

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



OCTOBER 20, 2014

Board Meeting
Four Points by Sheraton
11960 Foothill Boulevard
Rancho Cucamonga, CA 91739



Richard Hedges, Public Member,
President

Dr. Kari Williams, Industry Member,
Vice President

Mary Lou Amaro, Industry Member

Bobbie Anderson, Public Member

Wen Ling Cheng, Public Member

Andrew Drabkin, Public Member

Joseph Federico, Industry Member

Christie Truc Tran, Industry Member

Kristy Underwood
Executive Officer

Edmund G. Brown Jr., Governor
State of California

Department of Consumer Affairs
Board of Barbering and Cosmetology

Telephone: (916) 575-7100

Website: www.barbercosmo.ca.gov

2420 Del Paso Road, Suite 100
Sacramento, CA 95834

California State Board of Barbering and Cosmetology

Board Meeting Agenda

Monday, October 20, 2014

10:00 A.M.

Until completion of business

Four Points by Sheraton
11960 Foothill Boulevard
Rancho Cucamonga, CA 91739

An additional meeting location, via teleconference, has been established at:

1515 Sports Drive
Sacramento CA 95834

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

OPEN SESSION:

1. **Call to Order/Roll Call (Richard Hedges)**
2. **Public Comment on Items not on the Agenda**
Note: the Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a)]
3. **Board President's Report (Richard Hedges)**
4. **Executive Officer Report (Kristy Underwood)**
 - Update on the Board's Budget
 - Update on Breeze
 - Board's Statistics
5. **Approval of Board Meeting Minutes**
 - July 28, 2014
 - September 4, 2014
6. **Proposed Regulations – Discussion/Review and Approval of Proposed Changes:**

Updates:
 - Relating to Health and Safety Title 16, Division 9, Article 12 of the California Code of Regulations Sections: 977, 978, 979, 980.1, 980.2, 980.3, 981, 982, 983, 987, 991, and 992. Updating health and safety regulations to reflect terms more commonly used in the barbering and cosmetology industry and to make the terms clearer or more detailed.
 - Relating to the Apprenticeship Program Title 16, Division 9, Article 3 of the California Code of Regulations Sections: 914, 918, 921, 921.1 and 921.2

California State Board of Barbering and Cosmetology

- Relating to the Removal of Lash/Brow Tinting from the Cosmetology Curriculum Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.2, 950.9
- Relating to the Cross Over and Transfer of Credit of Barbering and Cosmetology Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.8, 950.9 and 950.1
- Relating to Text book Approval Title 16, Division 9, Article 12 of the California Code of Regulations Section: 961

7. Update and Discussion of Proposed Bills that Could Impact BBC:

- SB 1159 – Federal Tax Identification Number

8. Approval of the 2014 Sunset Review Report

9. Overview of the Disciplinary Process

10. Update from the Enforcement Committee Meeting on October 16, 2014 (**Richard Hedges**)

- Discussion on the Practice of Teeth Whitening
- Discussion on Section 7351, of Article 6, Chapter 10, Division 3, of the California Business and Professions Code on the Provision and Maintenance of Adequate Facilities Pertaining to Establishment Owners Storing Washers and Dryers in the Establishment Restroom.
- Proposed Revisions to Section 974 of the California Code of Regulations Regarding Revisions to the Fine Schedule.
- Discussion on Section 7319 (e), of Article 2, Chapter 10, Division 3, of the California Business and Professions Code Pertaining to Demonstrating Products (i.e. Eyelash Extensions, Makeup) and When a License is Required.

11. Agenda Items for Next Meeting

12. Public Comment

*Note: the Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting.
[Government Code Sections 11125, 11125.7(a)]*

13. **CLOSED SESSION:**

Discussion on Reconsideration and Disciplinary Cases (Closed Pursuant to Government Code Section 11126(c) (3))

OPEN SESSION:

14. Adjournment

A quorum of the Board will be present. Meetings of the Board of Barbering and Cosmetology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The audience will be given appropriate opportunities to comment on any issue before the Board, but the Chair may apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting shall make a request no later than five (5) working days before the meeting to the Board by contacting Tami Guess at (916) 575-7144 or sending a written request to that person at the address noted above.

No Attachment

**Quarterly Barbering and Cosmetology
Licensing Statistics
Fiscal Year 14/15**

Applications Received

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,772				1,772
Mobile Unit	2				2
Barber					
Pre-App	278				278
Initial Application	294				294
Re-Exam	191				191
<i>Sub-Total</i>	763				
Reciprocity	62				62
Apprentice	135				135
Cosmetology					
Pre-App	2,162				2,162
Initial Application	1,030				1,030
Re-Exam	2,601				2,601
<i>Sub-Total</i>	5,793				
Reciprocity	540				540
Apprentice	179				179
Electrology					
Pre-App	11				11
Initial Application	1				1
Re-Exam	4				4
<i>Sub-Total</i>	16				
Reciprocity	3				3
Manicuring					
Pre-App	744				744
Initial Application	1,038				1,038
Re-Exam	1,128				1,128
<i>Sub-Total</i>	2,910				
Reciprocity	164				164
Esthetician					
Pre-App	697				697
Initial Application	507				507
Re-Exam	501				501
<i>Sub-Total</i>	1,705				
Reciprocity	144				144
Total	14,188	0	0	0	14,188

Licenses Issued

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,614				1,614
Mobile Unit	2				2
Barber	497				497
Barber Apprentice	116				116
Cosmetology	3,014				3,014
Cosmetology Apprentice	142				142
Electrology	6				6
Electrology Apprentice	0				0
Manicuring	1,451				1,451
Esthetician	1,345				1,345
Total	8,187	0	0	0	8,187

Examination Results (July 1, 2014-September 30, 2014)

Practical Examinations

Administered	Passed	Failed	Total	Pass Rate	*DNA
Barber	413	114	527	78%	99
Cosmetologist	3,003	482	3,485	86%	653
Esthetician	1,216	128	1,344	90%	148
Electrologist	5	0	5	100%	0
Manicurist	1,496	368	1,864	80%	196
TOTAL	6,133	1,092	7,225	85%	1,096

* Did Not Attend

Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	379	110	489	78%
Spanish	20	3	23	87%
Vietnamese	9	2	11	82%
Korean	0	1	1	0%
TOTAL	408	116	523	78%

Cosmetologist	Passed	Failed	Total	Pass Rate
English	2,248	1,903	4,151	54%
Spanish	75	230	305	25%
Vietnamese	140	162	302	46%
Korean	20	6	26	77%
TOTAL	2,463	2,295	4,758	52%

Manicurist	Passed	Failed	Total	Pass Rate
English	377	176	553	68%
Spanish	5	10	15	33%
Vietnamese	968	697	1,665	58%
Korean	19	6	25	76%
TOTAL	1,350	889	2,233	60%

Esthetician	Passed	Failed	Total	Pass Rate
English	843	227	1,070	79%
Spanish	4	6	10	40%
Vietnamese	284	53	337	84%
Korean	26	1	27	96%
TOTAL	1,157	287	1,417	82%

Electrologist	Passed	Failed	Total	Pass Rate
English	6	2	8	75%
Spanish	0	0	0	0%
Vietnamese	0	0	0	0%
Korean	0	0	0	0%
TOTAL	6	2	8	75%



Business, Consumer Services, and Housing Agency – Governor Edmund G. Brown Jr.
 BOARD OF BARBERING AND COSMETOLOGY
 P.O. Box 944226, Sacramento, CA 94244-2260
 P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov



**QUARTERLY BARBERING AND COSMETOLOGY
 DISCIPLINARY REVIEW COMMITTEE STATISTICS**

Fiscal Year 14-15

Report Date: September 30, 2014

	July - September	YTD
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NORTHERN

Heard	371	371
Received	298	298
Pending ¹	615	615 ²

SOUTHERN

Heard	627	627
Received	402	402
Pending ¹	728	728 ²

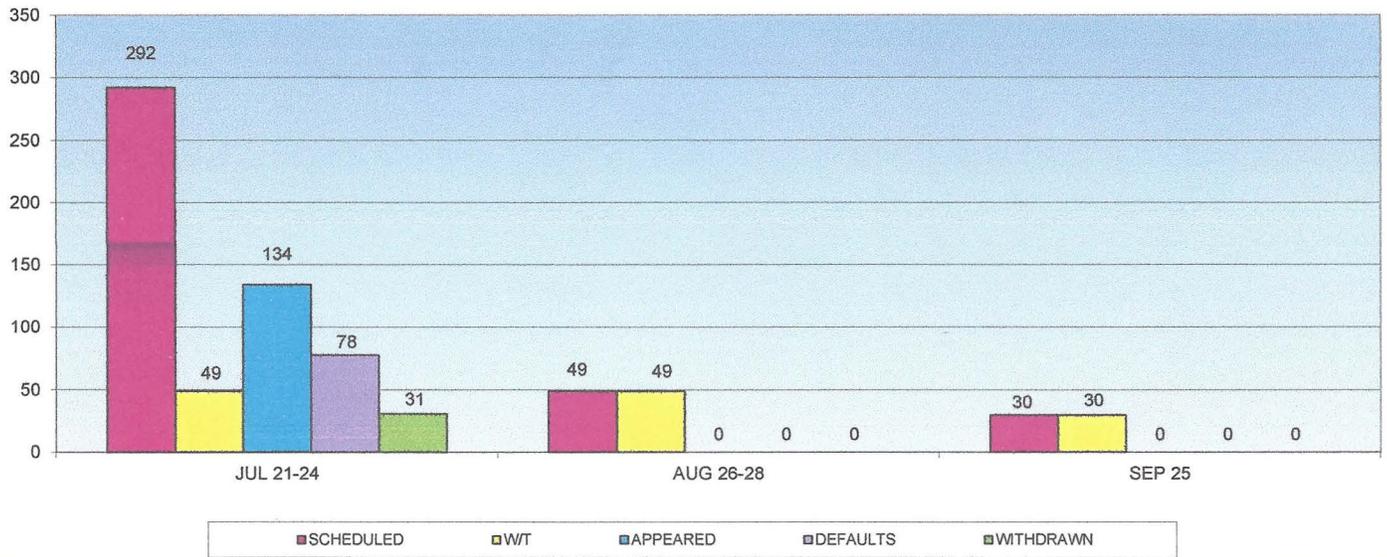
¹ Pending refers to the number of appeals received but not yet heard by DRC.

² Figure represents number of pending requests as of report date.

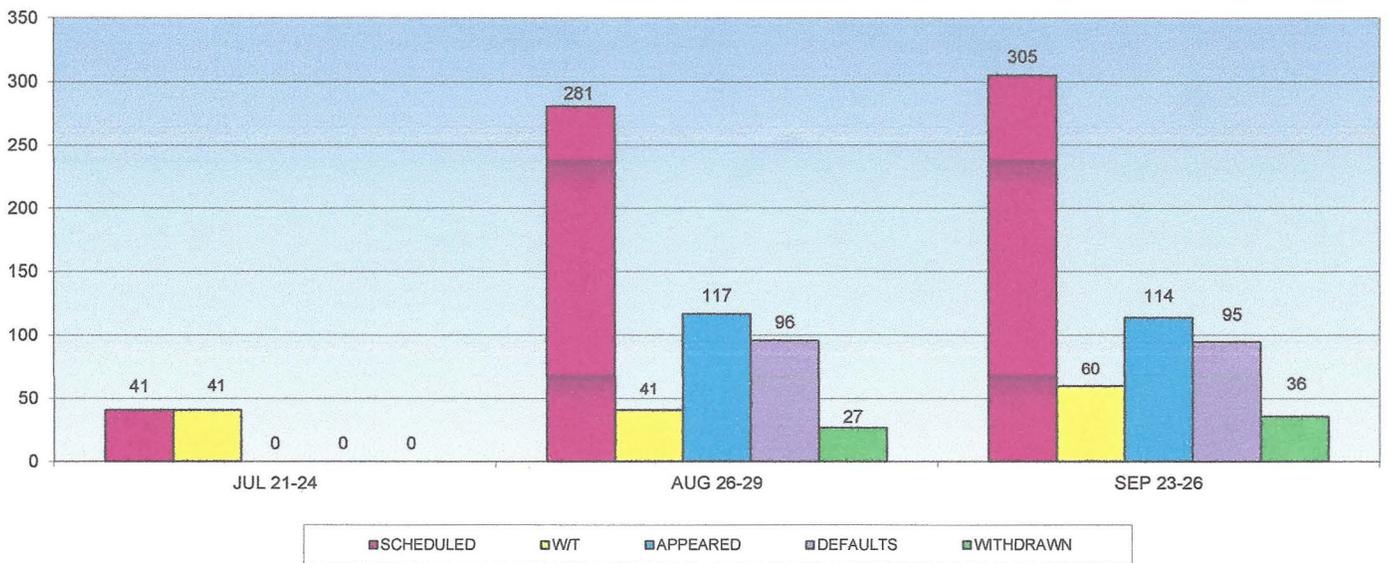
2014/2015 SCHEDULED HEARINGS

Area	Location	Date
Southern	Ontario	October 21-23, 2014
Northern	Sacramento	November 17-20, 2014
Southern	Los Angeles	December 16-18, 2014
Southern	San Diego	January 14-16, 2015
Northern	Sacramento	February 23-26, 2015
Southern	Norwalk	March 23-26, 2015

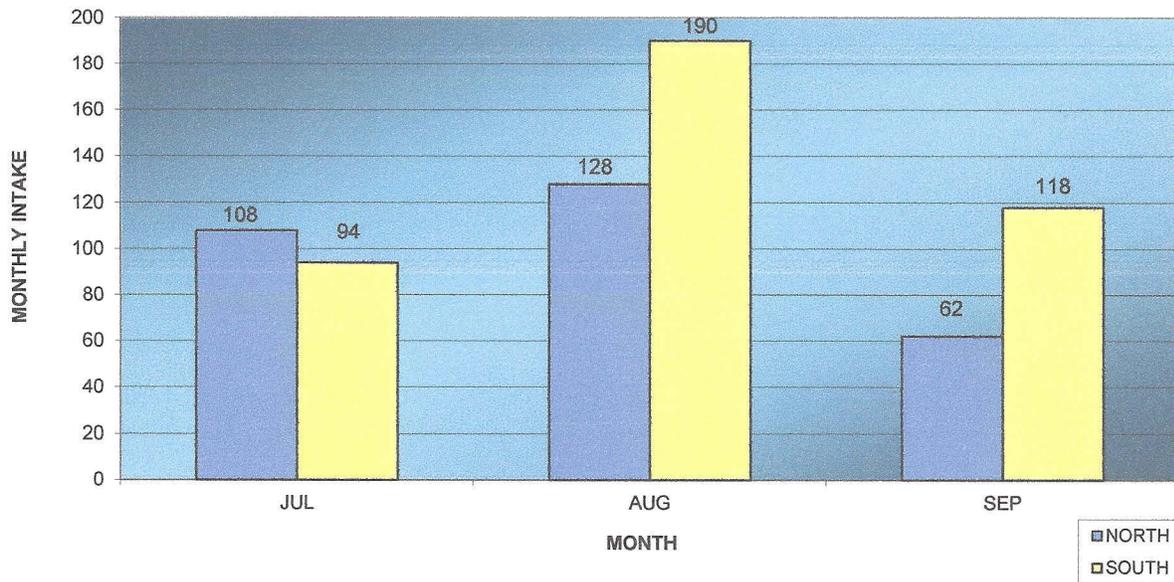
**NORTHERN APPEALS HEARD
(Fiscal Year 14-15)**



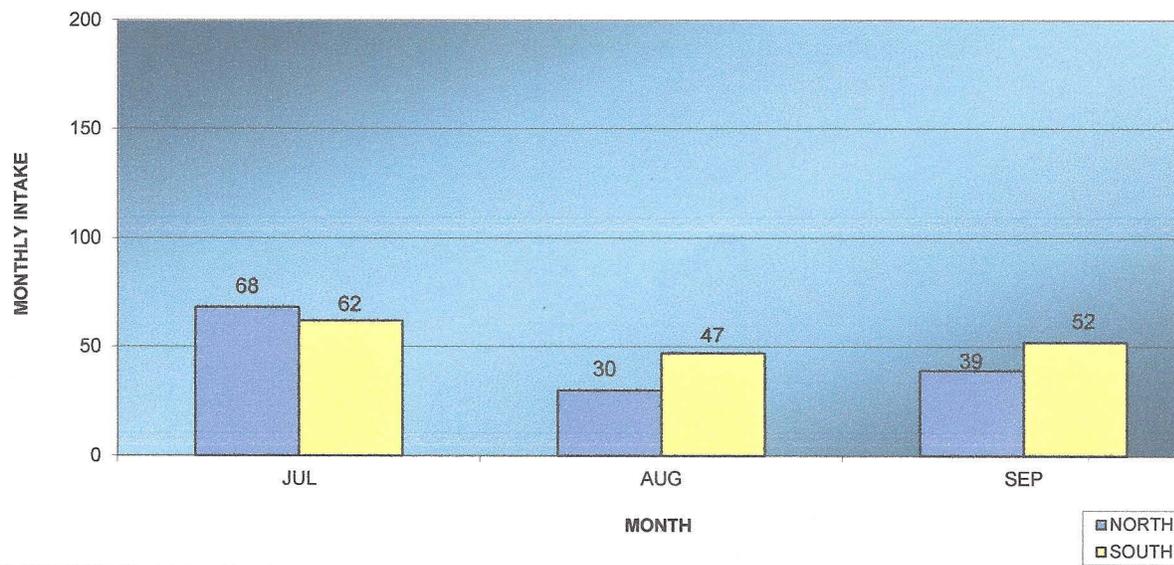
**SOUTHERN APPEALS HEARD
(Fiscal Year 14-15)**



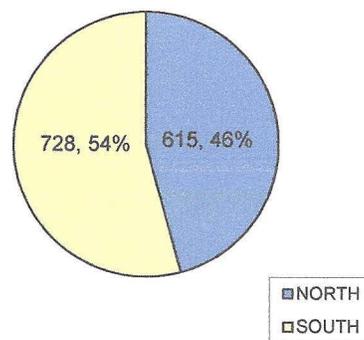
DRC MONTHLY INCOMING APPEALS (Fiscal Year 14-15)



DRC MONTHLY INCOMING WT APPEALS (Fiscal Year 14-15)



DRC APPEALS WAITING TO BE HEARD/SCHEDULED (As of September 30, 2014)



**QUARTERLY BARBERING AND COSMETOLOGY
ENFORCEMENT STATISTICS Fiscal Year 14-15**

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun*	YTD*
COMPLAINTS					
Complaints Received	984				984
Referred to DOI	0				0
Complaints Closed	784				784
Total Complaints Pending	1092				1092
APPLICATION INVESTIGATIONS					
Received	349				349
Pending	0				9
Closed	354				354
ATTORNEY GENERAL					
Referred	7				7
Accusations Filed	15				15
Statement of Issues Filed	0				0
Total Pending	101				101
DISCIPLINARY PROCESS					
Proposed Decisions	0				0
Default Decision	5				5
Stipulation	5				5
DISCIPLINARY OUTCOMES					
Revocation	6				6
Revoke, Stay, Probation	2				2
Revoke, Stay, Suspend/Prob	2				2
Revocation, Stay w/ Suspend	0				0
Probation Only	0				0
Suspension Only	0				0
Suspension & Probation	0				0
Suspension, Stay, Probation	5				5
Surrender of License	2				2
Public Reprimands	0				0
License Denied	0				0
Other	0				0
Total	17				17
PROBATION					
Active	164				
	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
CITATIONS					
Establishments	2700				2700
Barber	218				218
Barber Apprentice	22				22
Cosmetologist	1130				1130
Cosmetologist Apprentice	17				17
Electrologist	0				0
Electrologist Apprentice	0				0
Manicurist	767				767
Esthetician	67				67
Unlicensed Est.	124				124
Unlicensed Individual	114				114
Total	5159				5159
INSPECTIONS					
Establishments w/ violations	3247				3247
Establishments w/o violations	693				693
Total	3940*				3940*

* Inspection totals do not include September 29th and 30th



Budget Updates

Constraints:

On April 26, 2011, the Governor issued Executive Order B-06-11 prohibiting in state or out-of-state travel unless it is mission critical or there is no cost to the state. The Board prepared a reduction plan for FY 2014-15. The plan included reducing the amount of staff who travel to Southern California to conduct disciplinary review hearings from three (3) staff to two (2) staff. All travel must be mission critical and pre-approved by the Boards' Executive Officer.

