



NORTH DAKOTA STATE BOARD OF COSMETOLOGY

4719 SHELburne ST. SUITE 1
BISMARCK, ND 58503
TELEPHONE (701) 224-9800

Chairman Klein, Senator Larsen, Committee Members,
I am Maureen Wanner, the President of the State Board of Cosmetology.

We, as a board, serve:

- 1942 Salons and/or renter,
- 6926 Cosmetologist,
- 535 Estheticians,
- 789 Manicurist,
- 85 Instructors,
- 4 schools (2 in Fargo, 1 in Grand Forks, 1 in Bismarck) with a 5th opening soon in Williston,
- along with 233 students.

The instructors need to complete 8 hours of continuing education per year. There is no continuing education required for other licensees.

Our mission is to ensure the health and safety of North Dakota consumers by promoting ethical standards and by enforcing the laws of the beauty industry. It is the duty of the board to protect the public health, welfare, and safety through the prevention of the creating and the spreading of infectious and contagious diseases.

We are opposing HB 1426 as it is presented and offer an amendment.

Page 1. Lines 13-17.

"Cosmetic application" is mentioned in 43-11-02 #6 (page 5, line 7-11) and we agree that it does need to be defined. In our amendment, we want to add "topical" to cosmetics application to clearly define the exemption. We ask that the term "rouge" be changed to "blush," an updated term. We are asking to strike "The term includes the application of makeup applied using an airbrush." In this same exemption it states, "if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration." We need to continue with consistency. Having it defined in this manner will keep with national standards.

Page 2. Lines 14-19.

"Hairstyling" is already defined in the definition of cosmetology. Hairstyling is a part of cosmetology.

Very few states have a separate definition for hairstyling, hairstylist, hairdressing, or hairdresser. It is not a trend. It is not consistent. In these very few states, it is happening because the state has been pushed to except a definition presented, surprised by amendments and unprepared to fight against them. And those definitions for hairstyling in those state varies to include chemical services such as coloring, perming, or chemical straightening, or not, or to include esthetics, skin care, and waxing, or not. They are not consistent enough to follow or mimic. Cosmetology is consistent. We are asking your to leave hairstyling a part of cosmetology.

Due to reciprocity, we would be unfair to our licensees by granting them a license that did not transfer to another state. We need keep consistent with the national standards and verbiage. We stand with the National Interstate Council of State Boards (NIC) to keep the definition of cosmetology intact. NIC has a national test for cosmetology which makes reciprocity easier for those moving across the states.

“Hairstyling,” as simple as it may sound, if you do not know how to properly heat hair, especially chemically treated hair, it can be burnt. With education, a cosmetologist will know:

- Modern hot tools heat up fast and can get extremely hot. With the professional products, a professionally trained stylist can work very quickly with hot tools, so not to burn the hair or that maybe should work with rollers instead of hot tools.
- The proper care of the hair and what types of products to use when.
- Infection control, how to best disinfect their tools after each use and before using them on the next client.
- Scalp analysis.
- We have not even begun to talk about headlice. Could you identify headlice?

“The term would include the use and styling of hair extensions, hair pieces, and wigs.”

These “hairstylist” will be potentially able to work with extensions, hair pieces, and wigs and also be able to use “mechanical devices” to install or bind them into the hair. From my knowledge, extensions, hair pieces, and wigs most times they need to be color matched and cut to desired length. And again, there is the education needed to install or bind them to the hair. Reputable training courses require each participant to show proof of their cosmetology license before enrolling. It is an advanced training class put on by the hair extension companies and then technicians will be able purchase extensions, hair pieces, and wigs from these companies. If these “hairstylists” are unlicensed therefore unable to get proper training and therefore unable to buy quality product, they will have to purchase lower grade hair. One example of lower grade hair is hair strands with cuticles going in opposite directions which can leave the hair in a more matted mess. Unlicensed technicians will not be able to get high quality products for the safety and protection of the consumers. Formaldehyde is often used in low grade hair extensions. I could also talk about binding agents, glue, and the needles used. Needles also need to be disinfected. How will they disinfect tools and space for their clients? We will never know.

