



August 1, 2017

Rebecca Gaspard
Board of Cosmetologist Examiners
1000 University Avenue West, Suite 100
St. Paul, MN 55104

RE: *OAH Docket No. 65-9013-33230, Revisor R-4342. Proposed Permanent Rules on Advanced Practice Esthetics Licenses, Application for License; Grandfathering, Curriculum and Practices; and Proposed Amendments to Rules Governing the Practice of Cosmetologists, Estheticians, Nail Technicians, and Schools; Advertising; Infection Control; and Curriculum Requirements for Cosmetologists and Estheticians, Minnesota Rules, chapters 2105 and 2110; including the proposed repeal of parts 2105.0010, subpart 3a; and 2105.0420.*

Dear Ms. Gaspard:

The MMA appreciates the opportunity to submit the following comments on the proposed permanent rules on advanced practice (AP) esthetician licensing.

The primary purpose of professional licensing is public safety/protection. As such, the MMA supports the general framework reflected in the rules that limits the scope of practice for AP estheticians to the epidermis – specifically limiting services to above the epidermal dermal junction (and to the stratum corneum for cosmetology/esthetician practice). The board has appropriately recognized any services provided beyond this point as out of scope for AP estheticians and belonging exclusively to medical practice.

The potential for AP esthetician treatments and procedures to penetrate beyond the epidermal dermal junction, however, is real. As such, the MMA supports adoption of education and training standards that ensure compliance with AP esthetician scope; expects rigorous attention and professional restraint in the application of AP esthetic treatments and procedures within the boundaries of AP esthetician scope; and, urges diligent regulatory oversight of AP esthetician practice to protect the safety and health of Minnesotans.

2105.0010 Definitions

The MMA recommends the addition of two definitions – one for stratum corneum and one for epidermal dermal juncture. These terms are essential for distinguishing the scope of practice between basic and advanced esthetician services, are used in defining the scopes of practice, yet are not

defined in the proposed rules. The MMA believes that the addition of these two terms will strengthen the rules and add clarity.

Subp. 8a Electrical energy treatments

The MMA recommends that this definition be amended in two ways:

1. The specific allowed treatments, currently noted in 2105.0105, Subp. 4(B), should, instead, be included in the definition. In addition, the phrase, "and other energy treatments" is unnecessarily broad, ambiguous, and should be deleted from the list of treatments.
2. Because lasers or laser-assisted devices are defined in state law as the practice of medicine¹ and, therefore, out of scope for AP estheticians, the MMA strongly recommends that the definition be modified to note this prohibition and avoid any potential confusion.
 - o With these recommended changes, the item would read as follows: "'Electrical energy treatments' means advanced practice esthetic services for the personal care of the skin that use various forms of light or electrical energy, including light therapy, galvanic current, microcurrent, and radio frequency treatments, but excluding lasers or laser-assisted devices.'"

2105.0105 Scope

Subp. 2 Esthetics, Paragraph (D)

The MMA recommends that the word, "microdermabrasion" be stricken from this item. It appears that the failure to strike it was an error during the drafting of the rules. Microdermabrasion was intended to be excluded from basic esthetician scope and is not included in the definition of "primary exfoliation." The statement of need and reasonableness (page 13) also notes that "microdermabrasion" was intended to be deleted in this item.

Supb. 4 Advanced practice esthetic services

The MMA recommends that paragraph B be amended to read simply, "electrical energy treatments" (i.e., delete, "including light therapy, galvanic current, microcurrent, radio frequency, and other energy treatments"). This change is consistent with the recommendation, above (definitions), to move the types of permissible treatments to the definition section rather than including them in this item.

2105.0110 Advertising

The MMA strongly supports the inclusion of paragraph E that would prohibit the use of the term medical esthetician. This is not a recognized provider in Minnesota and prohibiting the use of this term is appropriate to avoid public confusion.

2105.0155 Grandfathered advanced practice estheticians

In Subp. 1(C), the MMA recommends that the phrase "electromagnetic energy services," be changed to "electrical energy treatments." Electromagnetic energy services are not defined or used elsewhere in the rule. All relevant items should be defined and used consistently throughout the rule. This phrase may have been used in error during the drafting of the proposed rules.

¹ M.S. §147.081, Subd. 3(4)

2105.0830 Compliance with other regulations

The MMA supports the addition of this section as a means of improving understanding and reducing confusion as to the scope of the rules.

2110.0010 Definitions (Cosmetology Schools)

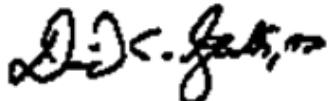
Subp. 15a Electrical energy treatments

The MMA recommends that this definition be amended to match the definition proposed (above) and as included in 2105.0010, Subp. 8a.

Finally, the MMA wishes to comment on the advisory committee recommendations and other information presented to the Board of Cosmetologist Examiners (BCE) on May 8, 2017. In the presentation materials (slides 9-11), there are specific references to "intent" or to "intentional wounding." Based on this information, the MMA is extremely concerned that "intent" may be used by the BCE as a standard for regulation of esthetician and AP esthetician practice. The MMA submits that regulation must be based on the legally-defined scope of practice and professional adherence to a reasonable standard of care. Advanced practice estheticians (and estheticians) employ treatments and procedures many of which have the *potential* to penetrate into the dermis; injury or wounding that extends into the dermis, by definition, exceeds AP esthetician scope of practice. It is our understanding that there is no statutory authority to regulate AP esthetician practice based on *intent* to cause harm; therefore, the MMA is disappointed that the May 8, 2017 presentation materials made such a reference. The MMA expects that the board will continue to ensure the safety of the public by regulating AP esthetician practice based on the defined scope of practice and consistent with high-quality, professional standards of care.

On behalf of the MMA, I want to thank you for including the MMA on the rules advisory committee and for your consideration of these comments. Should you have additional questions, please feel free to contact Janet Silversmith, MMA Director of Health Policy.

Sincerely,



David C. Agerter, MD
President