1. Budget 2014/15 Fiscal Year (July 2014 - June 2015):

Attachment 1 displays projected expenditures for end of the year.

Board of Barbering and Cosmetology
Fiscal Year 2014/2015
Projected Expenditures 8/31/14

Personnel Services	ALLOTMENT	BBC Projected Expenditures	Projected Year
Permanent	4,013,845	3,908,036	105,809
Expert Examiners	452,554	452,554	0
Temporary	134,000	191,138	(57,138)
BL 12-03 Blanket	0	147,924	147,924
Statutory-Exempt	103,608	108,852	(5,244)
Board Member Commission	0	16,000	(16,000)
Overtime	0	45,000	(45,000)
Total Salary & Wages	4,704,007	4,869,504	130,351
Net Salary & Wages	4,704,007	4,869,504	(165,497)
Staff Benefits	2,099,320	2,024,281	75,039
Total of Personnel Services	6,803,327	6,893,785	(90,458)
Operating Expenses & Equipment (OE&E)	Allotment	BBC Projected Expenditures	Projected Year End Balance
General Expense	191,511	159,000	32,511
Printing	168,413	201,011	(32,598)
Communication	40,605	39,000	1,605
Postage	40,605	211,000	(170,395)
Insurance	4,489	3,268	1,221
Travel In State	82,789	147,000	(64,211)
Travel, Out-of-State	0	0	0
Training	10,513	25	10,488
Facilities Operations	1,288,599	1,105,582	183,017
Consultant & Professional Svs. - Interdept.	125,781	1,500	124,281
Consultant & Professional Svs. - External	486,506	322,995	163,511
Depart. and Central Admin. Services	6,896,230	7,277,863	(381,633)
Consolidated Data Center	68,468	16,000	52,468
DP Maintenance	38,376	70,000	(31,624)
Central Admin Pro Rata	1,068,771	765,459	303,312
Examinations	1,394,177	2,196,703	(802,526)
Major Equipment	72,200	5,579	66,621
Minor Equipment	44,850	16,471	28,379
Other Items of Expense	7,288	1,000	6,288
Vehicle Operations	37,784	69,549	(31,765)
Enforcement	1,938,365	885,938	1,052,427
Special Items of Expenses	0	0	0
Required OE&E Savings	0	0	0
Total Operating Expenses & Equipment	14,006,320	13,494,943	511,377
Total Personal Services Expenses	21,352,273	21,165,726	(36,113)

Total reimbursements (57,000)

0069 - Barbering and Cosmetology Analysis of Fund Condition

Prepared 9/18/14

(Dollars in Thousands)

NOTE: \$21 Million General Fund Repayment Outstanding

Budget Act FY 2014-15

	Actual 2010-11	ACTUAL 2011-12	ACTUAL 2012-13	ACTUAL 2013-14	CY 2014-15	BY 2015-16
BEGINNING BALANCE	\$ 10,104	\$ 15,985	\$ 9,993	\$ 13,833	\$ 15,919	\$ 18,439
Prior Year Adjustment	\$ -55	\$ 99	\$ 531	\$ 893	\$ -	\$ -
Adjusted Beginning Balance	\$ 10,049	\$ 16,084	\$ 10,524	\$ 14,726	\$ 15,919	\$ 18,439
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	\$ 4,939	\$ 5,735	\$ 5,394	\$ 4,953	\$ 6,649	\$ 6,649
125700 Other regulatory licenses and permits	\$ 4,845	\$ 4,943	\$ 4,941	\$ 4,990	\$ 4,402	\$ 4,402
125800 Renewal fees	\$ 10,434	\$ 10,390	\$ 10,947	\$ 10,796	\$ 11,580	\$ 11,580
125900 Delinquent fees	\$ 728	\$ 717	\$ 759	\$ 846	\$ 800	\$ 800
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 60	\$ 31	\$ 33	\$ 32	\$ 57	\$ 62
150500 Interest Income from Interfund Loans	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 19	\$ 21	\$ 9	\$ 8	\$ 8	\$ 8
161400 Miscellaneous revenues	\$ 9	\$ 18	\$ 17	\$ 9	\$ 9	\$ 9
Totals, Revenues	\$ 21,034	\$ 21,855	\$ 22,100	\$ 21,634	\$ 23,505	\$ 23,510
Transfers from Other Funds						
Proposed GF Loan Repayment						
Transfers to Other Funds						
GF Loan per item 1110-011-0069, Budget Act of 2011		\$ -11,000				
Totals, Revenues and Transfers	\$ 21,034	\$ 10,855	\$ 22,100	\$ 21,634	\$ 23,505	\$ 23,510
Totals, Resources	\$ 31,083	\$ 26,939	\$ 32,624	\$ 36,360	\$ 39,424	\$ 41,949
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	\$ 27	\$ 20	\$ 12		\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 15,060	\$ 16,882	\$ 18,680	\$ 20,348	\$ 20,968	\$ 21,387
1111 Program Expenditures (State Operations)						
8880 Financial Information System for California (State Ops)	\$ 11	\$ 44	\$ 99	\$ 93	\$ 17	\$ -
9670 Equity Claims / Board of Control (State Operations)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Disbursements	\$ 15,098	\$ 16,946	\$ 18,791	\$ 20,441	\$ 20,985	\$ 21,387
FUND BALANCE						
Reserve for economic uncertainties	\$ 15,985	\$ 9,993	\$ 13,833	\$ 15,919	\$ 18,439	\$ 20,562
Months in Reserve	12.7	6.4	8.1	9.1	10.3	11.3

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.



FY 14-15 Outreach/Industry Events

Participated:

- August 23, 2014 San Jose Face & Body (San Jose)
Speakers: Kristy Underwood, Tami Guess and Marcene Melliza
- August 29, 2014 Telemundo 52 Interview (La Habra)
Topic: Safe Sandal Season
Speaker: Julie Espinosa
- September 8, 2014 Vietnamese Town Hall Meeting (Westminster)
Attendees: Kristy Underwood, Tami Guess, Marcene Melliza and Patricia Garcia
- September 21, 2014 Nail Pro Show (Sacramento)
Attendees: Marcene Melliza and Patricia Garcia

Tentatively Scheduled:

- December 2014 Assemblywoman Susan Bonilla's (Pleasant Hill)
State Licensed Professionals Town Hall
- January 24 – 26, 2015 ISSE – Long Beach Convention Center
Attendees: Marcene Melliza, Tami Guess and Patricia Garcia



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**CALIFORNIA STATE BOARD OF
 BARBERING AND COSMETOLOGY
 MINUTES OF JULY 28, 2014 BOARD MEETING**

**Department of Consumer Affairs
 1747 North Market Boulevard
 HQ 2 Hearing Room 186, 1st Floor
 Sacramento, CA 95834**

Additional Meeting Location via Teleconference
 1038 West 80th Street
 Los Angeles, CA 90044

BOARD MEMBERS PRESENT

Richard Hedges, President
 Dr. Kari Williams, Vice President
 Mary Lou Amaro
 Wen Ling Cheng
 Andrew Drabkin
 Joseph Federico
 Christie Truc Tran

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
 Gary Duke, Legal Counsel
 Tami Guess, Board Policy Analyst

VIA TELECONFERENCE

Bobbie Anderson

1. Agenda Item #1, Call to Order/Roll Call

Mr. Hedges called the meeting to order at 10:00 a.m. The Board members and staff introduced themselves.

2. Agenda Item #2, Public Comment on Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a)]

Public Comment

Emme Diane spoke on behalf of California estheticians. Ms. Diane proposes working together with the Board of Barbering and Cosmetology (BBC) to improve the clarity of the State Board rules and regulations. She has concerns for the safety and privacy of clients and the lack of uniform inspections by Board inspectors. Ms. Diane proposed having the inclusion of using sterile and disposable lancets with the use of a Sharps container into the

verbiage of AB 1153, if an esthetician has taken continuing education and received a certification in blood-borne pathogens.

Ms. Diane stated that due to unclear rules and regulations, that are inconsistent with State Board inspections, there are discrepancies and gray areas as to inspection standards and guidelines. Ms. Diane is hearing from some of her colleagues that there are certain things that they will be fined on that other estheticians are not, small things, such as, the labeling of a trash can. Ms. Diane is proposing to have the State Board rules and regulations clearly outlined in a standardized inspection checklist that licensees can review. In addition, of concern is maintaining the public's right to privacy. Ms. Diane proposes that State Board inspections not be performed while a client is receiving services.

Ms. Underwood stated that there is a self-inspection sheet that is available on the BBC's website and that an inspector should never interrupt a service in progress. BBC has created a consumer notice card that inspectors can hand to clients to explain the purpose of their visit.

3. Agenda Item #3, Board President's Report (Mr. Hedges)

Mr. Hedges asked Ms. Guess to explain how a consumer can gain access to the BBC's Facebook page. Ms. Guess stated the user should go to www.barbercosmo.ca.gov. If the consumer clicks on the Face Book icon, they will be automatically directed to the Face Book page. Twitter is available in the same manner.

The Disciplinary Review Committee (DRC) is now holding hearings four days a week. The DRC is hearing more cases each day. Mr. Hedges appreciates the Board members, especially the industry members, who are stepping up and participating in the hearings.

The BBC has made some changes in the apprenticeship rules and with the required school equipment. These changes were prompted by comments heard in the public comments sessions of Board meetings. The public was encouraged to attend and participate in the BBC's Board meetings.

Mr. Hedges presented Heather Berg and Carrie Harris with an award for their superior performance and dedication to the implementation of the BreEZe project. They were, and continue to be, an integral part of the development of the new BreEZe database system. Both received DCA's Superior Accomplishment award.

4. Agenda Item #4, Executive Officer Report

- Update on the Board's Budget
The latest version of the budget appears in the report. The Board is just starting its new fiscal year. Expenditures in the packets are as of May 31st. The fund condition showing the 2014-2015 budget is available in the report. BBC has submitted a Budget Change Proposal for the hiring of new inspectors.
- Update on Breeze
Statistics from Breeze are not available. It is anticipated that statistics will be available for the October 2014 Board meeting.
- Board's Statistics
Statistics for DRC are in the report.

The BBC has increased its outreach. There will be a town hall meeting in Westminster for Vietnamese speaking licensees. It will be held on September 8th.

In June, BBC conducted two examinations in State correctional facilities (Chowchilla, Corona). Of the 13 candidates that were examined, 12 passed the examination.

BBC, in conjunction with Federico's Institute of Beauty, has produced two public service videos, focusing on consumer safety within the nail salon.

5. Agenda Item #5, Review of Open Meetings Act/Board Member Ethics

Mr. Gary Duke, staff counsel, reviewed the Open Meetings Act (Bagley-Keene Act). The Open Meetings Act is considered "a sunshine law" whose purpose is to promote openness and transparency in state government decision-making. The law requires boards and committees to do business in public. Specifically, the Open Meetings Act declares, "The people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Government Code Section 11120. The Open Meetings Act imposes three explicit duties: (1) give adequate notice of the meetings that will be held and any items that may be discussed; (2) a duty to conduct meetings in an open session; and (3) provide an opportunity for the public to comment. Mr. Duke invited Board members to contact him with any questions.

6. Agenda Item #6, Approval of Board Meeting Minutes

- April 21, 2014

A motion was made by Dr. Williams and seconded by Mr. Drabkin, to approve the minutes from the April 21, 2014, Board meeting. The minutes were approved by an 8-0 vote.

7. Agenda Item #7, Proposed Regulations -- Discussion/Review and Approval of Proposed Changes

Updates: Relating to Health and Safety Title 16, Division 9, Article 12 of the California Code of Regulations Sections: 977, 978, 979, 980.1, 980.2, 980.3, 981, 982, 983, 987, 991, and 992. Updating health and safety regulations to reflect terms more commonly used in the barbering and cosmetology industry and to make the terms clearer or more detailed.

The version presented includes changes made by the Department of Public Health, (technical changes to the wording) and comments received during the comment period for electrolysis needles. Current edits allow an electrologist to sterilize their needles, if they are using non-disposable needles, and it recognizes the use of disposable needles. The regulations are coming to the Board for approval. Upon approval by the Board, the regulations will have to go back out with a 15-day notice to the public. If no comments are received, the BBC can proceed with the final rule-making package. It is noted that with regards to changes in public health and safety regulations, the Board has to have approval from the Department of Public Health.

Public Comment

Jaime Schrabek, Precision Nails, stated one of the bigger changes she noticed was in Section 984. (disease and infestation) Section E has been changed significantly so that it applies to all services not just massage services. She questioned if a client comes in with a paper cut; does that mean you can't perform a manicure? If a client has acne with some broken skin, does that mean an esthetician cannot perform a facial? The other concern she has is that there is still no mention here about the condition of the nails themselves. She knows that there is a lot of controversy about exactly what condition a nail can be in and

still be worked on. Some people feel it is perfectly fine to work on fungal toenails and that topic is not addressed in any of the rules.

Ms. Underwood stated esthetician cannot treat acne, Dermatologists treat acne. Estheticians do not treat any disorders. As for conditions of the nail, Ms. Underwood does not believe the regulations address that directly.

Danielle Wachowski, educator for over 15 years, would like clarification about acne. There are four grades of acne. She believes the BBC needs to be very clear about the grades of acne that can or cannot be treated.

Ms. Underwood commented that an esthetician cannot work on skin where the skin has an infection or an eruption. Estheticians need to work within the scope of their esthetics license.

A motion was made by Dr. Williams and seconded by Ms. Amaro to approve the amendments to the BBC's health and safety regulations. The motion passed with a vote of 8-0.

- Relating to the Apprenticeship Program Title 16, Division 9, Article 3 of the California Code of Regulations Sections: 914, 918, 921, 921.1 and 921.2

This is language that has previously been approved by the Board. No changes are recommended. This is now the final language. There are no more notices that will be needed after this. If the Board approves it today, it then goes to the Department and then eventually to the Office of Administrative Law.

A motion was made by Mr. Federico and seconded by Mr. Drabkin, to approve the amendment package of the regulation changes. The motion passed with a vote of 8-0.

- Relating to the Removal of Lash/Brow Tinting form the Cosmetology Curriculum Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.2, 950.9

The rule-making file has been submitted to the Department of Consumer Affairs and is in the process of review.

- Relating to the Cross Over and Transfer of Credit of Barbering and Cosmetology Title 16, Division 9, Article 7 of the California Code of Regulations Sections: 950.8, 950.9 and 950.1

This is coming to the Board as the final step. This removes the cross-over curriculum in regulation and allows schools to develop a cross-over curriculum which eliminates any duplication of courses.

A motion was made by Mr. Federico and seconded by Dr. Williams, to approve the regulation package. The motion passed with a vote of 8-0.

- Relating to Text book Approval Title 16, Division 9, Article 12 of the California Code of Regulations Section: 961

The changes to this section (text and reference books) are in process. It is proposed that the requirement that the Board approve textbooks be removed. This is due to the fact that the Board no longer creates its own examination.

8. Agenda Item #8, Update and Discussion of Proposed Bills That Could Impact BBC

- AB 1153 – Advanced Esthetician Bill

Ms. Underwood has had discussions with the sponsors of this bill. There are amendments coming to this bill that are not yet in print. The bill will not create a new scope of practice for master estheticians. The proposed bill will likely expand the existing esthetician scope of practice to include body work. This will be a certification issued by the Board if a person has completed an additional 600 hours plus their existing 600 hours of esthetic training. Mr. Hedges recommended withdrawal of support and taking a watch position until BBC sees the proposed amendments.

Public Comment

Lynelle Lynch, Bellus Academy, stated her disappointment on where the bill is today. The goal from the California Coalition of Esthetician's standpoint is to have BBC approve the certification process. She does not believe the BBC should go into a watch position at this point until it sees current proposed amendments.

Fred Jones, Professional Beauty Federation, California, stated the association strongly supports the idea of industry certification. The industry wants to have continuing education and wants to encourage people to continue to perfect their trade. He urged the members to specify what principals they would need to see in the bill, so that BBC can take a support position. Mr. Federico mentioned that nothing should impede or diminish from the existing esthetician license. Since this Board has already voted to embrace the concept of industry certification across all private license categories, then any bill that creates an industry cert should be extended to all license categories.

Mr. Jones stated, that whatever industry certification program is out there, it really only has credibility if the State Board has some involvement with it. Everybody looks to the State Board, which is the licensing and enforcement agency of the Beauty and Barbering industry. Therefore, if the Board is going to recognize any particular industry certification program, the Board should review the standards of those programs and either approve them or reject them. He felt, BBC needs to have the review, approval, and rejection authority over any potential industry certification program offered, especially if it's supposed to officially recognize those certifications. Regarding the process of reviewing, approving, and rejecting, he felt the Board should have the commensurate resources to do that work. The Board should have the fee authority for that review process so it doesn't negatively impact the budget.

Jaime Schrabek, Precision Nails, has been opposed to this from the beginning because she thought it was too narrow and obviously addressed only the skin care category of the licensure. Her concern is that if this does expand the scope of practice to include the entire body, then the industry is in fact, whether it's intended or unintended, affecting people who do work in spas where they are giving saunas and exfoliation scrubs or herbal wraps, people who are currently exempt from BBC licensure. If the scope of practice is expanded, to include the full body, then what happens with those people who are working in those businesses now who are not currently under the Board's regulatory authority?