Page 5. Line 8.

We are asking to strike out the term “beauty aid, or equipment.” What beauty aid or piece of equipment would you allow to be used by an unlicensed person on yourself or family member?

- A piece of equipment that was bought online with no training?
- Laser hair removal machine?
- Micro needling?
- Maybe a high percentage acid?
- Makeup brushes that no one disinfects that would easily harbor bacterial infections such as herps, MRSA, staph infection, e coli.? I know this exemption says “applied only with disposable applicators” but “beauty aid or equipment” creates a loophole.

“Cosmetic application,” again seems simple and mindlessly done every day by millions of people around the world. So, what could go wrong with unclean beauty aids aka makeup

brushes, powders, and mascaras? That is why we stand firm on the use of disposable applicators.

We are asking to keep this exemption clear: "Services provided by retailers or sales personnel trained in the *demonstration* of cosmetics application, if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration."

We cannot open this up for a loophole for the public, or our licensees alike, to use any beauty aid or piece of equipment they want to use.

Page 5. Line 9-11.

We need to keep the statement "The board may adopt rules to ensure sanitary conditions for services provided under this exemption." We again, are to ensure the health and safety of North Dakota consumers by promoting ethical standards and by enforcing the laws of the beauty industry. It is the duty of the board to protect the public health, welfare, and safety through the prevention of the creating and the spreading of infectious and contagious diseases.

Page 5, line 17.

"Dry hairstyling." What is "dry hairstyling?" If dry hairstyling is what they wish for, then shampooing, conditioning, drying, and the use of product would not be needed. And they would have to style with hands only, without mechanical tools. Mechanical tools fall under cosmetology. Cosmetologist are taught how to disinfect these tools, including cords, after each person to prevent the creating and spreading of infectious and contagious diseases. "Dry hairstyling" is not a nationally recognized term.

Page 5. Line 20-26. Niche Beauty Services

The definition for Niche is denoting products, services, or interests that appeal to a small, specialized section of the population. Why would we add verbiage, terms, and definitions like this into our law? The board works hard on striving and maintaining verbiage that is nationally recognized, therefore, licensees can easily move from state to state. We would be doing a disservice to everyone we possible would issue this license or certification to. They would never be able to move from state to state. We utilize the NIC tests and there is no test for "niche beauty services." We would not license or certify someone and then not regulate them under 41-11.

Again, our board agrees to stand with the board's mission which is to ensure the health and safety of the North Dakota consumers by promoting ethical standards and by enforcing the law of the beauty industry.

Thank you for your time.

Submitted by Maureen Wanner,
President, State Board of Cosmetology

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1426

A BILL for an Act to ~~create and enact section 43-11-02.1 of the North Dakota Century Code, relating to certification of niche beauty services providers; and to~~ amend and reenact sections 43-11-01 and 43-11-02 of the North Dakota Century Code, relating to exemptions to regulation by the state board of cosmetology and definitions relating to the regulation of cosmetology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the North Dakota Century Code is amended and reenacted as follows:

~~43-11-01. Definitions.~~

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Booth space" means that part of a licensed salon operated independently by an individual licensed under this chapter.
3. "Cosmetic application" means the application of a topical cosmetic to enhance the appearance of the face or skin, including powder, foundation, rougeblush, eyeshadow, eyeliner, mascara, and lipstick. ~~The term includes the application of makeup applied using an airbrush.~~ The term does not include the application of permanent makeup or tattooing.
4. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
- 4.5. "Cosmetology" means any one or a combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises.

a. The term includes the following or any one or a combination of these practices:

arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any individual by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, performing noninvasive hair removal, beautifying, or similar work on the body, manipulation of eyelashes, or manicuring the nails of any individual.

b. The term does not include natural hair braiding or threading.

~~5.6.~~ "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.

~~6.7.~~ "Esthetician" means an individual who is licensed by the board to engage in the practice of skin care.

