2ph rule. Again, it is easy to follow the 50% AHA, 20% BHA and 20% TCA my concern is how the 2ph drastically changes my ability to find any product that utilizes the AHA/BHA strengths while remaining above 2ph. As I set myself up for peel season this fall I want to make sure I'm within the Arkansas guidelines but I also dont want to do due diligence and be behind other Estheticians that are continuing services and not considering the ph rule. I want the results that the higher AHA/BHA will safely give my clients. Is there an education gap I need to further myself in? I asked this question to my inspector when she came to inspect my room (she is wonderful btw!) and she suggested emailing. My second less lengthy question is to confirm that I can offer IPL photofacial as a solo Esthetician, assuming my machine is a class 1 or 2. This same photofacial machine allows for IPL hair removal. I am reading that I could not use this machine for hair removal even though it falls under the class 1/2? Or can I offer IPL hair removal so long as I do not promise "permanent hair removal" as laser is not permanent.

AGENCY RESPONSE:

The provisions regarding PH levels for chemical peels were previously recommended by subject matter experts through the Cosmetology Technical Advisory Committee and followed FDA guidelines. The Department will take this comment under further review and discuss with current subject matter experts to determine if changes to the Rules are appropriate.

Pursuant to FDA safety requirements, cosmetologists and estheticians may use either a class 1 or class 2, provided they follow all FDA, OSHA, and state safety requirements and manufacturer instructions.

Comment #3: Christina Lewis

Verbal Comment, received during public hearing on July 10, 2024

Ms. Lewis noted the following during her verbal comments: 1. 110-2 The time to make a complaint should be extended or exception be made on a case-by-case basis as many customers do not know that it is possible or how to make a complaint until outside the 90-day window. 2. 306- Record Keeping – section (G) piercing/tattoo – are we now required to keep a separate consent book for minors’ paperwork from that of the rest of the other customers paperwork 3. 306 Record Keeping – section 1 (B) – Regularly told by parents that other shops have separated them from their minor during the procedure (no line of sight) If they make a complaint, what proof can they give to affirm their complaint? 4. 306 – Record Keeping – section 2(B) What forms of ID/parental consent/proof of guardianship is required for piercing earlobes of minors under the age of 16. 5. 314 – Standard for serving clients references of steel or titanium jewelry for the initial piercing- what grade of surgical steel is allowed for the initial piercing?

AGENCY RESPONSE:

In order to provide more efficient agency adjudication of complaints, complainants are encouraged to report all complaints within the ninety-day window. As the Department has implemented in similar occupation rules, the Department will consider expanding this provision to allow complaints of serious nature, including those of sexual assault, past the initial 90 day window, if adjudication of the complaint is necessary for the protection of public health and safety.

The Department is implementing a requirement for separate recordkeeping for body art performed on minors to ensure compliance with Arkansas law regarding minors. The body art establishment is now required to keep one record bound book for all clients since the last inspection and one record bound book for minors, instead of two bound books for the current year since the last inspection and the previous year’s bound book.

Pursuant to Ark. Code §17-26-602 and the Rules, the parent or legal guardian must be present during the procedure. If any minor or parent has a complaint regarding this requirement, the complaint should be submitted to the Department for review and adjudication.

Ark. Code §17-26-602 requires the person to undergo body art (piercing) and the parent or legal guardian to each (if the minor has attained the age required to obtain an identification) shall provide a valid government-issued form of identification that includes a name, date of birth, and photo; and shall provide proof of guardianship that matches the identification given, such as birth certificate or a court or state record for adoption, legal guardianship, emancipation, or a marriage license.

Ark. Code §17-26-611(c)(3) requires jewelry used for initial piercing be certified by the ASTM International or the International Organization for Standardization, or both, for steel and titanium jewelry.

AGENCY RESPONSE:
Proceed to adoption.