Diane Bucolla, licensed esthetician, was not supportive of the master bill as written. She supports the BBC's decision to take a watch position. Esthetics has become so clinical over the years. She wishes the bill had continuing education requirements mandated. She believes the Board needs to separate the cosmetology license from the esthetician license.

Mr. Hedges moved and it was seconded by Dr. Williams, for the Board to withdraw the support position and take a watch position. Mr. Hedges directed the Executive Officer to deliver the public comments to the Legislature. Ms. Underwood will relay the comments to the Legislature and will let the Legislature know that the Board has withdrawn their support position and are now taking a watch position on the bill.

Mr. Federico clarified the motion. The Board is moving to a watch position and authorizing the Executive Director to express the concerns that the Board heard from the public on this bill and any other concerns that the Board may have. The motion carried with a vote of 8-0.

- SB 1159 – Federal Tax Identification Number

This bill is not specific to the Board. This bill allows an individual who does not have a Social Security number, to use an Individual Tax Identification Number (ITIN), on their application for examination. It would allow undocumented individuals the ability to get a license in the industry.

A motion was made by Dr. Williams and seconded by Ms. Amaro, to take a support position on the bill. The motion passed with a vote of 8-0.

9. **Agenda Item #9, Discussion and Review of Recommendations of the Natural Hair Care Task Force**

A very thorough report on the proposed regulation of hair braiding was included in the Board's packets. This subject was discussed by BBC and a natural haircare task force. The task force met on April 14, 2014, and the discussion was surrounding the concern of the public's health and safety being served since braiding is currently unregulated. The task force adopted a definition of natural hair care. The definition is listed in the packets.

"A Natural Hair Care Stylist provides a service for compensation that result in tension on hair strands or roots by braiding, locking, twisting, wrapping, weaving, finishing, and extending the hair with or without natural hair or synthetic fibers or applying cornrows to the hair. Such a practice may include: Shampooing, drying the hair, incidental trimming or singeing the ends of the hair to complete the service; applying antiseptics, powders, oil, clays, lotions or applying tonics to the hair, head, or scalp to condition the hair; the use of tools such as combs, hair rods, hair rollers, hair clips, brushes or shears. **Such practice shall not include:** the application of glues and/or adhesives; the use of preparations or the use of any device or tool designed to alter the color or chemically straighten/curl the hair; the application of extreme heat applications, such as, flat irons, straightening combs or curling irons."

BBC would like to help expand the scope of practice of braiders or natural hair care providers, that may be interested in performing services like shampooing or heat applications that are currently listed under the scope of practice for a cosmetologist, without having to complete a 1,600-hour course.

Public Comment

Kim Abernathy has been in the industry over 15 years and an educator for about 8 years. She would like to put something in motion to certify braiders/natural hair care providers, like they do in Texas. In Texas, you do have to be certified in order to work on natural hair because even though they are not using the shears or adhesives, they still need to understand biology, sanitation and disinfection because they are using combs and they can spread diseases.

Fred Jones, Professional Beauty Federation of California, stated this subject is a very politically sensitive issue because it affects an ethnic group in particular and a minority group at that. This issue will take legislation to effect a change. He would like the Board to keep its expectations in check. What his organization fears the most is unlicensed activity.

Ms. Guess reported on the Institute of Justice's website. The Institute of Justice has stated that braiding is a matter of cultural practice and that governmental regulators are infringing on the rights of braiders by requiring a license for natural hair care. The Institute of Justice has recently won two court cases. They have won legislative decisions and currently, they are litigating in Washington, Missouri, and Arkansas to say that natural hair care providers/braiders should not be licensed. They have sued the BBC in the past and won. The legal theory that they're using is that braiding is a cultural equivalent of what people do in their culture and culture should not be regulated. An initiative called #braidingfreedom has been started and is gaining momentum.

The BBC does not have enough consumer harm to take forward to the Legislature to prove that a braiding license should be required. Ms. Underwood stated the report regarding braiding and natural hair care will be submitted to the Legislature within the Sunset Report. She does not recommend the Board pursue the licensing of natural hair care providers/braiders, at this time. Dr. Williams does not want to run into any problems if the Board is having difficulty demonstrating the consumer harm.

Public Comment

Fred Jones, PBFC, thinks the report is well-worded. It's a soft recommendation to the Legislature to consider a license. He thinks it is an appropriate line in the sand for this Board to take, that it should be regulated. That doesn't mean that the Board should make it one of its top priorities. It will be very difficult to find a Legislative author for that vehicle. He thinks that it is appropriate to list this as one of the issues that the Board continues to grapple with.

Ms. Underwood stated that the recommendation in the report says that the BBC recommends that the Legislature consider enacting a bill for the development of a natural haircare license with a theory hour requirement of 400 hours and curriculum to be determined by the Board.

Public Comment

Kim Abernathy stated she sees a lot of fantastic work done by the braiders. She feels that a lot of the times the consumer does not know if they are safe or not. If there is a problem, a lot of the times a consumer feels maybe *they* have done something wrong, not the service provider.

Dr. Williams suggested submitting the report and not putting pressure on the Legislature and see what the Legislature says and move forward from there. Ms. Underwood stated the report will become part of the BBC's sunset report, so it will be submitted to the Legislature.

Mr. Hedges moved that the Board submit the report as written with the addendum that it's difficult to prove consumer harm, but based on all of the testimony at our public meetings, the Board feels it's important to let the Legislature know that there is definitely industry-driven concern that this be regulated. Ms. Underwood restated the motion: the Board will submit the report as written with an addendum that it's difficult to show the consumer harm, but based on the input from the industry that the Board recognizes that the harm is out there. The motion was seconded by Ms. Cheng.

The motion was passed with a vote of 7 with one abstention (Mr. Andrew Drabkin).

10. Agenda Item #10, Presentation from Allies Innovation Initiative Representative

The presentation was cancelled.

11. Agenda Item #11, Sunset Review

- First Draft of Background Paper for Review

The BBC is up for sunset review. The report will be due to the Legislature in November of this year. The members need to decide what new issues they would like to see addressed in the Sunset Review report. In the last sunset review, the BBC brought up the issue of licensing hair braiders/natural hair care providers and the Board's request for sole oversight of schools. The following items were requested by members to be brought forward as new issues in the Sunset Review report:

- Title protection for all licensees
- Early written testing
- The monitoring of natural hair care (because of industry concern)
- Booth rental licensure
- Freelance licensure

Public Comment

Fred Jones, Professional Beauty Federation of California, stated that there is legislation that's working its way through the Legislature right now that's going to propose to make the Bureau of Private Post-Secondary Education (BPPE), a state board. He thinks this piece of legislation is very problematic for a number of reasons. He thinks it is incumbent upon this Board, which has already historically had this position, to continue to maintain and advocate for sole regulatory oversight of Board approved schools.

Mr. Jones suggested that BBC ask in the sunset review report for industry certification and authority, which, includes the ability to review, approve, or deny any certifications and the authority to require a fee for the certification.

Mr. Jones proposed that the new issues include a request to allow for early written examination after the required theory hours have been completed.

In addition, Mr. Jones would like to see Board member term limits revoked so that Board members who have proven themselves, are able to maintain a Board position if the appointing official thinks that they have earned another term.

Lynelle Lynch, wanted to make the Board was aware of a federal rule. If the Board takes sole oversight of schools, there are certain terms that must be used and certain ways in which the school would need to be regulated. BBC would have to be a part of higher education and have "post-secondary" in its name or in its statute. If the Board obtains sole oversight of the schools and does not have this, the schools could lose their title 4 position.

The Board directed Ms. Underwood to include the above "New Issues" into the next draft of the Sunset report.

12. Agenda Item #12, Discussion to Allow Early Written Testing for Future Professionals

The packets contain information brought to the Board to facilitate the discussion. Legislative change would be required and there would be probably substantial fiscal impact to the Board because it would require several programming changes, not only for the BBC, but there would also

be programming changes to our computer-based testing vendor. Ms. Underwood pointed out that it would completely change the internal processing of applications. Examination wait time would probably take longer because the BBC would have to schedule each examinee twice. The candidates would come to the BBC to be scheduled for their written exam at the time that they've completed a certain amount of schooling. Candidates would be able to take the written exam at a number of different locations throughout California. The candidates would have to come back to the BBC when they have finished school to take their practical exam. The BBC would have to change the contract with the computer-based testing company.

Public Comment

Fred Jones, PBFC, suggested the issue of early written testing be added as a new item in the Sunset Review report. He suggested BBC request statutory changes to same day licensing, within the sunset review report, to allow for early written examination after the required theory hours have been satisfied.

Lynelle Lynch suggested, if adopted, the BBC implement the proposed early written testing program with the cosmetology program first, as other State Boards have had a measure of success with the Cosmetologist early testing program.

Mr. Hedges stated that the Board would let Ms. Underwood handle this as she sees fit in the Sunset report.

13. Agenda Item #13, Proposed Board Meeting Dates for 2015

Meeting dates are in the packet.

14. Agenda Item #14, Agenda Items for Next Meeting

- Sunset review

15. Agenda Item #15, Public Comment

Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a)]

Public Comment

Jaime Schrabek, Precision Nails, mentioned the proposed January 2015 meeting date conflicts with the ISSE Long Beach show. (January 24–26, 2015) Ms. Underwood stated the BBC planned on having a booth at the show.

Danielle Wachowski, asked if LED was legal. Mr. Hedges stated that cited violations were being removed in the DRC. She asked whether the Board has ever considered polling California licensed estheticians on current issues or if the Board has ever reached out or have a way for estheticians in California to actually speak about how they're earning a living, what they think they need to be successful and how they can protect the consumer. She believes that estheticians feel that the legislators and authors of the bills are out of touch with their business.

Ms. Underwood encouraged licensees to attend all Board meetings to voice their concerns. She encouraged licensees to apply to be Subject Matter Experts or participate on Board technical advisory committees.

Kim Abernathy, stated concerns regarding the apprenticeship program and the fraudulent activity going on by sponsors currently enrolled in the program. A few sponsors in Sacramento area are taking the apprentices fees and telling them that all of their paperwork has been submitted to BBC and then not following through. This is causing hardship to the apprentices. She would like something done to correct this action or have these sponsors removed from the program.

16. Agenda Item #13, Adjournment



BOARD OF BARBERING AND COSMETOLOGY
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**CALIFORNIA STATE BOARD OF
BARBERING AND COSMETOLOGY**

MINUTES OF SEPTEMBER 4, 2014

**Board of Barbering and Cosmetology
2420 Del Paso Road, 1st Floor, Sequoia Room
Sacramento, CA 95834**

BOARD MEMBERS PRESENT

Richard Hedges, President
Andrew Drabkin
Joseph Federico

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Tami Guess, Board Policy Analyst

BOARD MEMBERS PRESENT VIA TELECONFERENCE

Dr. Kari Williams, Vice President
Mary Lou Amaro
Bobbie Anderson
Christie Tran

ABSENT:

Wen Ling Cheng

1. Agenda Item #1, Call to Order/Roll Call

Mr. Hedges called the meeting to order at 10:00 a.m. The Board members introduced themselves.

Public Comment

Lynelle Lynch, President of Bellus Academy, updated the Board on the foundation, Beauty Changes Lives, which was formed by the American Association of Cosmetology Schools. The foundation was formed to lift the perception of the image of the beauty industry by the gift of education. 3 million dollars has been raised in the last year and a half for scholarships. Recently, one million dollars was secured from the Passage family (Pivot Point) in memory of Leo Passage. The million dollars will be used for scholarships for students to enter competitions. Currently, there are four (4) scholarships, two (2) in honor of Vidal Sassoon, which was funded by Proctor and Gamble. There are currently ten (10) scholarships for students wanting to enter beauty college in the amount of \$10,000.00 or up to half of their tuition, (10) scholarships for professionals to who

want to attend one week at the Advance Vidal Sassoon Academy in the amount of \$ 5,000.00 to assist in paying for their training and travel expenses. There are Six (6) scholarships in the massage category funded by Massage Envy. These scholarships are in the amount of \$2,000.00. In addition, there is the Tippi Hedren scholarship for nails. There are Ten (10) scholarships which will pay 100 percent of the tuition fees, up to \$ 5,000.00. Ms. Lynch is the founding president and continues as Board president. Dr. Howard Murad is funding a new scholarship in January 2015 for ten (10), \$ 2,500.00 scholarships to be offered to estheticians to aid in beauty school tuition. In March, Beauty Changes Lives will be honoring Leo Passage at the Legacy Awards. Interested parties are encouraged to view the organizations website at beautychangeslives.org.

Mr. Hedges stated he would like to work together with the community colleges, boards of supervisors and Beauty Changes Lives organization in assisting inmates of county jails in obtaining education within the beauty industry, so that they may be licensed and employable at the time their incarceration concludes.

Fred Jones, of the Professional Beauty Federation of California, complimented the work done by Beauty Changes Lives and advised the Board that currently there is a nationwide lawsuit against beauty colleges for not paying their students for work done by the student on the school clinic floor. These law suits are attempting to treat the student as employees of the school. He believes the Barber and Cosmetology law makes this illegal. He believes these lawsuits represent an existential threat to the school community. He would like to work with the Board in clarifying existing law language, to prevent future lawsuits. He recounted in the past the Board has taken a strong stand against such attempts and hopes the Board will be motivated to work with the schools and his organization in the preventing of these nuisance law suits.

Mr. Andrew Drabkin asked if these law suits are similar to the current collegiate lawsuits. Mr. Jones did not feel the law suits were related. Mr. Joseph Federico concurred with Mr. Jones.

Mr. Hedges is concerned that these law suits represent an imminent threat to the beauty industry.

Mr. Jones has concerns that the suit poses a danger to the Board's extern program.

2. Agenda Item #2, Proposed Legislation – Discussion and Vote on Board Position on AB 1153 Master Esthetician Certification Bill

Mr. Hedges stated it is his understanding that AB 1153 is no longer being considered by the legislature. Ms. Underwood noted that the Board has received a lot of correspondence both for and against the proposed bill. The general consensus was that the public seemed confused by the bill. General support of the bill seemed to have declined when the 'grandfathering clause' was removed from the bill. Within the final version of the bill (title protection, certification, and esthetic scope expansion) there was a lot of industry input in the portion of the scope which allowed for body wraps. It was noted that allowing for body wraps (previously an unregulated service) would require many who were not previously licensed to obtain schooling and licensure. Initial support was for the development of an actual scope of practice for a master esthetician. Confusion existed in the fact that the public thought that the bill was generated by the Board. Mr. Hedges reiterated that AB 1153 was not generated by the Board. The Board took a support if amended position on the original version of the bill, and then a watch position, as amendments to the bill were added. Mr. Hedges encouraged the public to get to know the inner workings of the government and to stay informed. Mr. Hedges would like the draft minutes posted to the Board's website and noted on the Board's Face book account. Mr. Federico encouraged the Board to keep the posting short and concise so that people would read the postings.

Mr. Drabkin inquired as to why the “grandfather clause” was removed from the bill. Ms. Underwood stated the legislature felt there was not enough to move forward with a new license type. There was opposition from the dermatologist association, the association wanted to limit Board estheticians to working within the stratum corneum layer of the epidermis. Board staff did not agree with this action as estheticians have always worked within the entire epidermis. Ms. Underwood stated that the esthetic scope of practice and how it relates to the med-spa industry will most likely be discussed at the Board’s Sunset Review Hearing.

Public Comment

Lynelle Lynch, of the California Coalition of Estheticians, thanked the Board and staff for their support and assistance with the progression of AB 1153. The Coalition felt it was necessary to pull the bill due to the progression of changes made to the bill. In its final draft, the bill did not represent the intent of the originally proposed bill. The Coalition recognizes that the subject of a master esthetic bill maybe discussed at the Board’s Sunset Review Hearing and offered its support and collaboration to the Board.

Fred Jones, of the Professional Beauty Federation of California (PBFC), noted that it usually does take a couple of years to really fine tune a bill. He stated that it is generally noted that the Medical community tends to engage in ‘turf battles’ when new ideas come up that they feel encroach within their scope of practice. He stated the PBFC was not in association with the California Coalition of Estheticians due to the fact that the PBFC represents all license types, not just the skin care licensees.

Mr. Jones recognized the Board staff’s efforts at the Face and Body emergency session meeting. He felt the Boards senior staff along with Deedee Crossett did a great job at diffusing the confusion related to the AB 1155 bill and other issues. He felt the attendees left the session renewed, unified and appreciative of the Board. He noted how difficult it is for licensees to stay current with the goings-on of everything happening in Sacramento.

Mr. Jones encouraged the Board to continue in their previously approved pursuit of a Board approved industry certification program. He recognized the fact that the legislature is hesitant to approve new license types. His association feels that the Board approved industry certification program is a viable course to raise the professionalism within the beauty industry. Mr. Jones clarified that the proposed certification program is a program which would allow licensees to gain additional continuing education, from a board-approved industry educator. After a licensee completes the required hours of instruction, the licensee would be eligible to receive a certificate stating they have completed the training at a Board approved industry educator.

Dr. Kari Williams stated she supports Mr. Jones comments and feels the Board should move foreword in the pursuit of Board approved industry certification.

3. Agenda Item #3, Adjournment

With no further discussion the meeting was adjourned.



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MEMORANDUM

Table with 2 columns: Field (DATE, TO, FROM, SUBJECT) and Value (October 20, 2014, Members, Board of Barbering and Cosmetology, Kristy Underwood, Executive Officer, Regulations Update)

Health & Safety: Staff has prepared the Final Language and Final Statement of Reasons, including draft responses to comments received during the original language's 45-day comment period and the modified text's 15-day comment period.

Action Needed: Motion to Approve

Apprenticeships: The Final Rulemaking File is under review by the Department of Consumer Affairs. Once approved by the Director, it will go the Business, Consumer Services, and Housing Agency for review and approval. It will then go to the Office of Administrative Law (OAL).

Action Needed: None

Lash/Brow Tinting: The Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency have signed off on this package. It is now under review by OAL.

Action Needed: None

Crossover Courses: The Final Rulemaking File is under review by the Department of Consumer Affairs. Once approved by the Director, it will go the Business, Consumer Services, and Housing Agency for review and approval. It will then go to the Office of Administrative Law (OAL).

Action Needed: None

Text and Reference Books for Students: Staff has prepared the Final Statement of Reasons and Final Language on this regulatory action for review and approval by the Board.