~~7.8. "Hairstyling" means the practice of shampooing, conditioning, drying, arranging, curling, straightening, or styling hair using only mechanical devices, hair sprays, and topical agents, such as balms, oils, and serums. The term includes the use and styling of hair extensions, hair pieces, and wigs. The term does not include cutting hair or the application of dyes, bleach, reactive chemicals, keratin treatments, or other preparations to color or alter the structure of hair.~~

~~9.8.~~ "Homebound" means an individual who is ill, disabled, or otherwise unable to travel to a salon.

~~8.10.9.~~ "Instructor" means an individual who is at least eighteen years old, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.

~~9.11.10.~~ "Invasive care" means any procedure that invades the live tissue of the dermis,

including:

a. Laser use; and

b. Chemical peels using:

(1) Thirty percent or higher concentration of alpha hydroxy acid;

(2) Twenty percent or higher concentration of beta hydroxy acid;

(3) Two percent or higher concentration of resorcinol;

(4) Fifteen percent or higher concentration of trichloroacetic acid (TCA); or

(5) Fifteen percent or higher concentration of phenol.

~~10.12.11~~. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any individual.

~~11.13.12~~. "Manicurist" means an individual who is licensed by the board to engage in the practice of manicuring.

~~12.14.13~~. "Master cosmetologist" means an individual who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.

~~13.15.14~~. "Mechanical device" means a ~~brush~~, clip, comb, crochet hook, curler, curling iron, ~~flat iron~~, hairpin, roller, scissors, blunt-tipped needle, thread, ~~tweezers~~, and hair binder.

~~14.16.15~~. "Natural hair braiding" means the service of twisting, wrapping, weaving, extending, locking, or braiding hair by hand or with a mechanical device. Natural hair braiding is commonly known as "African-style hair braiding" but is not limited to any particular cultural, ethnic, racial, or religious forms of hairstyles.

a. The term includes:

(1) The use of natural or synthetic hair extensions, natural or synthetic hair and fibers, and decorative beads and other hair accessories;

(2) Minor trimming of natural hair or hair extensions incidental to twisting, wrapping, weaving, extending, locking, or braiding hair;

(3) The making of wigs from natural hair, natural fibers, synthetic fibers, and

hair extensions; and

(4) The use of topical agents, such as conditioners, gels, moisturizers, oils, pomades, and shampoos, in conjunction with performing services under paragraph 1 or 2.

b. The term does not include:

(1) The application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair; or

(2) The use of chemical hair joining agents, such as synthetic tape, keratin bonds, or fusion bonds.

~~45.17-16.~~ "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

~~46.18-17.~~ "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, performing noninvasive hair removal, beautifying, or similar work on the body of any person. The term does not include invasive care or threading.

~~47.19-18.~~ "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.

~~48.20-19.~~ "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

~~49.21-20.~~ "Threading" means the method of removing hair from the eyebrows, upper lip, or other body part by using cotton thread to pull hair from follicles.

a. The term may include the use of an over-the-counter astringent, gel, and powder, tweezers, and scissors, incidental to the removal of hair by threading.

b. The term does not include the use of chemicals, heat, or any type of wax.

~~20.22.21.~~ "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-02 of the North Dakota Century Code is amended and reenacted as follows:

43-11-02. Exemptions from provisions of chapter.

This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a cosmetologist or manicurist.
4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation.
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application, ~~beauty aid, or equipment,~~ if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. ~~The board may adopt rules to ensure sanitary conditions for services provided under this exemption.~~

7. Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.
8. Skin care provided under the supervision, control, and responsibility of a physician practicing within the scope of the physician's license under chapter 43-17 or nurse practicing within the scope of the nurse's license under chapter 43-12.1.

9. Providing dry hairstyling.

~~SECTION 3. Section 43-11-02.1 of the North Dakota Century Code is created and enacted as follows:~~

~~43-11-02.1. Certification for niche beauty services.~~

~~The board shall certify an individual who performs only hairstyling and cosmetic application as a niche beauty services provider. The board may require a certificate holder to complete a board-approved four-hour course in health, safety, and infection control and state law. A certificate holder is not licensed under this chapter as a cosmetologist, esthetician, or manicurist. A facility at which a niche beauty services provider provides hairstyling and cosmetic services is not subject to regulation under this chapter.~~