

**MISSISSIPPI STATE BOARD OF COSMETOLOGY
AMENDMENTS TO RULES AND REGULATIONS**

The Mississippi State Board of Cosmetology amends its rules and regulations by: adding new Rule 114. , Oral Proceedings on Proposed Rules and Rule 115., Declaratory Opinions, and revising Rule 809., relating to Disinfecting Work Surfaces, Instruments, Materials and Supplies, and Rule 812., relating to Cleaning and Disinfecting Whirlpool Footspas,

114. ORAL PROCEEDINGS ON PROPOSED RULES

- I. This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board pursuant to §25-43-3.104.
 - A.. The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (1) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
 2. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches) Requests may be in the form of a letter addressed to the Board and signed by the requestor(s)
 3. The date, time and place of al oral proceedings shall be field with the Secretary of State’s office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty days from the filing of this information with the Secretary of State.
 4. The Board President or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.
- II Public Presentations and Participation
 - BBBBB. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
 - CCCCC. Persons wishing to make oral presentations at shall a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Department.
 - DDDDD. At the proceeding, those who participate shall indicate their name and addresses, identify any persons or organizations

they may represent, and provided any other information relating to their participation deemed appropriate by the presiding officer.

B. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

C. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

D. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where to orderly conduct of the proceeding so requires.

III. Conduct of Oral Proceeding.

D. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall:

1. Call proceeding to order.

2. Give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule.

3. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

4. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.

5. The Board may record oral proceedings by stenographic or electronic means.

115. DECLARATORY OPINIONS

I. These rules set forth the Board of Cosmetology's rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code §25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the

issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

D. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the Board means that the board has a constitutional or statutory grant of authority in the subject matter at issue.

E. The Board will issue declaratory opinions regarding the applicability to specified facts of:

1. A statute administered or enforceable by the Board, or
2. A rule promulgated by the Board.

The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

D. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. lack of clarity concerning the question presented;
2. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
3. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
4. the facts presented in the request are sufficient to answer the question presented;
5. the request fails to contain information required by the rules or the requestor failed to follow the procedure set forth in these rules;
6. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;
7. no controversy exists concerning the issue as the requestor is not faced with existing fact or those certain to arise which raise a question concerning the application of the statute or rule;
8. the question presented by the request concern the legal validity of a statute or rule;
9. the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;

10. no clear answer is determinable;
 11. the question presented by the request involved the application of a criminal statute or an set of facts which may constitute a crime;
 12. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
 13. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
 14. a similar request is pending before this board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.
 15. where issuance of a declaratory opinion may adversely affect the interest of the State, the Board of any of their officers or employees in any litigations which is pending or may reasonable be expected to arise;
 16. the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.
- D. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-12 inches by 11 inches). Request must be in the form of a letter addressed to the Board.
- E. All requests must be mailed, delivered or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone request or e-mail requests will be accepted for official opinions.
- F. Each request must include the full name, telephone number and mailing address of the requestor. All request shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including by not limited to a full, complete and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.
- G. Each request shall contain the following:
1. a clear and concise statement of all facts on which the opinion is requested;
 2. a citation to the statue or rule at issue;
 3. the question(s) sought to be answered in the opinion, stated clearly;
 4. a suggested proposed opinion from the

requestor, state the answers desired by petitioner and a summary of the reasons in support of those answers;

5. the identify of all other known persons involved in or impacted by the desired factual situation, including their relationship to the facts, name, mailing address and telephone number; and

6. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

H. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall in writing:

1. issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

2. Decline to issue a declaratory opinion, stating the reasons for its action; or

3. Agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) days period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

I. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules and that the opinion issued contains a legal or factual error.

II. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

III. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement shall remain confidential.

IV. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that

the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used a precedent for any other transaction or occurrence beyond that set forth by the requesting person.

809. DISINFECTING WORK SURFACES, INSTRUMENTS, MATERIALS AND SUPPLIES:

DCCCX. Work surfaces must be cleaned with a detergent and disinfected after each client.