Action Needed: Motion to Approve

BOARD OF BARBERING AND COSMETOLOGY

FINAL STATEMENT OF REASONS

Hearing Date: April 10, 2014

Subject Matter of Proposed Regulations: Health and Safety

Sections Affected: Sections 977, 978, 979, 980, 980.1, 980.2, 980.3, 980.4, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993 and 994, California Code of Regulations (CCR)

Updated Information

During the course of this rulemaking, the Board made several revisions to the originally proposed text after consulting with the Department of Public Health, which, under 7312 (e) of the Business and Professions Code, must approve regulations governing sanitation and other measures designed to protect the health and safety of the public.

Those changes, which were presented to the public for comment from August 11, 2014 through August 25, 2014, are as follows:

Section 977

- Changed "toilette" to the more commonly used "wipe."
- Added definitions for "Foot Basin," "Tub," and "Poisonous," and expanded the definition of "Soiled," in order to clarify the meaning of these terms.

Section 978

- Clarified that the regulation's reference to "public areas" is to enclosed areas within the establishment.
- "Drawers" were added because many establishments store tools in drawers.
- "Non-electrical tools" were added to subsection (a)(3) to emphasize that non-electrical tools, like linens, must also be stored in closed containers. (Electrical tools are not included because they are often hung from wall hooks, which the Board permits).

Section 981

- Rephrased (a) to clarify that items must be disposed of after use on a single client. Some items might be used more than once on the same client during a service or procedure.

Section 983

- Changed “cleansing agent” to the simpler, more easily understood “hand-cleaning product.”

Section 984

- As a precaution, the Board added a requirement that anyone performing services in establishments or schools wear gloves if their own skin is infected or inflamed.

Section 987

- Added a provision for commercial laundries that use chemicals and cold water to launder fabrics.

Section 991

- Added “student” to subsection (a) to clarify that people training to become licensees are also prohibited from performing these procedures.
- The Board had meant to convey that the contracting of the muscle should be observable to the individual performing the service. The word “visibly” is more appropriate.

In addition to the changes made after consulting with the Department of Public Health, the Board also made changes in response to the comments of several people that were made during the original 45-day public comment period. They had urged the Board to restore electrologists’ ability to use disinfected, re-useable needles.

Those changes, which were also presented to the public for comment from August 11, 2014 through August 25, 2014, are as follows:

Section 982

- Removed the reference to electrology needles/wires/filaments in the section title to reflect that the language of the proposed section was revised to allow those items to be disinfected and reused.
- Rewrote subsections (a) and (b) to allow for the disinfection and reuse of electrology needles/wires/filaments. The Board also revised (b) to address how those who choose to use disposable needles should dispose of them, and how a Sharps container should be used.
- The Department of Public Health asked for the change to subsection (C) (2) in order to stress that damaged packaging is an indicator that the contents are probably not sterile.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

There is no significant impact to small business.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy on other provision of law.

Summary of, and Responses to, Comments Received During the 45-day Comment Period

Comments No 1, 2, 3, 4, 5, 6, 7:

1. Julia Hamilton, Electrologist President of Electrologists' Association of California – Northern Chapter
2. Randa Thurman, Electrologist, Monterey Bay Institute of Electrology
3. Denise La Fave, Electrologist
4. Mike Bono, Electrologist
5. Elissa Schwartz, Electrologist
6. Rita Dietrich, Electrologist
7. Alana Dzurek, Electrologist

These commenters all urged the Board to reconsider amending Section 982 (one of the commenters refers to Section 991 in their remarks, but 982 is the relevant section) to require that all electrology needles/filaments be of the single-use, disposable variety. They argue that the requirement would be cost-prohibitive for practitioners who use multi-needle equipment, the electrology schools that are required under the Board's electrology school curriculum to teach that technique and the students required to learn it. They instead recommend that the Board continue to allow electrology needles to be sterilized and reused, as is now permitted under Section 982.

Board Response:

The Board agrees with these comments and has revised the proposed language to allow the use re-useable needles, provided they are properly sterilized.

Comment No. 8

- Patsy Kirby, Electrologist, Director of the International Board of Electrology Certification

Ms. Kirby wrote in support of the Board's proposal to amend Section 982 to require that all electrology needles be single-use and disposable, stating the cost impact to the few electrologists who practice the multi-needle technique would be "minimal." She also states that the federal Center for Disease Control recommends disposable needles.

Board Response:

Although the Board agrees that single-use, disposable needles are the safest alternative, it also believes the cost involved for electrologists using multiple-needle techniques would be unnecessarily burdensome. Consequently, the Board has revised the language to allow for the re-use of electrology needles that have been properly disinfected.

Summary of, and Responses to, Comments Received During the 15-day Comment Period on the Modified Text

Comment No 9:

9. Gregory C. Brandt, Attorney, on behalf of Face Reality Inc.

Face Reality, Inc. objects to the adoption of the proposed amendments to Section 984(e) for several reasons. The amendments to section 984(e) lack sufficient clarity, are ambiguous, overbroad and improperly infringe on the scope of services that estheticians currently and lawfully provide. The proposed amendments to section 984(e) are not supported by facts in the rulemaking record. Furthermore, if the amendments are adopted as written, they will have a significant adverse impact on consumers, small businesses and estheticians practicing in California. For these reasons, the proposed amendments to section 984(e) should be withdrawn by the Board.

As an alternative, the Board should prepare and adopt, through a separate rulemaking process, regulations that explicitly state that estheticians are licensed to service clients with acne, as long as they comply with all other applicable health and safety regulations. As part of this additional rulemaking, the Board should conduct a thorough investigation and research to determine the safety and efficacy of practices by estheticians who specialize in working with clients who have acne, comparing clinical trials of prevalent dermatology procedures and those of estheticians specializing in acne, and taking into account the required knowledge and training for servicing clients with acne and other skin conditions.

Board response

1a) The Proposed Language in Section 984(e) Lacks Sufficient Clarity, is Ambiguous, and Overbroad.

The Board rejects this comment. The comment isn't directed at language the Board actually proposes to amend, but rather centers around language describing skin appearance ("... inflamed, or broken ... or where a skin infection or eruption is present.") that has been part of Section 984(e) since its adoption in 1994 and is not at issue in this rulemaking. While it's true that the Board adds this language to signal when gloves should be worn, it simply repeats the subsection's earlier, existing verbiage concerning massage and applies it to practitioners wearing gloves.

1b) The Proposed Language in Section 984(e) Improperly Infringes on an Esthetician's Allowed Scope of Services as Set Forth by California Law;

and

1c) Estheticians who Provide Services to Clients with Acne Must Comply with Existing Regulations Requiring Safe and Sanitary Practices and Are Not Practicing Medicine or Infringing on Duties Properly Performed by Dermatologists.

and

1d) Drawing a Distinction between Grades of Acne Does Not Resolve the Issues with Clarity and Ambiguity, Makes the Regulations Prone to Misinterpretations and is Also not Supported by the Record.

The Board declines to respond to these comments, which are either outside the scope of this rulemaking entirely or do not address the changes to 984(e) made by the Board in the modified text presented to the public for comment on August 11-25, 2014.

2a) There is no Evidence that the Amendments to Section 984(e) "Increase Consumer Safety."

The Board rejects this comment, and will address the commenter's remark in the context of requiring that gloves be worn by barbering and cosmetology licensees when certain skin conditions are present. There are a number of contagious skin diseases that can be transmitted through contact with the infected area (such as scarlet fever, impetigo, ringworm, even athlete's foot) that exhibit skin conditions similar to those described in 984(e). Given this fact, the Board believes the requirement that licensees wear gloves in these instances is simple common sense and falls well within the Board's mandate to protect consumers. Moreover, as noted in the "Updated Information" section of this Final Statement of Reasons, the glove requirement was added after consulting with the California Department of Public Health, which occurred after the initial statement of reasons was issued.

2b) Current Practices Provide an Adequate and Enforceable Level of Safety

The Board rejects this comment, again in the context of the requirement that licensees wear gloves under certain conditions. The commenter states that under Sections 981 and 987 CCR, “estheticians are required to use a new pair of exam gloves ... on every client.” This statement is presented in support of his contention that current practices provide “an adequate and enforceable level of safety.” But this misstates the provisions of 981 and 987, both as they currently exist, and as proposed in this rulemaking. There is no such requirement that gloves be used, only that the same gloves cannot be worn for more than one client – if gloves are worn at all. The Board believes the glove requirement proposed for Section 984(e) provides an adequate and enforceable level of safety.

3) The Proposed Language Will Have Significant Adverse Impact on Consumers, Small Business And a Significant Adverse Impact on Jobs.

The Board rejects this comment, again in the context of the requirement that licensees wear gloves under certain conditions. The Board rejects the claim that the gloves requirement proposed for 984(e) would have a significant adverse impact on consumers, small business or jobs.

BOARD OF BARBERING AND COSMETOLOGY

Title 16, Division 9 of the California Code of Regulations.

Final Language

LEGEND

<u>Underline</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.
<u>Double Underline</u>	Indicates an addition to the originally proposed text of regulations.
Double Strikeout	Indicates a deletion to the originally proposed text of regulations.

(1) Adopt Section 977 to read as follows:

§ 977. Health and Safety Definitions.

The following words and terms, when used in this article, shall have the following meanings:

Autoclave — A device used to sterilize tools, equipment and supplies by subjecting them to high pressure saturated steam.

Over-the-Counter — Cosmetology, barbering or electrology products that are made available for purchase by the general public without a physician's prescription.

Cosmetics — Substances used to enhance the appearance of the human body.

Contaminated — The presence of blood or other potentially infectious materials on an item's surface or visible debris such as dust, hair and skin.

Dermis — The layer of skin just below the epidermis; the living layer of the skin.

Disinfect or Disinfection — The use of chemicals to destroy harmful bacteria, viruses and pathogens on implements or tools to render them safe for use.

Disinfectant — A product registered by the U.S. Environmental Protection Agency (EPA) that has demonstrated bactericidal, fungicidal and virucidal activity. The products used must include a label from the manufacturer that indicates the EPA registration and must be in liquid form to disinfect non-electrical tools and spray or ~~toilette~~ wipe form to disinfect electrical tools and shears.

Dry Heat Sterilizer — A device used to sterilize equipment and supplies by use of hot air that is nearly or completely free of water vapor.

Epidermis — The outermost layer of the skin; the non-living layer of the skin.

Electrical Tools — All tools used for barbering, cosmetology and electrology that require electricity to operate by means of an electrical cord, wireless charger, or battery. These include, but are not limited to clippers, blow dryers, curling irons and flat irons.

Foot Basin — On a footspa chair, the open vessel that is filled with water and in which the client's feet are placed during a pedicure.

Hot Styling Tools — Tools that utilize heat to style hair.

Non-Electrical Tools — All tools used for barbering, cosmetology and electrology that do not use any form of electricity to operate. These include, but are not limited to shears, razors, cuticle nippers, cuticle pushers, nail clippers, metal files, metal smoothers, combs and hair clips.

Poisonous — A substance that can cause sickness or death by entering or touching the body.

Sanitary — A clean, healthy condition.

Soiled — dirty; not clean.

Sterilize or Sterilization — The process which removes or kills all forms of microbial life, including transmissible agents (such as fungi, bacteria, viruses and spore forms) by use of an autoclave or dry heat sterilizer.

Tub — A standalone, open vessel that is filled with water and in which the client's feet are placed during a pedicure.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(2) Amend Section 978 to read as follows:

§ 978. Minimum Equipment and Supplies.

(a) Establishments and schools shall have and maintain the following minimum equipment and supplies:

(1) If hair services are performed, At at least one covered waste receptacle container per establishment for the disposal of hair. Hair must be disposed of in a covered waste container.

(2) Closed ~~receptacles~~ containers to hold all soiled towels, gowns, smocks, linens and sheets in any enclosed area frequented by the public in public areas.

(3) Closed, clean cabinets, drawers, or containers to hold all clean non-electrical tools, towels, gowns, smocks, linens and sheets.

(4) Containers for disinfectant solution for ~~instruments~~ tools and equipment to be disinfected. Containers must be labeled "Disinfectant Solution".

(5) Each container specified in (4) shall contain sufficient disinfectant solution to allow for the total immersion of ~~tools and instruments.~~

(6) If electrolysis is performed, ~~a steam~~ an autoclave or dry heat sterilizer that meets the requirements of Section 982.

(b) Establishments and schools shall have disinfectant solution, mixed according to manufacturer's directions, available for use at all times.

(c) A manufacturer-labeled container for the disinfectant used must be available at all times in the establishment or school. In the event that the last remaining disinfectant has been used, the empty manufacturer-labeled container must be present.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(3) Amend Section 979 to read as follows:

§ 979. Disinfecting Non-Electrical Tools ~~Instruments and Equipment.~~

(a) Before use upon a ~~client patron~~, all non-electrical ~~instruments~~ tools that can be disinfected, excluding shears, shall be disinfected in the following sequential manner:

(1) ~~Clean with soap or detergent and water.~~ Remove all visible debris.

(2) Clean with soap or detergent and water.

(3) Completely dry tools with a new, clean paper towel

(4) Then totally immerse in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's instructions.

(5) Licensees or students shall wear protective gloves or use tongs when removing tools from the disinfectant.

(b) The disinfectant solutions specified in subdivision (a) shall:

(1) Remain covered at all times.

(2) Be changed according to the manufacturer's instructions at least once per week or whenever visibly when it is cloudy or contains debris.

(c) All ~~tools instruments that have been used on a patron client~~ or soiled in any manner shall be placed in a properly labeled receptacle container labeled "Dirty", "Soiled", or "Contaminated".

(d) All disinfected ~~tools instruments~~ shall be stored in a clean, covered place which is labeled as ~~such~~ "Clean" or "Disinfected".

(e) Disinfected tools shall not be placed in a container, pouch or holder which cannot be disinfected.

(f) Shears shall be disinfected according to the following sequential procedures:

(1) Remove all visible debris.

(2) Clean with soap or detergent and water.

(3) Spray or wipe the shear with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's instructions.

(g) Disinfected shears shall not be placed in a container, pouch or holder which cannot be disinfected.

~~(e)(h)~~ If ~~tools instruments and equipment~~ specified in this section are sterilized in accordance with the requirements outlined in Section 982, the requirements of this section will be deemed to have been met.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(4) Amend Section 980 to read as follows:

§ 980. Disinfecting Electrical Tools Instruments.

(a) Clippers, ~~vibrators,~~ and other electrical tools ~~instruments~~ shall be disinfected prior to each use ~~by~~ in the following sequential manner:

(1) First removing all visible debris ~~foreign matter;~~ and

(2) Disinfecting with an EPA-registered disinfectant spray or wipe with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions.

(b) All disinfected electrical tools instruments, ~~excluding curling irons and hot combs~~, shall be stored in a clean, ~~covered~~ place.

(c) All soiled electrical tools used on a client, or soiled in any manner, shall be placed in a container labeled "Soiled", "Dirty" or "Contaminated" (excluding hot styling tools).

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(5) Amend Section 980.1 to read as follows:

§ 980.1. Procedures for Cleaning and Disinfecting Whirlpool Footspas, and Air-Jet Basins.

(a) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water.

(b) An air-jet basin is defined as any basin using an air jet stream system to move water.

(c) After use upon each client ~~patron~~, each whirlpool footspa or air-jet basin shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the basin.

(2) The inside walls of the basin shall be scrubbed and cleaned of all visible debris residue with a clean brush, ~~and~~ liquid soap (labeled as such on soap product) and water.

(3) The spa basin shall be rinsed with water.

(4) The spa basin shall be refilled with clean water.

(5) The water in the basin shall be circulated with the correct amount (read manufacturer label for mixing instructions) of the EPA-registered hospital-liquid disinfectant that is labeled as a bactericide, fungicide and virucide, through the basin for at least 10 minutes.

(6) The spa basin must be drained, rinsed, and wiped dry with a new, clean paper towel.

(7) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(d) At the end of each day and after the last client, each whirlpool footspa or air-jet basin shall be cleaned and disinfected in the following sequential manner:

(1) The screen and any other removable parts shall be removed.

(2) Scrub all visible debris residue from the screen, inside walls of the basin, any other removable parts, and the area behind them with a clean brush, and liquid soap (labeled as such on soap product) and water.

(3) Reinsert the clean screen and any other removable parts.

(4) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow the spa manufacturer's instructions).

(5) Drain the detergent solution and rinse the basin.

(6) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide through the basin for at least 10 minutes.

(7) Drain, rinse, and wipe the basin dry with a new, clean paper towel and allow basin to dry completely.

(8) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(e) At least once each week, after completing the procedures provided in subsection (d) (1 through 6), each whirlpool footspa and air-jet basin shall not be drained and the following sequential procedures shall be followed:

(1) Do not drain the disinfectant solution. The unit shall be turned off and the disinfecting solution shall be left undisturbed in the unit for at least 6 to 10 hours.

(2) After the disinfectant solution has been sitting ~~between~~ at least 6 to 10 hours, drain and rinse the basin with clean water.

(3) Refill the basin with clean water and flush the system.

(4) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(f) The pedicure equipment-cleaning log shall be made available upon request by either a client patron or a board representative.

(g) A whirlpool footspa "Not in Service" must have a notation on the pedicure equipment-cleaning log that the footspa is not in service. The footspa must have a "Not in Service" sign displayed upon the chair and be kept in a sanitary condition.

~~(h)~~ (g) A violation of this section may result in an administrative fine and/or disciplinary action. Each whirlpool footspa or air-jet basin not in compliance with this section may result in a separate violation.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(6) Amend Section 980.2 to read as follows:

§ 980.2. Procedures for Cleaning and Disinfecting Pipe-Less Footspas.

(a) As used in this section, "~~Pipe-Less~~" "pipe-less" footspa is defined as any unit with footplates, impellers, impeller assemblies and propellers.

(b) After use upon each client patron, each ~~Pipe-less~~ pipe-less footspa shall be cleaned and disinfected in the following sequential manner:

- (1) All water shall be drained from the spa basin.
- (2) Remove footplate, and any other removable components according to the manufacturer's instructions.
- (3) Scrub all visible debris residue from the impeller, footplate, inside walls of the basin, and/or other components and the areas behind or under each with a clean brush, and liquid soap (labeled as such on soap product) and water. Rinse with clean water.
- (4) Reinsert the properly cleaned footplate, and/or other components.
- (5) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.
- (6) Drain, rinse and wipe the basin dry with a new, clean paper towel.
- (7) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(c) At the end of every day and after performing the procedures provided in subsection (b) (1 through 7) and after the last client, each pipe-less footspa shall be cleaned and disinfected in the following sequential manner:

- (1) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow manufacturer's instructions).
- (2) Drain the detergent solution and rinse the basin.
- (3) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.
- (4) Drain, rinse and wipe the basin dry with a new, clean paper towel.

(5) Allow the basin to dry completely.

(6) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(d) At least once each week, after completing the procedures provided in subsection (c) (1 through 3), and the disinfectant solution in each pipe-less footspa shall not be drained and the following sequential procedures shall be followed:

(1) The unit shall be turned off and the disinfecting solution shall be left in the unit undisturbed for at least 6 to 10 hours.

(2) After the disinfectant solution has been sitting ~~between~~ at least 6 to 10 hours, rinse and wipe the basin dry with a new, clean paper towel.

(3) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(e) The pedicure equipment-cleaning log shall be made available upon request by either a client ~~patron~~ or a board representative.

(f) A whirlpool footspa "Not in Service" must have a notation on the pedicure equipment-cleaning log that the footspa is not in service. The footspa must have a "Not in Service" sign displayed upon the chair and be kept in a sanitary condition.

(g) A violation of this section may result in an administrative fine and/or disciplinary action. Each pipe-less footspa not in compliance with this section may result in a separate violation.

Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(7) Amend Section 980.3 to read as follows:

§ 980.3. Procedures for Cleaning and Disinfecting Non-Whirlpool Foot Basins or Tubs.

(a) As used in this section, "~~Non-Whirlpool Foot Basin~~" or "~~Tubs~~" "non-whirlpool foot basins" or "tubs" are defined as any basin, tub, footbath, sink, and bowl, - and all non-electrical equipment that holds water for a client's feet during a pedicure service.

(b) After use upon each client ~~patron~~, each ~~Non-Whirlpool Basin or Tub~~ non whirlpool foot basin or tub shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the foot basin or tub.

(2) The inside surfaces of the foot basin or tub shall be scrubbed and cleaned of all visible debris residues with a clean brush, and liquid soap (labeled as such on soap product) and water.

(3) The foot basin or tub shall be rinsed with clean water.

(4) Refill the foot basin or tub with clean water and the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide. Leave the disinfecting solution in the foot basin or tub for at least 10 minutes.

(5) Drain, rinse and wipe the basin dry with a new, clean paper towel.

(6) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(c) The pedicure equipment-cleaning log shall be made available upon request by either a client patron or a board representative.

(d) A violation of this section may result in an administrative fine and/or disciplinary action. Each non-whirlpool foot basin or tub not in compliance with this section may result in a separate violation.

(e) All disinfected basins or tubs shall be stored in a clean, covered place labeled "Clean" or "Disinfected".

Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(8) Adopt Section 980.4 to read as follows:

§ 980.4 Disposable Foot Basin or Tub Liners.

(a) Single use, disposable, recyclable, liners designed specifically and manufactured for use as a foot basin or tub liner shall be disposed of immediately after each use and may not be disinfected or reused.

(1) After disposal of the pedicure basin liner the basin or tub shall be scrubbed and cleaned of all visible debris with a clean brush and liquid soap (labeled as such on soap product) and water. The foot basin or tub shall be rinsed with clean water and wiped dry with a new, clean paper towel.

(2) Record the cleaning procedure in the pedicure equipment – cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(3) The pedicure equipment-cleaning log shall be made available upon request by either a client or a board representative.

(4) Establishments or schools that utilize the liners must maintain a supply of five (5) liners per foot tub basin for use at all times.

Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(9) Amend Section 981 to read as follows:

§ 981. Instruments Tools and Supplies.

(a) All tools instruments and supplies which come into direct contact with a client patron and cannot be disinfected (~~for example, including, but not limited to buffers, pumice stones, wax sticks, toe separators, gloves, cotton pads, sponges, emery boards, and neck strips~~) shall be disposed of in a waste ~~receptacle~~ container immediately after use on a single use client.

(b) New supplies and single-use, disposable tools shall be stored in a clean, covered place labeled 'New'.

(c) No person working or training in an establishment or school shall be permitted to carry any tools instrument or supplies in or on a garment or uniform (including pouches and holsters) while practicing any of the acts as defined in Section 7316 of the Business and Professions Code.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(10) Amend Section 982 to read as follows:

§ 982. Sterilizing Electrolysis Instruments Tools and Use of Electrology Needles/Wire Filaments.

(a) Before use upon a client patron in schools and establishments, all tools that can be sterilized, excluding single-use, pre-sterilized, disposable needles/wire filaments, each electrolysis needle or tweezers shall be first cleaned with detergent and water (which may include the use of ultrasonic equipment) and then be sterilized by one of the following methods:

(1) Clean with soap or detergent and water (which may include the use of ultrasonic equipment) and then sterilized by one of the following methods:

(A) Steam sterilizer Autoclave, registered and listed with the federal U.S. Food and Drug Administration (FDA), used according to manufacturer's instructions.

(B) Dry heat sterilizer, registered and listed with the federal U.S. Food and Drug Administration (FDA), used according to manufacturer's instructions.

(C) Chemical (color change) indicators must be used on each sterilized package to indicate the sterilization process was completed.

(2) All sterilized tools shall remain in the package they were sterilized in until ready for use. This package must be undamaged and labeled "Sterilized" or "Sterilization".

(3) All tools that have been used on a client or soiled in any manner shall be placed in a container labeled "Dirty," "Soiled" or "Contaminated."

~~(b)~~ (4) Sterilization equipment shall be checked weekly to ensure that it is reaching the temperature required by manufacturer's instructions.

~~(b) Electrology needles/wire filaments shall be single use, pre-sterilized and disposable. Disposable Single-use, pre-sterilized, disposable needles/wire filaments must be placed in a puncture resistant sharps container immediately after use, when contaminated before use, or when opened and found damaged, or when not used before the pre-printed expiration date. The sharps container must be changed when not more than three-quarters filled and disposed of as biohazardous waste.~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(11) Amend Section 983 to read as follows:

§ 983. Personal Cleanliness.

(a) ~~The person and attire of a licensee~~ or student serving a client ~~patron~~ shall at all times be clean.

(b) Every licensee or student performing services shall thoroughly wash his or her hands with soap and water or any equally effective alcohol-based cleansing agent ~~hand-cleaning product~~ immediately before serving each patron.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(12) Amend Section 984 to read as follows:

§ 984. Disease and Infestation.

(a) No establishment or school shall knowingly permit a licensee or student ~~person~~ afflicted with an infection or parasitic infestation capable of being transmitted to a client ~~patron~~ to serve clients ~~patrons~~ or train in the establishment or school.

(b) No establishment or school shall knowingly require or permit a licensee or student to work upon a client ~~person~~ with an infection or parasitic infestation capable of being transmitted to the licensee or student.

(c) Infections or parasitic infestation capable of being transmitted between licensee or student and client ~~patron~~ include, but are not limited to, the following:

- Cold, influenza or other respiratory illness accompanied by a fever, until 24 hours after resolution of the fever.
- Streptococcal pharyngitis ("Strep throat"), until 24 hours after treatment has been initiated, and 24 hours after resolution of fever.
- Purulent conjunctivitis ("pink eye"), until examined by a physician or other licensed clinician and approved for return to work.
- Pertussis ("whooping cough"), until five days of antibiotic therapy has been completed.
- Varicella ("chicken pox"), until the sixth day after onset of rash or sooner if all lesions have dried and crusted.
- Mumps, until nine days after onset of parotid gland swelling.
- Tuberculosis, until a ~~physician or~~ local health department authority states that the individual is noninfectious.
- Impetigo (bacterial skin infection), until 24 hours after treatment has begun.
- Pediculosis (head lice), until the morning after first treatment.
- Scabies ("crabs"), until after treatment has been completed.

(d) Blood-borne diseases, such as HIV/AIDS and hepatitis B (HBV), shall not be considered infectious or communicable diseases for the purpose of this section.

(e) No person working or training in an establishment or school shall ~~massage any person~~ perform services upon a surface of the skin or scalp where such skin is inflamed, or broken (e.g., abraded, cut) or where a skin infection or eruption is present; nor shall a person working

or training in an establishment or school perform services if the skin of his or her hands is inflamed, or broken, or where a skin infection or eruption is present, without wearing gloves.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(13) Amend Section 985 to read as follows:

§ 985. Neck Strips.

A sanitary neck strip or towel shall be used to keep the protective covering, such as client capes, from coming in direct contact with a client's ~~patron's~~ neck.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(14) Amend Section 986 to read as follows:

§ 986. Neck Dusters and Brushes.

(a) Before use on a client, neck or nail Neck dusters and all other manicure brushes that are used in an establishment or school on a client patron shall be maintained in a clean and sanitary condition. cleaned in the following sequential manner:

- (1) Remove all visible debris.
- (2) Clean with soap or detergent and water.
- (3) Dry dusters or brushes.
- (4) Store all clean dusters or brushes in a clean, covered place which is labeled "Clean".
- (5) All dusters or brushes used on a client or soiled in any manner shall be placed in a container labeled "Dirty", "Soiled" or "Contaminated".

(b) Before use on a client, natural fiber, facial, acrylic, gel, nail-art, and makeup brushes used in an establishment or school, on a client, shall be cleaned in the following sequential manner:

- (1) Remove all visible debris.

- (2) Clean by using a cleansing agent(s) such as: monomer, makeup brush liquid/spray cleaner, alcohol.
- (3) Dry brushes.
- (4) Store all clean brushes in a clean, covered place which is labeled "Clean".
- (5) All brushes used on a client or soiled in any manner shall be placed in a container labeled "Dirty", "Soiled" or "Contaminated".

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e)(d), Business and Professions Code.

(15) Amend Section 987 to read as follows:

§ 987. Towels.

(a) After a towel, sheet, robe, linen or smock has ~~once~~ been used once, it shall be deposited in a closed container ~~receptacle~~ and not used until properly laundered and sanitized.

(b) Towels, sheets, robes, linens and smocks shall be laundered either by regular commercial laundering or by a noncommercial laundering process which includes immersion in water at least 140 ~~160~~° degrees F for not less than ~~fifteen (15)~~ twenty-five (25) minutes during the washing or rinsing operation. Alternately, it is acceptable if the commercial laundry opts to use chemicals and cold water to reduce organisms on laundry, provided the laundry follows manufacturers' instructions for washing machines, dryers, detergents, rinse aids, and other additives. The laundry detergents used are not required to have stated antimicrobial claims.

(c) All clean towels, sheets, robes, linens and smocks shall be stored in clean, closed cabinets or a clean, closed container.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(16) Amend Section 988 to read as follows:

§ 988. Liquids, Creams, Powders and Cosmetics.

(a) All liquids, creams, waxes, shampoos, gels and other cosmetic preparations shall be kept in clean, ~~and~~ closed containers. Powders may be kept in clean shakers.

(b) All bottles and containers shall be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances shall be additionally and distinctly marked as such. Poisonous substances that are maintained in the manufacturer-labeled container are not required to have additional labeling.

(c) When only a portion of a cosmetic preparation is to be used on a client ~~patron~~, it shall be removed from the bottle or container in such a way as not to contaminate the remaining portion.

(1) This provision does not apply to cosmetic preparations that have been demonstrated to be unlikely to transmit pathogens, (e.g. nail polish, artificial nail monomer liquids).

(d) Pencil cosmetics shall be sharpened before each use.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(17) Amend Section 989 to read as follows:

§ 989. Prohibited Hazardous Substances/Use of Products.

No establishment or school shall:

(a) ~~have~~ Have on the premises cosmetic products containing hazardous substances which ~~have been~~ banned by the U.S. Food and Drug Administration for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is disapproved by the FDA.

(b) Have on the premises methyl methacrylate monomer and/or methylene chloride.

(c) Use a product in a manner that is disapproved by the FDA, Occupational Safety and Health Administration or EPA.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(18) Amend Section 990 to read as follows:

§ 990. Headrests, Shampoo Trays and Bowls, and Treatment Tables.

(a) The headrest of chairs shall be covered with a clean towel or paper sheet for each client ~~patron~~.

(b) Shampoo trays and bowls must be cleansed with soap and water or other detergent after each shampoo, kept in good repair and in a sanitary condition at all times.

(c) Treatment tables must be covered with either a clean sheet of examination treatment table paper, a clean towel or a clean sheet, after each use. for each patron. After a towel or sheet has been used once, it shall immediately be removed from the treatment table and be deposited in a closed container and not used again until it has been properly laundered and sanitized. Treatment table paper shall be immediately disposed of after a single use.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

(19) Amend Section 991 to read as follows:

§ 991. Invasive Procedures.

(a) No licensee or student may use a product, device, machine, or other technique or combination of the same, which results in the removal, destruction, incision, or piercing of a client's skin beyond the epidermis. ~~perform any act which affects the structure or function of living tissue of the face or body.~~ Any such act shall be considered an invasive procedure.

(b) Invasive procedures include, but are not limited to, the following:

(1) Application of electricity which physically visibly contracts the muscle.

(2) Application of topical lotions, creams, serums or other substances which affect living tissue require a medical license to purchase.

(3) Penetration of the skin by metal needles, except electrolysis needles/wire filaments.

(4) Abrasion and/or exfoliation of the skin below the ~~non-living,~~ epidermal layers.

(5) Removal of skin by means of a razor-edged ~~instrument~~ tool or similar device.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, 7320, 7320.1, Business and Professions Code.

(20) Amend Section 992 to read as follows:

§ 992. Skin Peeling~~Exfoliation~~.

(a) Only the ~~non-living, uppermost layers of facial~~ upper layer of the skin, known as the epidermis, may, by any method or means, be removed, and then only for the purpose of ~~beautification~~ improving the appearance of the skin.

(b) Skin removal techniques and practices which result in destruction of living tissue beyond the epidermal layer of the skin is prohibited. ~~affect the living layers of facial skin, known as the dermis, are prohibited and constitute the practice of medicine.~~

(c) Only ~~commercially available over-the-counter~~ over-the-counter products that are not sold for physician's use only may be used for the purpose of skin exfoliation. ~~for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by manufacturer instructions.~~

(d) All skin exfoliation products must be applied using the manufacturer's instructions for consumer health and safety.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, and 7320, Business and Professions Code.

(21) Amend Section 993 to read as follows:

§ 993. Prohibited Instruments~~Tools~~ .

(a) No establishment or school shall have on the premises or use any razor-edged ~~or other device or tool~~ for the purpose of which is designed to remove removing calluses or other similar procedures.

(b) No establishment or school shall have on the premises or use any needle-like tool ~~instrument which is used for the purpose of extracting skin blemishes and other similar procedures.~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7320, and 7320.1, Business and Professions Code.

(22) Amend Section 994 to read as follows:

§ 994. Cleanliness and Repair.

(a) Establishments and schools shall keep the floors, walls, woodwork, ceilings, furniture, furnishing, and fixtures clean and in good repair.

(b) No establishment or school shall permit an accumulation of waste, hair clippings or refuse.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

Flanagan, Kevin@DCA

From: THEO WIERDSMA <theoandjulia@sbcglobal.net>
Sent: Wednesday, March 12, 2014 5:57 PM
To: Flanagan, Kevin@DCA
Subject: Proposed changes to regulations

Dear Mr. Flanagan I wish to address he proposed change to the BBC regulations. I am the president from the Electrologists Association of California, Northern Chapter. I have highlighted in yellow the proposed change that I am hoping you will consider changing.

This regulatory proposal would require that single-use, disposable electrolysis needles be used by electrologists. These types of needles cost approximately 50 cents each. The Board has determined that the practical impact of these requirements will be negligible because of the needles' low cost and because most of the State's approximately 1,600 licensed electrologists already use these implements, which are recommended by the American Electrology Association, the electrologists' professional organization.

Effect on Housing Costs: None

Actually the cost of the needles is closer to a dollar and while I agree we should use disposable needles when there is the problem of Multiple needle epilators that would be very expensive if they had to use them just one time. We need to have sterilization equipment for our tweezers so why not state: *Disposable needles are advised but we recognize that the needles may be reused if properly sterilized using the same procedure as tweezers.*

**TITLE 16. BOARD OF BARBERING AND COSMETOLOGY
 NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter "the Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held from 1.p.m. to 4 p.m., April 10, 2014 in the Sequoia Room at the Board's offices at 2420 Del Paso Road, Sacramento, California, 95834. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its offices not later than 5:00 p.m. on April 10, 2014 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7312 and 7406 of the Business and Professions Code, and to implement, interpret or make specific Sections 7312(e), 7316, 7320, 7320.1 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

9

INFORMATIVE DIGEST

A. Informative Digest

Section 7312 of the Business and Professions Code requires the Board to adopt rules governing sanitary conditions and precautions that are reasonably necessary to protect the public health in barbering and cosmetology establishments and schools, and in the practice of the professions regulated by the Board.

Adopt Section 977.

This regulatory proposal would add a section of definitions to Article 12, Division 9 of Title 16 of the California Code of Regulations.

Adopt Section 980.4.

This regulatory proposal would add regulations regarding the use of pedicure foot spa liners to Article 12, Division 9 of Title 16 of the California Code of Regulations.

Amend Sections 978, 979, 980, 980.1, 980.2, 980.3, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993 and 994.

These regulatory proposals would update, clarify and strengthen the Board's existing health and safety regulations, as well as, require, under the proposed amendments to Section 982, that electrolysis needles be single-use and disposable.

B. Policy Statement Overview/Anticipated Benefits of Proposal

Under Section 7303.1, the Board is mandated to make protection of the public its highest priority. The primary method by which the Board achieves this goal is by following its mandate under Section 7312 of the Business and Professions Code to formulate and enforce health and safety regulations. This regulatory action furthers that goal by updating, clarifying and strengthening existing regulations and adopting new regulations to reflect practical changes in the barbering and cosmetology industry. These proposed regulatory changes will promote a better understanding of sanitary and safety practices among licensees. The health and safety standards of the said industries are maintained to prevent injury and ensure that transmittable diseases are controlled and prevented from spreading to consumers. Thus, these regulatory changes benefit the general welfare of California.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search for any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630

Require Reimbursement: None

10

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

This regulatory proposal would require that single-use, disposable electrolysis needles be used by electrologists. These types of needles cost approximately 50 cents each. The Board has determined that the practical impact of these requirements will be negligible because of the needles' low cost and because most of the State's approximately 1,600 licensed electrologists already use these implements, which are recommended by the American Electrology Association, the electrologists' professional organization.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not have a negative effect on small businesses because these regulatory proposals are mostly updates or clarifications of existing rules that have no associated economic cost. While there is a small cost associated with the requirements that electrologists use single-use, disposable electrolysis needles, the Board has determined the practical impact on small business will be minor because the requirements mirror the recommendations of the American Electrology Association, which are already widely followed in the industry.



Dear Mr. Flanagan:

My name is Randa Thurman. I am the proprietor of Monterey Bay Institute of Electrology. I am responding to the BBC's Legislative Bill 1183 regarding the proposed language change of section 991 of Division 9.