DCCCXI. All instruments, materials and supplies used in direct contact upon a patron, except those which come in contact with blood or body fluids, require the following treatment:

A. Thorough cleansing of the instruments, materials and supplies with soap and water or other detergent immediately after each use, and prior to disinfection, so as to remove all foreign material which might harbor bacteria.

B. Each establishment will have and use for disinfection at all times during business hours, a Wet Disinfectant Container made of glass, stainless steel, or the type recommended by the manufacturer of the product it contains.

4. The disinfectant used must be an EPA registered, hospital grade, bactericidal, virucidal and fungicidal disinfectant.

5. The solution will be mixed and used according to manufacturer's instructions for dilution and immersion time.

6. The container will be large enough for total immersion of the open implement and will contain the appropriate amount of solution for the number of items to be disinfected.

7. The container will have a cover in place at all times, labeled as to its contents, and be easily accessible to all practitioners.

8. Implements are to be removed from the disinfectant in such a manner as not to contaminate the disinfectant solution (using tongs, baskets, and such), and placed on a clean dry towel for air drying.

9. Ultraviolet ray cabinets may be used, but are not acceptable as approved disinfecting devices. Glass bead sterilizers are not an acceptable disinfectant.

C. Storage of Disinfected Implements:

1. Disinfected combs, brushes, instruments and accessories

will be kept in a clean, sanitized, closed receptacle or cabinet when not in use.

- III. Body treatment, pedicure and manicure equipment that holds water shall be cleaned after each client by scrubbing with *surfactant* soap and water to remove all visible residue, then disinfected with an EPA registered bactericide, fungicide, and virucidal disinfectant with surface contact according to manufacturer's directions
- IV. All tools and implements which have come in contact with blood or body fluids must be disinfected in the manner stipulated in Rule 809.II., except that the disinfectant must be an EPA registered, hospital grade, *tuberculocidal* that is mixed and used according to the manufacturer's direction. Disposable items must be discarded immediately, following the Blood Spill Procedures as stipulated in Rule 813.

812. CLEANING AND DISINFECTING WHIRLPOOL FOOTSPAS.

- I. As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water.
- II. Hair Removal and waxing services may not be performed on the legs or feet before any pedicure service
- III. Each whirlpool footspa shall be cleaned and disinfected in the following manner:
 - A. Before use upon each patron,
 - 1. All water shall be drained and all debris shall be removed from the spa basin.
 - 2. The spa basin must be cleaned with a brush and *surfactant* soap and water.
 - 3. The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.
 - 4. The spa basin must be wiped dry with a clean towel.
 - B. At the end of each day,
 - 1. The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be cleaned with a brush and *surfactant* soap and water.
 - 2. Before replacing the screen, one of the following procedures shall be performed:
 - a. The screen shall be washed with a chlorine bleach solution of 1 teaspoon of 5% chlorine bleach to 1 gallon of water, or
 - b. The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

3. The spa system shall be flushed with low sudsing soap and warm water for at least 10 minutes, after which the spa shall be rinsed and drained.
- C. Every other week (bi-weekly), after cleaning and disinfecting as provided in Section B. above, each whirlpool footspa shall be cleaned and disinfected in the following manner:
1. The spa basin shall be filled completely with water and 1 teaspoon of 5% bleach for each 1 gallon of water.
 2. The spa system shall be flushed with the bleach and water solution for 5 to 10 minutes and allowed to sit for 6 to 10 hours.
 3. The spa system shall be drained and flushed with water before use upon a patron.
- D. A record shall be made of the date and time of each cleaning and disinfecting as required by Sections B. And C., and will indicate whether the cleaning was a daily or bi-weekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Cleaning and disinfecting records shall be made available upon request by either a patron or a board representative.
- E. A violation of this section may result in an administrative fine and/or disciplinary action. Each footspa not in compliance with this section may result in a separate violation.