As you are aware this proposed change will require electrologists to use single-use, disposable needles/probes. As a licensed 'Electrology School' it is a requirement of the State of California's Electrology curriculum to teach multiple needle technique. This is a modality that is still very active and currently trending up. These multiple needle machines can have as few as 6 needles and as many as 32 needles. You can see the potential cost factor that will be incurred by the client, as most electrologists will undoubtedly have to pass this cost on to their client or loose up to \$32.00 per procedure. As a school, this will be a hardship on our students, not to mention the additional cost to the school.

Section 982 of Division 9 has been established and necessitates proper sterilization techniques for electrology instruments and as such includes the sterilization for

NON-DISPOSIBLE NEEDLES/PROBES. We are already mandated and regulated by the BBC for proper sterilization practices. This new legislation is not needed and truly not wanted by the majority of all Electrologists.

As 2nd Vice President of the Electrologists' Association of California I invite you to investigate how the proposed change will impact our industry as a whole before making your final decision. This is not simply a change. It is a change that has the possibility to affect the entire industry from student to electrologist to manufacturer negatively.

Please review the follow as it conveys the language the Northern Chapter of Electrologists' Association of California's written recommendation.

Cordially,

Randa Thurman LE CPE
Monterey Bay Institute of Electrology
2600 Garden Road, Suite, 207
Monterey, CA 93940
831-643-2100

Legislative Bill 1183 - Division 9 per section 991 contains proposed language to change sterilizing electrolysis instruments. This regulatory proposal would require that single-use, disposable electrolysis needles be used by electrologists.

The Board position is based on the costs of needles/probes. The proposed new language would make it cost prohibitive for multiple-needle operators. Multiple needle operators already have a process in place to ensure that probes/needles utilized are properly sterilized, ensuring the health and safety of patrons.

The Board of the Electrologists' Association of California would like to delete proposed language in section 991 and recommend that they keep the language regulating the sterilization of electrolysis instruments (per section 982) as currently states below:

Section 982: Sterilizing Electrolysis Instruments

a) Before use upon a patron in schools and establishments, each electrolysis needle or tweezers shall be first cleaned with detergent and water (which may include the use of ultrasonic equipment) and then be sterilized by one of the following methods:

1) Steam sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions

2) Dry health sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions

b) Sterilization equipment shall be checked weekly to ensure that it is reaching the temperature required by manufacturer's instructions.

Flanagan, Kevin@DCA

From: sebomenos . <sebomenos@gmail.com>
Sent: Thursday, April 03, 2014 1:21 PM
To: Flanagan, Kevin@DCA
Subject: Proposed changes to BBC regulations.

Dear Mr. Flanagan:

On June 9, 2014, while attending an Electrologists' Association of California Member Meeting I was advised of the proposed regulatory changes to 'Division 9 section 991'.

As a unanimous vote was taken against the proposed changes regarding the new language of disposable electrolysis needles, I feel the necessity to write and express my concern regarding this change. Not only will this incur additional cost to either the client or electrologist there will also be and impact to the manufacturer of the needle/probes we use; as not all are producing such disposable probes. Unfortunately this will set the stage for unforeseen monopolization of this market.

As a multi-needle user this hardship will require and addition charge to my clients as up to 16 needles are utilized. It would seem that the BBC would take care not to dictate what instruments of my trade I am able to use when I am licensed and govern by proper sterilization practices already in place and adopted by section 982.

I have included in the following paragraphs the desire of the Northern Chapter of the Electrologists' Association of California's written recommendation. I appreciate you taking the time to review the terminology preferred by the board and ask you to consider the ramifications of the client, electrologist and manufacturer in your decision before adopting the requirement of a single-use, disposable electrolysis needle.

Sincerely,
Denise La Fave

Legislative Bill 1183 - Division 9 per section 991 contains proposed language to change sterilizing electrolysis instruments. This regulatory proposal would require that single-use, disposable electrolysis needles be used by electrologists.

The Board position is based on the costs of needles/probes. The proposed new language would make it cost prohibitive for multiple-needle operators. Multiple needle operators already have a process in place to ensure that probes/needles utilized are properly sterilized, ensuring the health and safety of patrons.

The Board of the Electrologists' Association of California would like to delete proposed language in section 991 and recommend that they keep the language regulating the sterilization of electrolysis instruments (per section 982) as it currently states below:

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a) Before use upon a patron in schools and establishments, each electrolysis needle or tweezers shall be first cleaned with detergent and water (which may include the use of ultrasonic equipment) and then be sterilized by one of the following methods:

- 1) Steam sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions
- 2) Dry heat sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions

b) Sterilization equipment shall be checked weekly to ensure that it is reaching the temperature required by manufacturer's instructions.

Flanagan, Kevin@DCA

From: Mike Bono <mikebono@cox.net>
Sent: Monday, April 07, 2014 1:26 PM
To: Flanagan, Kevin@DCA
Subject: Mike Bono

RE: New ELECTROLOGY rules.

Dear Kevin Flanagan,

I've been asked to weigh-in on the proposed new rules for electrologists, i.e., mandating the used of sterile disposable needles only.

I think this is an appropriate ruling and probably all of us are doing this already. This ruling, however, will negatively impact those using "multiple-needle" electrolysis. With these operators, as many as 32 needles are used at one time. With needle costs more than one-dollar (one needle) this could be a hardship on these practitioners.

Indeed, those performing multiple-needle are extremely rare in their choice of modality. I would be surprised if there were more than a dozen such operators in California.

Of course, those using non-disposable needles for "multiple=needle" are sterilizing their needles (in sets of 16) by using FDA approved sterilizers.

I suppose the new law could be written to the effect only those using single-needle; and those using multiple-needle still be allowed to use the techniques they've been using for the past 30 years?

Overall, the proposed new rules are fine and I support the rule. I've been doing electrolysis for 40 years and have written three textbooks on the subject.

Sincerely,
Mike Bono

Flanagan, Kevin@DCA

From: Elissa Schwartz <softtouchskin@gmail.com>
Sent: Sunday, April 06, 2014 7:52 AM
To: Flanagan, Kevin@DCA
Subject: Electrolysis language amendment concerning Division 9 of Title 16 CALif Code of Regulations Section 982

Dear Mr. Flanagan

Division 9 of Title 16 of the CALif Code of Regulations in Section 982#b language.

I am a practicing Electrologist for 34 years. I use disposable probes but their are methods of Electrolysis that require several probes to be used during a treatment (Multi Needle machine.) The single use of probe would be price prohibited a dry heat sterilizer would take care of the sterilization of probes without proving to transfer infection to clients.

I think it is in the best interest to keep the language as it is at present, recommending the use of single use deposable probes. Also I think that in order to practice Electrology in some commercial buildings where electrologists work, it is important to stay with the dry heat sterilizer instead of an autoclave. The buildings in downtown San Francisco are not equipped with a water force or electric current strong enough to support this equipment.

Thank you,

Elissa Schwartz, Licensed Electrologist, CPE

Flanagan, Kevin@DCA

From: Rita Dietrich <hsc@dslextre.me.com>
Sent: Wednesday, April 02, 2014 10:06 AM
To: Flanagan, Kevin@DCA
Subject: Att: Board of Cosmetology

Kevin Flanagan,

I am a member of the California Electrologists' Association and a California Licensed Electrologist. Please do not add the new language concerning disposable electrology needles/wire filaments per Division 9 of Title 16 of the California Code of Regulations in Section 982, #b. This would make it cost prohibitive for multi-needle operators.

Rita Dietrich, L.E.
www.huntingtonskincare.com
949 642-3200

Flanagan, Kevin@DCA

From: Alana Dzurek <alanadzurek@msn.com>
Sent: Thursday, April 03, 2014 5:34 PM
To: Flanagan, Kevin@DCA
Subject: Electrolysis -Language Amendement

I received an email from the AEA southern Chapter that the Board of Cosmetology is considering amending the current language See below

As a Multi-Needle practitioner for the past 20 years, I urge you to please reconsider your position. It is extremely cost prohibitive to change the language, not to mention the laser has already dipped into our profession and taken a large chunk of our customers away. Electrolysis is already suffering as a profession due to budget issues and lack of schooling available in most areas. This would further cripple the already practicing and established practitioners and deter anymore from practicing this technique.

Please feel free to contact me if you have questions, or need more information. I am happy to speak with you in person to explain why this is so important.

The Board of Barbering and Cosmetology is considering amending language concerning disposable electrology needles/wire filaments per Division 9 of Title 16 of the California Code of Regulations in Section 982, #b. The language is as follows:

(b) Electrology needles/wire filaments shall be single-use, pre-sterilized and disposable. Disposable needles/wire filaments must be placed in a puncture resistant sharps container immediately after use, when contaminated before use, when opened and found damaged, or when not used before the pre-printed expiration date.

Alana Dzurek, L.E.
Beverly Hills Hair Free
414 N. Camden Drive
Beverly Hills, CA 90210
310-428-0603
www.beverlyhillshairfree.com
info@beverlyhillshairfree.com

Flanagan, Kevin@DCA

From: Patsy Kirby <patsykirby@comcast.net>
Sent: Wednesday, April 09, 2014 9:08 AM
To: Flanagan, Kevin@DCA
Subject: From Patsy Kirby

Hi Kevin,

The Electrology Association of California is sending out an "Alert" letter stating that they do not support the new proposed regulation that requires electrologist to use single-use, per-sterilized and disposable needles. Disposable needles/wires filaments must be placed in a puncture resistant sharps container immediately after use, when contaminated before use, when opened and found damaged, or when not used before pre-printed expiration date.

The purpose of electrologists using single-use, per-sterilized and disposable needles is to protect the consumer from the spread of disease. The cost for electrolysis needles is minimal to the electrologists who use multi-needle equipment. Not knowing exact statistics of how many electrologists in the state of CA use multi-needle, I would say that would be less than 40. The multi-needle technique uses 16 needles. The price of needles range from \$31.45 to \$49.50 for 50 needles. Further more, the Center for Disease control recommends electrologist use single-use, per-sterilized and disposable needles. In this day and age why in the world would a client receiving an electrolysis treatment want to be treated with a needle that has been used previously.

Regards,

Patsy Kirby, MA, CPE
International Board of Electrologist Certification, Director
ibecaea@electrology.com
Ph: 707-777-5315
American Electrology Association
<http://www.electrology.com>
patsykirby@comcast.net



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August 22, 2014

VIA EMAIL AND U.S. MAIL

Kevin Flanagan
Board of Barbering and Cosmetology
2420 Del Paso Road, Suite 100
Sacramento, CA 95834
Kevin.Flanagan@dca.ca.gov

**Re: Public Comment to Proposed Changes to Section 984(e)
of Division 9 of Title 16 of the California Code of Regulations by the
California Board of Barbering and Cosmetology ("Board")**

Dear Mr. Flanagan:

I am writing on behalf of Face Reality, Inc., a California corporation that employs 10 estheticians and provides esthetic training and services within the state of California. Face Reality, Inc.'s mission is to improve the quality of treatment and products for those suffering from acne, to educate, train and guide skin care professionals in the treatment of acne and to help its clients keep clear skin. These comments address the recently modified text of section 984(e) of Division 9 of Title 16 of the California Code of Regulations.¹

Face Reality, Inc. objects to the adoption of the proposed amendments for several reasons. The amendments to section 984(e) lack sufficient clarity, are ambiguous, overbroad and improperly infringe on the scope of services that estheticians currently and lawfully provide. The proposed amendments to section 984(e) are not supported by facts in the rulemaking record. Furthermore, if the amendments are adopted as written they will have a significant adverse impact on consumers, small businesses and estheticians practicing in California. For these reasons, the proposed amendments to section 984(e) should be withdrawn by the Board.

As an alternative, the Board should prepare and adopt, through a separate rulemaking process, regulations that explicitly state that estheticians are licensed to service clients with acne, as long as they comply with all other applicable health and safety regulations. As part of this additional rulemaking, the Board should conduct a thorough investigation and research to determine the safety and efficacy of practices by estheticians who specialize in working with clients who have acne, comparing clinical trials of prevalent dermatology procedures and those

¹ All further regulatory references herein are to sections of Division 9 of Title 16.

of estheticians specializing in acne, and taking into account the required knowledge and training for servicing clients with acne and other skin conditions.²

1) The Proposed Language in Section 984(e) Lacks Sufficient Clarity, is Ambiguous, Overbroad and Improperly Infringes on the Scope of Services that an Esthetician is Authorized by Statute to Provide

a) The Proposed Language in Section 984(e) Lacks Sufficient Clarity and is Ambiguous and Overbroad

The additional language in section 984(e) requires an esthetician to wear gloves whenever the skin or his or her hands are “inflamed, or broken, or where a skin infection or eruption is present.” Although many estheticians wear new, clean disposable gloves for each client, these amendments highlight the ambiguity in the proposed regulations. For instance, it is unclear whether any redness or puffiness on the service provider’s hands amounts to inflammation. Is a small cut, scratch or scab considered “broken” skin? Is the presence of acne, by itself, considered a “skin infection” that would fall under the prohibitions of 984(e)?

Moreover, with these additions the scope of subsection 984(e) has now been enlarged to include services and to address issues that are unrelated to the other provisions in that section of the regulation, set forth in subsections 984(a)-(d). The other subsections deal with specific infections and parasitic infestations. The infections or parasitic infestations covered by the other subsections do not, and should not, include acne. But, the amendment to subsection 984(e) arguably prohibits an esthetician from working on any client with acne.

b) The Proposed Language in Section 984(e) Improperly Infringes on an Esthetician’s Allowed Scope of Services as Set Forth by California Law

Section 984(e), which was previously a narrow section that prohibited the “massage” of skin that is inflamed, broken, infection or where an eruption is present, now prohibits *any services* on such a client, whether the esthetician is wearing gloves or not. By enlarging the scope to prohibit any services the regulations improperly infringe on the statutory practices that an esthetician is allowed by law to provide.

California Business & Professions Code section 7316(c) sets forth the statutory scope of skin care services that an esthetician can legally provide. That section states that:

- (1) Skin care is any one or more of the following practices:

² For example, tattoo artists and piercers are required to have less training than estheticians and, thus potentially pose a much more significant risk to the public than a licensed, well-trained estheticians using a lancet.

(A) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezer or waxing, or applying eyelashes to any parson.

(B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

Estheticians are authorized by law to perform a variety of services, including giving facials and skin care, applying appropriate products to the face, neck, arms and upper part of the body and massaging, cleaning and stimulating those body parts.

The proposed amendment does more than simply attempt to increase the perceived safety of clients and practitioners. It prohibits estheticians from performing services – any services – on clients with even the slightest amount of inflammation or infection. In particular, the language in section 984(e) could now be interpreted to prevent estheticians from performing any services on any client that has acne.

Testimony at the Board's July 28, 2014 hearing included evidence that estheticians have been providing services to clients with acne for decades. There has been no prior activity by the Board or its inspectors that would give estheticians any indication that they have been acting outside of the scope of their license. For example, the Board's "Fact Sheet: Esthetics" includes a list of some of the services that estheticians cannot provide, which include skin piercings, laser treatments, administration of medicine and removal of moles and skin tags. (Exhibit A.) Performing acne-related services are not included in the list of prohibited services. (*Id.*) Estheticians and facilities that employ estheticians to provide services to clients with acne are subject to regular inspections. To our knowledge, no estheticians have been cited for providing services to clients with acne or told that they were not allowed to provide any such services. Furthermore, hundreds of estheticians have listed acne-related services on their menu of services and detail these services on their websites.

Board licensed esthetics schools have invited estheticians to speak to their students about providing services to clients with acne. Many estheticians became licensed for the sole purpose of doing so. Estheticians have created businesses centered on clients with acne. Expanding the scope of section 984(e) to prohibit estheticians from working on any clients with skin that is inflamed, or broken or where a skin infection or eruption is present would deny these practitioners and the acne suffering public, many of whom have not achieved clear skin from the prescriptions issued by the dermatologists, of an alternative which is clearly working for thousands of acne sufferers.

c) Estheticians who Provide Services to Clients with Acne Must Comply with Existing Regulations Requiring Safe and Sanitary Practices and Are Not Practicing Medicine or Infringing on Duties Properly Performed by Dermatologists

The amendments are overbroad and unnecessary because existing regulations require sufficient safe practices. Sections 985-994 address and appropriately cover specific housekeeping and cleanliness requirements and procedures. Section 984(e), as now proposed, is duplicative of the more specific sections, unnecessary, overbroad and should be omitted from the regulation.

Allowing estheticians to perform appropriate and legally authorized services on clients with acne is not an infringement on the scope of services provided by the medical profession. Estheticians are not authorized to prescribe medication. They are not authorized to diagnose or treat medical conditions. Section 991 prohibits estheticians from performing any invasive procedures. Section 992 sets forth requirements for exfoliation and section 993 prohibits the use of certain tools. But, estheticians have historically performed services on clients with acne and there is nothing in the record that indicates any health or safety issues associated with continuing to provide services to clients with acne.

d) Drawing a Distinction between Grades of Acne Does Not Resolve the Issues with Clarity and Ambiguity, Makes the Regulations Prone to Misinterpretation and is Also Not Supported by the Record

Face Reality, Inc. is aware that the Board has recently posted a notice on its Facebook page that states that the proposed language in section 984(e) is not intended to prevent estheticians from providing services to clients with grade 1 and grade 2 acne. While we appreciate the clarification and the Board's acknowledgement, the language in the proposed amendments to section 984(e) does not draw a distinction between grades of acne.

The proposed language prohibits estheticians from providing any services to clients with inflammation, broken skin, or where a skin infection or eruption is present. Because the language in section 984(e) does not make any attempt to define the conditions or distinguish between grades of acne, it is inconsistent with the Board's recently announced policy, would create confusion, particularly with regard to proper enforcement, and should be withdrawn.

Moreover, the distinction between grades 1 and 2, on the one hand, and grades 3 and 4, on the other, or any prohibition on providing services to clients with grade 3 or grade 4 acne is not supported by any evidence in the rulemaking file or elsewhere. Face Reality, Inc. and other estheticians have had great success in the past providing services to clients with acne grades 1 through 4. Although the techniques and methods of treatment may be adjusted based on the client's particular skin type or condition, the number of lesions or comedones should not be the determining factor for whether a potential client can be seen by an esthetician or not.

As discussed in the additional comments below, estheticians provide a valuable and important service to clients with a wide variety of skin problems, including acne grades 1

through 4. Placing an arbitrary restriction on the types of clients that an esthetician can assist will remove important and valued services from the marketplace. There is no evidence in the record that estheticians with proper training and who follow other applicable health and safety requirements cannot provide safe and effective services to clients with acne grades 1 through 4. Absent compelling evidence to the contrary – evidence that is not present in the current rulemaking file – the proposed regulations are arbitrary and capricious, are not necessary and should not be adopted by the Board.

2) There is No Evidence in the Record that the Proposed Amendments Increase Consumer Safety, Making the Board Action Arbitrary and Capricious and Not Reasonably Necessary to Protect Consumers or Practitioners

a) There is No Evidence that the Amendments to Section 984(e) “Increase Consumer Safety”

The only reason set forth by the Board for the proposed changes is to “increase consumer safety.” The Notice of Proposed Rulemaking specifically states:

Amend Section 984

Problem Addressed and Anticipated Benefit: The existing subsection (e) specifies only that no massaging should be performed on customers with skin cuts or abrasions or skin infections. The Board has determined it is safer to prohibit all services when those conditions exist.

Factual Basis/Rationale: The Board has determined that expanding the prohibition to include all services is necessary to increase consumer safety.

The Board is authorized by statute to “[a]dopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety in establishments, schools approved by the board, and in the practice of any profession provided for in this chapter.” (Cal. Bus. & Prof. Code section 7312(e).)

There is no evidence that expanding the scope of the prohibition in section 984(e) will have any impact on consumer safety. Public comments at the July 28, 2014 hearing confirmed that estheticians have for many years performed services on clients with acne (which could be considered inflammation, broken skin or skin with an eruption) without any problems to the esthetician or the client. There is nothing in the rulemaking file that indicates that there have been any complaints against estheticians that have worked on clients with acne, inflammation, broken skin or eruptions. There is nothing that indicates there is any widespread or significant health or safety concern if estheticians are allowed to continue to provide services to clients with acne. The Board has not identified any factual basis for the contention that the proposed changes to the regulation would increase safety for clients or practitioners.

In fact, the larger concern may be the continued use of antibiotics to treat acne by dermatologists and other medical professions. This issue which was highlighted in an October 22, 2013 episode of the award winning PBS series FRONTLINE. "Hunting the Nightmare Bacteria" exposes the catastrophic danger posed by gram-negative and other antibiotic resistant bacteria, which according to experts, has emerged as a result of over-prescription of antibiotics. (**Exhibit B**, at pp. 10-12.)

Clinical use of oral antibiotics for acne is based primarily on empiric evidence and clinical dose-response trial data with comparative efficacy trials are "conspicuously rare." (**Exhibit C** (see highlighted text).) Many healthcare professionals and organizations, such as the Center for Disease Control (CDC) and National Institute of Health (NIH), are highlighting the dangers and calling for doctors to stop prescribing antibiotics for conditions for which it is not effective. (See **Exhibit D** (CDC publication highlighting the dangers of antibiotic resistance and citing "[w]idespread overuse and inappropriate use of antibiotics" as a primary cause), **Exhibit E** (acknowledging that "over time, the *P. acnes* bacteria can become resistant to the antibiotic being used to treat it. When resistance occurs, acne is no longer controlled.") and **Exhibit F** (abstract of a medical study concluding that patients who receive antibiotic treatment for acne were more likely to develop a upper respiratory tract infection than those with acne who were not receiving such treatment).)

It has been our experience that many dermatologists regularly prescribe Isotretinoin (Accutane) for acne patients that do not need it. Face Reality, Inc. often sees clients who have been on as many as three courses of this dangerous drug. (See FDA warnings and contraindications in **Exhibit G** and **Exhibit H**). It is rare for Face Reality, Inc. to not be able to achieve clear skin for these clients with an alternative protocol and the use of safe, non-invasive, over-the-counter topical products.

Face Reality, Inc. provides training to skin care professionals, mostly estheticians, in how to effectively service acne clients through corrective peels, extractions, and managed use of topical products. If the skin care professional passes a test, Face Reality, Inc. allows that professional to purchase, use and sell its products. The company has trained approximately 200 individuals and institutions around the country, including almost 60 in the State of California. Approximately 10 – 12 of these institutions are under the supervision of a medical doctor.

Some medical doctors, rather than treating acne with antibiotics, are now utilizing estheticians and nurses and using protocols, like those provided by Face Reality, Inc., for addressing acne. Face Reality, Inc. has worked with two estheticians who have previously worked for dermatologists. The estheticians both said that their motivation for coming to Face Reality, Inc. was because they had heard about its success with acne and they were chagrined at the poor results attained by their prior dermatologist employer.

b) Current Practices Provide an Adequate and Enforceable Level of Safety

Estheticians are required to use a new pair of exam gloves, fresh linen and a sterilized extractor on every client. (Sections 981 and 987.) Many estheticians who work with patients

that have acne take additional precautions. When Face Reality, Inc. sees a client for any service, it first confirms that the client does not have a condition that may preclude it from safely performing specific services. If it appears that the client may have an infection, such as staphylococcus, the client is told that he or she should see a medical doctor as soon as possible, and the company does not provide further services to that client. Face Reality, Inc. then goes through the steps necessary to sterilize anything for which that client may have come into contact.

If the client has a skin condition that is suspected to be cancerous or pre-cancerous, or if it is a condition that the esthetician does not recognize, the client is told that he or she should see a dermatologist as soon as possible. If it appears that the client may have eczema, herpetic lesions, a sunburn or irritated skin, Face Reality, Inc. will not perform any services.

Face Reality, Inc. checks with any client who may be pregnant or lactating. Such clients are told that they should avoid certain topical products, but the esthetician insists that the client check with her doctor about anything, relating to her skincare, that should be avoided. Employees at Face Reality, Inc., like most estheticians, always apply a small amount of any product which contains an active ingredient on a patch of skin to test for sensitivity, before recommending that product to a client.

All of the products that Face Reality, Inc. uses and sells list a complete deck of ingredients which comply with the FDA's INCI list. Face Reality, Inc. also keeps, on file, Certificates of Analysis and Material Safety Data Sheet on all of the Face Reality products. The safety of our clients, as well as our staff, is of paramount importance. Safety is a common topic at the company's meetings of estheticians.

If the Board feels that there is a justifiable risk to clients or practitioners that is not dealt with by the current regulations, there are ways to address the need for adequate or improved health and safety without prohibiting estheticians from performing any services on clients with acne. The proposed regulations go too far and there has been no showing that the prohibition in section 984(e) is necessary or would improve health and safety.

3) The Proposed Language Will Have Significant Adverse Impact On Consumers, Small Businesses And A Significant Adverse Impact On Jobs

The proposed revisions to section 984(e) significantly change the scope of the prohibitions in that section, the result being that they are not merely clarifications of existing rules but would preclude estheticians from performing any services on a client that has acne or other symptoms that estheticians can and have worked on safely for years.

Public comment at the July 28, 2014 hearing made it clear that many estheticians perform services on clients with acne without incident. By doing so, they are offering consumers an alternative to treatment by a doctor or dermatologist. Many clients prefer to see an esthetician for their acne, rather than take antibiotics or other treatments prescribed by a medical practitioner, and with great success. There is a place in the market for clients who prefer the

services of a trusted, sanitary and conscientious esthetician. The proposed regulations deprive both practitioners and clients of this safe and lawful choice.

The financial impacts of the proposed changes to section 984(e) would be significant. As of August 22, 2014, two petitions on change.org objecting to the proposed changes have gathered 2,109 signatures (see **Exhibits I and J**), and the financial impact of the amendment would be at least in the tens of millions of dollars, if not greater. The individuals who have signed the change.org petition have included a number of comments that further support the extreme adverse economic impact and loss of options for California consumers that would result if estheticians are prohibited from providing services to clients with acne. (*Id.*)

In its clinic alone, Face Reality, Inc. services over 500 new acne sufferers per year. It employs 10 estheticians and 5 support staff. Estheticians at the company make significantly more than the state and federal minimum wage and wages increase with training and experience. Employees that work full time also receive health and dental insurance (the cost of which is absorbed entirely by Face Reality, Inc.) and are eligible for an annual bonus and a 401(k) company contribution.

Currently, there are 59 establishments in the State of California that the company has trained, tested and that utilize the Face Reality, Inc. protocol and products. Although some of these are sole practitioners, others are establishments that have employees, do a significant amount of business and help a lot of people. These businesses also provide tax revenue and purchase products and services from other businesses.

Face Reality, Inc. alone, spends well over a million dollars every year on taxes, rent, payments to the City of San Leandro for employee parking, repairs and maintenance, web services, professional services such as accounting, legal and computer maintenance, laundry service and many others. Face Reality, Inc., if denied the opportunity to continue its present practice, would not continue by providing services such as facials or services under the auspices of "anti-aging"; that is not its calling.

The Board should remove the proposed revision in section 984(e) and leave the regulations in their present form until additional analysis, review and appropriate public comment can be obtained.

Conclusion

The proposed amendments to section 984(e) are unclear, ambiguous and overbroad, are not supported by sufficient factual information in the rulemaking file, and would have a significant adverse impact on thousands of estheticians and consumers in the state.

Estheticians have successfully been working with clients who have acne for many years, a fact that was supported by the public comments at the July 28, 2014 hearing. Adopting the proposed amendment to section 984(e) would deprive people of their livelihood and have a significant adverse impact on the practice of esthetics.

Kevin Flanagan
August 22, 2014
Page 9

WENDEL, ROSEN, BLACK & DEAN LLP

The proposed amendment should not be adopted by the Board and should be withdrawn. If the Board does not withdraw the proposed amendment, practitioners will likely pursue an appropriate legal challenge to the regulations. To the extent the Board believes further regulation is necessary, the Board should authorize estheticians to continue to work on such clients as long as current regulations are followed and other appropriate precautions are taken.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Greggory C. Brandt

BOARD OF BARBERING AND COSMETOLOGY

FINAL STATEMENT OF REASONS

Hearing Date: August 11, 2014

Subject Matter of Proposed Regulations: Text and Reference Books for Students

Sections Affected: Section 961, California Code of Regulations

Updated Information

The Initial Statement of Reasons is included in the file. There is no updated information.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

There is no significant impact to small business.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy on other provision of law.

Summary of, and Responses to, Comments Received During the 45-day Comment Period

Comment No. 1

- Leonette L. Motta

Ms. Motta says that the Board should not allow textbook publishers to regulate cosmetology practices in California. She also says that only cosmetology instructors and individual state boards have the expertise to properly evaluate and test students according to the laws of their respective states.

Board Response:

The Board rejects these comments. This regulation does not leave it to textbook publishers to define proper cosmetology practices in California. Those practices are defined by the statutes of the Legislature and Board regulations based on those statutes. This regulation is designed to ensure that textbooks and other teaching materials reflect the examination. Moreover, the examination although for the most part national in scope and developed by a national organization, does take into account California-specific standards and practices.

BOARD OF BARBERING AND COSMETOLOGY
Division 9 of Title 16 of the California Code of Regulations.

FINAL LANGUAGE

LEGEND

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation.
Strikeout	Indicates proposed deletions to the existing regulation.

- **Amend Section 961, Title 16, California Code of Regulations, as follows:**

§ 961. Online Training and Text and Reference Books for Students.

(a) In teaching, approved schools shall use text and reference books approved by the ~~board~~ National Interstate Council of State Boards of Cosmetology (NIC). ~~They~~ Approved schools may use other teaching material or on-line training programs, in lieu of the text book, under the condition that they have been approved by the NIC ~~to supplement the approved text and reference books.~~

(b) Each student shall possess the following:

(1) At least one (1) of the textbooks approved by the ~~board~~ NIC or have access to a NIC-approved online program.

(2) The Barbering and Cosmetology Act and the Rules and Regulations of the Board of Barbering and Cosmetology.

(c) There shall be available for the use of students in the school:

(1) A list of the text and reference books approved by the NIC ~~board~~.

(2) Any two approved texts other than the one text or online program access, possessed by the student. (Shall not apply to barber schools if there are less than three approved texts.)

Note: Authority cited: Sections 7312 and 7362, Business and Professions Code. Reference: Section 7362, Business and Professions Code.

On behalf of the esteemed academic community, I must ask what credential does the author of these rudimentary textbooks hold to define those practices that will best serve the consumer and the community?

I have been an active, licensed, practicing educator for thirty years, and understand the health, safety and mechanical credential essential to the practice of cosmetology and fail to see the priority of these essential goals properly endorsed by ANY PUBLISHED TEXT AVAILABLE AT THIS TIME. ALLOWING TEXTBOOK PUBLISHERS TO DEFINE STATE PRACTICAL CRITERIA and STANDARD IS EQUAL TO ALLOWING CAR MANUFACTURER'S TO REGULATE SPEED LIMITS AND DRIVING LAWS ! Does it not make more sense for schools and educators to define these protocols? It's not a matter of mass passing rate to generate maass licensing fees. . . IT IS OUR RESPONSIBILITY IS TO OUR STUDENTS AND THE CONSUMER TO ENSURE PROPER CARE AND THOROUGH EVALUATION HANE BEEN PROVIDED DURING AND FOLLOWING TRAINING ON BEHALF OF BOTH STUDENT AND CONSUMER. WHERE IS THE THE MEASURE OF QUALIFICATION AND CREDENTIAL OF ANY PUBLISHER TO SATISFY THE UNIQUE QUALIFICATIONS REQUIRED OF EACH STATE'S LAW.

INSTRUCTORS AND INDIVIDUAL STATE BOARDS HAVE THE EXPERTISE TO PROPERLY IMPLEMENT, EVALUATE AND TEST REGARDING THESE INDEPENDENT CRITERIA ESSENTIAL TO EACH STATE'S LICENSING PROTOCOL.

PLEASE PUT ME ON YOUR *INTERESTED PARTY MAILING LIST*.

Thank you.

Leonette L. Motta

E-Mail: s.f. volvo@aol.com

116 Haven Drive

Daly City, Ca. 94014

Nghi Tran
3590 Tuers Road
San Jose, CA 95121
(408)364-5852
Nitn002@gmail.com
June 29, 2014

Kevin Flanagan
Board of Barbering and Cosmetology
2420 Del Paso Road, Suite # 100
Sacramento, CA 95834

Dear Kevin Flanagan:

I am concern with the Board of Barbering and Cosmetology proposal of handing over its duties of overseeing school curriculums and textbooks to a vendor currently in use for the examination in respect to monetary gains, conflicting interest law. I would like to request more details about this proposal. What is the chain of command should a dispute arise about its effectiveness? In my opinion, this proposal would add on another supply cost to students and schools rendering current textbooks useless which may be passed on to consumers in the increase in service price with no measurable way of determining its benefit. However, if the board truly seeks to enforce standardization of instructional materials for the benefit of everyone is by making these instructional materials free, downloadable on the board website, as free e-books. Thank you for allowing my comments in the board proposal.

Sincerely,

Nghi Tran

Flanagan, Kevin@DCA

From: Dian Torres <diantor14@gmail.com>
Sent: Monday, June 23, 2014 11:42 AM
To: Flanagan, Kevin@DCA
Subject: response to proposed new ruling

Mr. Flanagan, it is with great concern that I write this email to you in regards to the potential new ruling for "broad proposal" for approval. My issues of concerns are that there will be "conflict on interest". The current testing folks are a national organization that was chosen and selected from a previous board group that made a back door deal. The "professional federation" group have lobbied many changes that serves the private sector and "dummy downs" the integrity and fairness to consumer and benefits the "private sector" and international individuals that want to come to the US to practice there trade.

To allow the "testing body" to make a determination is in no way appropriate to manage this decision.

Thank you for the opportunity and certainly hope that attention will be given to the concern and not just the opportunity for individual to air out there concerns and a decision has been determined already.

Respectfully,
Dian Torres

p.s.

Question on "selected board members" there are members that have been on the board for many years and I understand that they have been appointed, however there are term limits. Will you please clarify.

--

Do something scary every day, Leap and the net will appear! Eleanor Roosevelt



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

Board of Barbering and Cosmetology-Department of Consumer Affairs
PO Box 944226, Sacramento, CA 94244
P (800) 952-5210 F (916) 574-7574 | www.barbercosmo.ca.gov



MEMORANDUM

DATE	October 6, 2014
TO	Board Members, Board of Barbering and Cosmetology
FROM	Tami Guess, Board Policy Analyst Board of Barbering and Cosmetology
SUBJECT	SB 1159

On September 28, 2014, Senate Bill 1159 was chaptered by the Secretary of State, Chapter 752, Statutes of 2014. The Board will begin to implement procedures to become compliant with the new Legislation.

Senate Bill No. 1159

CHAPTER 752

An act to amend Sections 30, 2103, 2111, 2112, 2113, 2115, 3624, and 6533 of, and to add Section 135.5 to, the Business and Professions Code, to amend Section 17520 of the Family Code, and to amend Section 19528 of the Revenue and Taxation Code, relating to professions and vocations.

[Approved by Governor September 28, 2014. Filed with
Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, Lara. Professions and vocations: license applicants: individual tax identification number.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other licensing bodies. Existing law requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.

This bill, no later than January 1, 2016, would require those licensing bodies to require an applicant to provide either an individual tax identification number or social security number if the applicant is an individual. The bill would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would prohibit, except as specified, any entity within the department from denying licensure to an applicant based on his or her citizenship status or immigration status. The bill would require every board within the department to implement regulatory and procedural changes necessary to implement these provisions no later than January 1, 2016, and would authorize implementation at any time prior to that date. The bill would make other conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) (1) Notwithstanding any other law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall, at the

time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.

(2) No later than January 1, 2016, in accordance with Section 135.5, a board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for purposes of this subdivision.

(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means a person or entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Bureau of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, a federal employer identification number, individual taxpayer identification number, or social security number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) A deputy, agent, clerk, officer, or employee of a licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of his or her employment or duty, has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release an individual taxpayer identification number or social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other law, a board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall at the time of issuance of the license require that each licensee provide the individual taxpayer identification number or social security number of each individual listed on the license and any person who qualifies for the license. For the purposes of this subdivision, "licensee" means an entity that is issued a license by any board, as defined in Section 22, the State Bar, the Bureau of Real Estate, and the Department of Motor Vehicles.

SEC. 2. Section 135.5 is added to the Business and Professions Code, to read:

135.5. (a) The Legislature finds and declares that it is in the best interests of the State of California to provide persons who are not lawfully present in the United States with the state benefits provided by all licensing acts of entities within the department, and therefore enacts this section pursuant to subsection (d) of Section 1621 of Title 8 of the United States Code.

(b) Notwithstanding subdivision (a) of Section 30, and except as required by subdivision (e) of Section 7583.23, no entity within the department shall deny licensure to an applicant based on his or her citizenship status or immigration status.

(c) Every board within the department shall implement all required regulatory or procedural changes necessary to implement this section no later than January 1, 2016. A board may implement the provisions of this section at any time prior to January 1, 2016.

SEC. 3. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Submitted official evidence satisfactory to the board of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(b) Submitted official evidence satisfactory to the board of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

(c) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the board.

(d) Successfully completed one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104. The board shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (b) of Section 2102.

(e) Satisfactorily completed the postgraduate training required under Section 2096.

(f) Passed the written examination required for certification as a physician and surgeon under this chapter.

SEC. 4. Section 2111 of the Business and Professions Code is amended to read:

2111. (a) Physicians who are not citizens but who meet the requirements of subdivision (b) and who seek postgraduate study in an approved medical school may, after receipt of an appointment from the dean of the California medical school and application to and approval by the Division of Licensing, be permitted to participate in the professional activities of the department or division in the medical school to which they are appointed. The physician shall be under the direction of the head of the department to which he or she is appointed, supervised by the staff of the medical school's medical center, and known for these purposes as a "visiting fellow." The visiting fellow shall wear a visible name tag containing the title "visiting fellow" when he or she provides clinical services.

(b) (1) Application for approval shall be made on a form prescribed by the division and shall be accompanied by a fee fixed by the division in an amount necessary to recover the actual application processing costs of the program. The application shall show that the person does not immediately qualify for a physician's and surgeon's certificate under this chapter and that the person has completed at least three years of postgraduate basic residency requirements. The application shall include a written statement of the recruitment procedures followed by the medical school before offering the appointment to the applicant.

(2) Approval shall be granted only for appointment to one medical school, and no physician shall be granted more than one approval for the same period of time.

(3) Approval may be granted for a maximum of three years and shall be renewed annually. The medical school shall submit a request for renewal on a form prescribed by the division, which shall be accompanied by a renewal fee fixed by the division in an amount necessary to recover the actual application processing costs of the program.

(c) Except to the extent authorized by this section, the visiting fellow may not engage in the practice of medicine. Neither the visiting fellow nor the medical school may assess any charge for the medical services provided by the visiting fellow, and the visiting fellow may not receive any other compensation therefor.

(d) The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2102.

(e) The division shall notify both the visiting fellow and the dean of the appointing medical school of any complaint made about the visiting fellow.

The division may terminate its approval of an appointment for any act that would be grounds for discipline if done by a licensee. The division shall provide both the visiting fellow and the dean of the medical school with a written notice of termination including the basis for that termination. The visiting fellow may, within 30 days after the date of the notice of termination,

file a written appeal to the division. The appeal shall include any documentation the visiting fellow wishes to present to the division.

(f) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country and recognized by the division from participating in any program established pursuant to this section.

SEC. 5. Section 2112 of the Business and Professions Code is amended to read:

2112. (a) Physicians who are not citizens and who seek postgraduate study, may, after application to and approval by the Division of Licensing, be permitted to participate in a fellowship program in a specialty or subspecialty field, providing the fellowship program is given in a hospital in this state which is approved by the Joint Committee on Accreditation of Hospitals and providing the service is satisfactory to the division. Such physicians shall at all times be under the direction and supervision of a licensed, board-certified physician and surgeon who is recognized as a clearly outstanding specialist in the field in which the foreign fellow is to be trained. The supervisor, as part of the application process, shall submit his or her curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow. Approval of the program and supervisor is for a period of one year, but may be renewed annually upon application to and approval by the division. The approval may not be renewed more than four times. The division may determine a fee, based on the cost of operating this program, which shall be paid by the applicant at the time the application is filed.

(b) Except to the extent authorized by this section, no such visiting physician may engage in the practice of medicine or receive compensation therefor. The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2101 or 2102.

(c) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

SEC. 6. Section 2113 of the Business and Professions Code is amended to read:

2113. (a) Any person who does not immediately qualify for a physician's and surgeon's certificate under this chapter and who is offered by the dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Division of Licensing, be granted a certificate of registration to engage in the practice of medicine only to the extent that the practice is incident to and a necessary part of his or her duties as approved by the division in connection with the faculty position. A certificate of registration does not authorize a registrant to admit patients to a nursing or a skilled or assisted living facility unless that facility is formally affiliated with the sponsoring medical school. A clinical fellowship shall not be submitted as a faculty service appointment.

(b) Application for a certificate of registration shall be made on a form prescribed by the division and shall be accompanied by a registration fee fixed by the division in a amount necessary to recover the actual application processing costs of the program. To qualify for the certificate, an applicant shall submit all of the following:

(1) If the applicant is a graduate of a medical school other than in the United States or Canada, documentary evidence satisfactory to the division that he or she has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the division, or has been engaged in the practice of medicine in the United States for at least four years in approved facilities, or has completed a combination of that licensure and training.

(2) If the applicant is a graduate of an approved medical school in the United States or Canada, documentary evidence that he or she has completed a resident course of professional instruction as required in Section 2089.

(3) Written certification by the head of the department in which the applicant is to be appointed of all of the following:

(A) The applicant will be under his or her direction.

(B) The applicant will not be permitted to practice medicine unless incident to and a necessary part of his or her duties as approved by the division in subdivision (a).

(C) The applicant will be accountable to the medical school's department chair or division chief for the specialty in which the applicant will practice.

(D) The applicant will be proctored in the same manner as other new faculty members, including, as appropriate, review by the medical staff of the school's medical center.

(E) The applicant will not be appointed to a supervisory position at the level of a medical school department chair or division chief.

(4) Demonstration by the dean of the medical school that the applicant has the requisite qualifications to assume the position to which he or she is to be appointed and that shall include a written statement of the recruitment procedures followed by the medical school before offering the faculty position to the applicant.

(c) A certificate of registration shall be issued only for a faculty position at one approved medical school, and no person shall be issued more than one certificate of registration for the same period of time.

(d) (1) A certificate of registration is valid for one year from its date of issuance and may be renewed twice.

A request for renewal shall be submitted on a form prescribed by the division and shall be accompanied by a renewal fee fixed by the division in an amount necessary to recover the actual application processing costs of the program.

(2) The dean of the medical school may request renewal of the registration by submitting a plan at the beginning of the third year of the registrant's appointment demonstrating the registrant's continued progress toward licensure and, if the registrant is a graduate of a medical school other than in the United States or Canada, that the registrant has been issued a certificate

by the Educational Commission for Foreign Medical Graduates. The division may, in its discretion, extend the registration for a two-year period to facilitate the registrant's completion of the licensure process.

(e) If the registrant is a graduate of a medical school other than in the United States or Canada, he or she shall meet the requirements of Section 2102 or 2135, as appropriate, in order to obtain a physician's and surgeon's certificate. Notwithstanding any other provision of law, the division may accept clinical practice in an appointment pursuant to this section as qualifying time to meet the postgraduate training requirements in Section 2102, and may, in its discretion, waive the examination and the Educational Commission for Foreign Medical Graduates certification requirements specified in Section 2102 in the event the registrant applies for a physician's and surgeon's certificate. As a condition to waiving any examination or the Educational Commission for Foreign Medical Graduates certification requirement, the division in its discretion, may require an applicant to pass the clinical competency examination referred to in subdivision (d) of Section 2135. The division shall not waive any examination for an applicant who has not completed at least one year in the faculty position.

(f) Except to the extent authorized by this section, the registrant shall not engage in the practice of medicine, bill individually for medical services provided by the registrant, or receive compensation therefor, unless he or she is issued a physician's and surgeon's certificate.

(g) When providing clinical services, the registrant shall wear a visible name tag containing the title "visiting professor" or "visiting faculty member," as appropriate, and the institution at which the services are provided shall obtain a signed statement from each patient to whom the registrant provides services acknowledging that the patient understands that the services are provided by a person who does not hold a physician's and surgeon's certificate but who is qualified to participate in a special program as a visiting professor or faculty member.

(h) The division shall notify both the registrant and the dean of the medical school of a complaint made about the registrant. The division may terminate a registration for any act that would be grounds for discipline if done by a licensee. The division shall provide both the registrant and the dean of the medical school with written notice of the termination and the basis for that termination. The registrant may, within 30 days after the date of the notice of termination, file a written appeal to the division. The appeal shall include any documentation the registrant wishes to present to the division.

SEC. 7. Section 2115 of the Business and Professions Code is amended to read:

2115. (a) Physicians who are not citizens and who seek postgraduate study may, after application to and approval by the Division of Licensing, be permitted to participate in a fellowship program in a specialty or subspecialty field, providing the fellowship program is given in a clinic or hospital in a medically underserved area of this state that is licensed by the State Department of Health Services or is exempt from licensure pursuant

to subdivision (b) or (c) of Section 1206 of the Health and Safety Code, and providing service is satisfactory to the division. These physicians shall at all times be under the direction and supervision of a licensed, board certified physician and surgeon who has an appointment with a medical school in California and is a specialist in the field in which the fellow is to be trained. The supervisor, as part of the application process, shall submit his or her curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow. Approval of the program and supervisor is for a period of one year, but may be renewed annually upon application to and approval by the division. The approval may not be renewed more than four times. The division may determine a fee, based on the cost of operating this program, which shall be paid by the applicant at the time the application is filed.

(b) Except to the extent authorized by this section, no visiting physician may engage in the practice of medicine or receive compensation therefor. The time spent under appointment in a clinic pursuant to this section may not be used to meet the requirements for licensure under Section 2102.

(c) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

(d) For purposes of this section, a medically underserved area means a federally designated Medically Underserved Area, a federally designated Health Professional Shortage Area, and any other clinic or hospital determined by the board to be medically underserved. Clinics or hospitals determined by the board pursuant to this subdivision shall be reported to the Office of Statewide Health Planning and Development.

SEC. 8. Section 3624 of the Business and Professions Code is amended to read:

3624. (a) The committee may grant a certificate of registration to practice naturopathic medicine to a person who does not hold a naturopathic doctor's license under this chapter and is offered a faculty position by the dean of a naturopathic medical education program approved by the committee, if all of the following requirements are met to the satisfaction of the committee:

(1) The applicant submits an application on a form prescribed by the committee.

(2) The dean of the naturopathic medical education program demonstrates that the applicant has the requisite qualifications to assume the position to which he or she is to be appointed.

(3) The dean of the naturopathic medical education program certifies in writing to the committee that the applicant will be under his or her direction and will not be permitted to practice naturopathic medicine unless incident to and a necessary part of the applicant's duties as approved by the committee.

(b) The holder of a certificate of registration issued under this section shall not receive compensation for or practice naturopathic medicine unless

it is incidental to and a necessary part of the applicant's duties in connection with the holder's faculty position.

(c) A certificate of registration issued under this section is valid for two years.

SEC. 9. Section 6533 of the Business and Professions Code is amended to read:

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Have not committed any acts that are grounds for denial of a license under Section 480 or 6536.

(c) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(d) Have completed the required prelicensing education described in Section 6538.

(e) Have passed the licensing examination administered by the bureau pursuant to Section 6539.

(f) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or sciences degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least three years of experience working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than five years, prior to July 1, 2012, working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(g) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(h) Consent to the bureau conducting a credit check on the applicant.

(i) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(j) Submit with the license application a nonrefundable application fee, as specified in this chapter.

SEC. 10. Section 17520 of the Family Code is amended to read:

17520. (a) As used in this section:

(1) "Applicant" means a person applying for issuance or renewal of a license.

(2) "Board" means an entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Bureau of Real Estate,

the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Wildlife, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) “Certified list” means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the federal Social Security Act.

(4) “Compliance with a judgment or order for support” means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) “License” includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. “License” also includes any driver’s license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Wildlife, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not

exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means a person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means a person holding a driver's license issued by the Department of Motor Vehicles, a person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, a person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes an individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the federal Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers or individual taxpayer identification numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board

shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of an applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file

with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of

payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

This section shall not be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (I) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(I) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to

notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative

Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will

require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 11. Section 19528 of the Revenue and Taxation Code is amended to read:

19528. (a) Notwithstanding any other law, the Franchise Tax Board may require any board, as defined in Section 22 of the Business and Professions Code, and the State Bar, the Bureau of Real Estate, and the Insurance Commissioner (hereinafter referred to as licensing board) to provide to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
 - (2) Address or addresses of record.
 - (3) Federal employer identification number, if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number of all other licensees.
 - (4) Type of license.
 - (5) Effective date of license or renewal.
 - (6) Expiration date of license.
 - (7) Whether license is active or inactive, if known.
 - (8) Whether license is new or renewal.
- (b) The Franchise Tax Board may do the following:

(1) Send a notice to any licensee failing to provide the federal employer identification number, individual taxpayer identification number, or social security number as required by subdivision (a) of Section 30 of the Business and Professions Code and subdivision (a) of Section 1666.5 of the Insurance Code, describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty.

(2) After 30 days following the issuance of the notice described in paragraph (1), assess a one-hundred-dollar (\$100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number (if the licensee is a partnership) or his or

her individual taxpayer identification number or social security number (for all others) as required in Section 30 of the Business and Professions Code and Section 1666.5 of the Insurance Code.

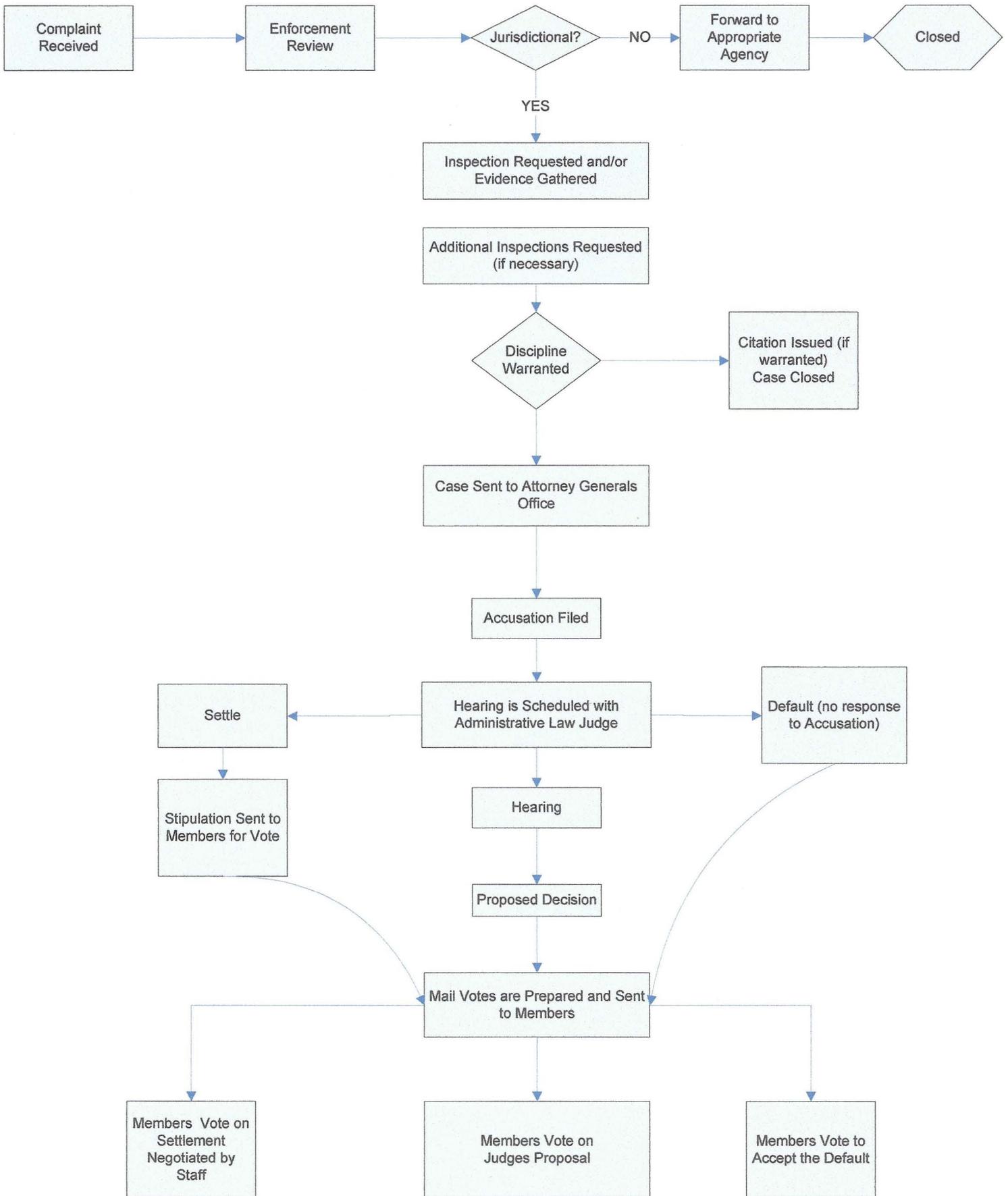
(c) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished to the Franchise Tax Board pursuant to Section 30 of the Business and Professions Code or Section 1666.5 of the Insurance Code shall not be deemed to be a public record and shall not be open to the public for inspection.

Item 8 - Sunset Review

Draft of Background Paper for Review

No Attachment

To request a copy email: Tandra.Guess@dca.ca.gov





MEMORANDUM

DATE	September 11, 2014
TO	Members, Enforcement Committee Board of Barbering and Cosmetology
FROM	Tami Guess, Board Policy Analyst Board of Barbering and Cosmetology
SUBJECT	Teeth Whitening

Purpose of Discussion

A trend has developed within the barbering and beauty industry of providing teeth whitening services at Board licensed establishments.

Definitions

Teeth whitening: Processes that will make teeth appear whiter.

Practice of Dentistry: the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation.

Background

The appearance of teeth whitening services and practices in non-dental settings has led to various State Dental Board decisions, attorney general opinions and legislation in some States. Some jurisdictions have taken recent action to limit teeth bleaching services to dental settings. These include: Florida, Iowa, Massachusetts, Nevada, New Jersey, Tennessee and the District of Columbia. On February 3, 2011 an administrative action was taken by the Federal Trade Commission (FTC) against the North Carolina Board of Dental Examiners for limiting teeth whitening services to licensed dental professionals. According to the FTC, North Carolina's restrictions amounted to a restraint of trade and unreasonably harmed competition. This ruling was challenged and the courts upheld the FTC's administrative determination. Currently, the United States Supreme Court is reviewing the Court of Appeals decision. The Board should be aware that there are currently several legal challenges involving teeth whitening services and the restricted practice of dentistry.

On May 14, 2014, Board staff obtained a legal opinion regarding the practice of teeth whitening in Board licensed establishments. The opinion stated that the act of teeth whitening was not within the scope of practice for a cosmetologist, esthetician, manicurist and/or student of cosmetology/esthetics/manicuring. The act is considered a practice of dentistry. It is a violation of the dental act for a cosmetologist/esthetician/manicurist or student of cosmetology/esthetics/manicuring to engage in teeth whitening services.

Practice of Dentistry¹

- Evaluating, assessing or diagnosing the discoloration of teeth.
- The application of a tooth whitening gel to another person or employee.
- Providing personalized instruction to a consumer and instructing a person based on an assessment.
- Supervising the use and application of a tooth bleach, or lightening fluids, pastes, gels, solutions, or other agents to a person's teeth.

Not Practice of Dentistry

- The practice of selling over-the-counter teeth whitening products so long as the seller is not evaluating a consumer and making specific recommendations to the consumer based on that evaluation.

Conclusion

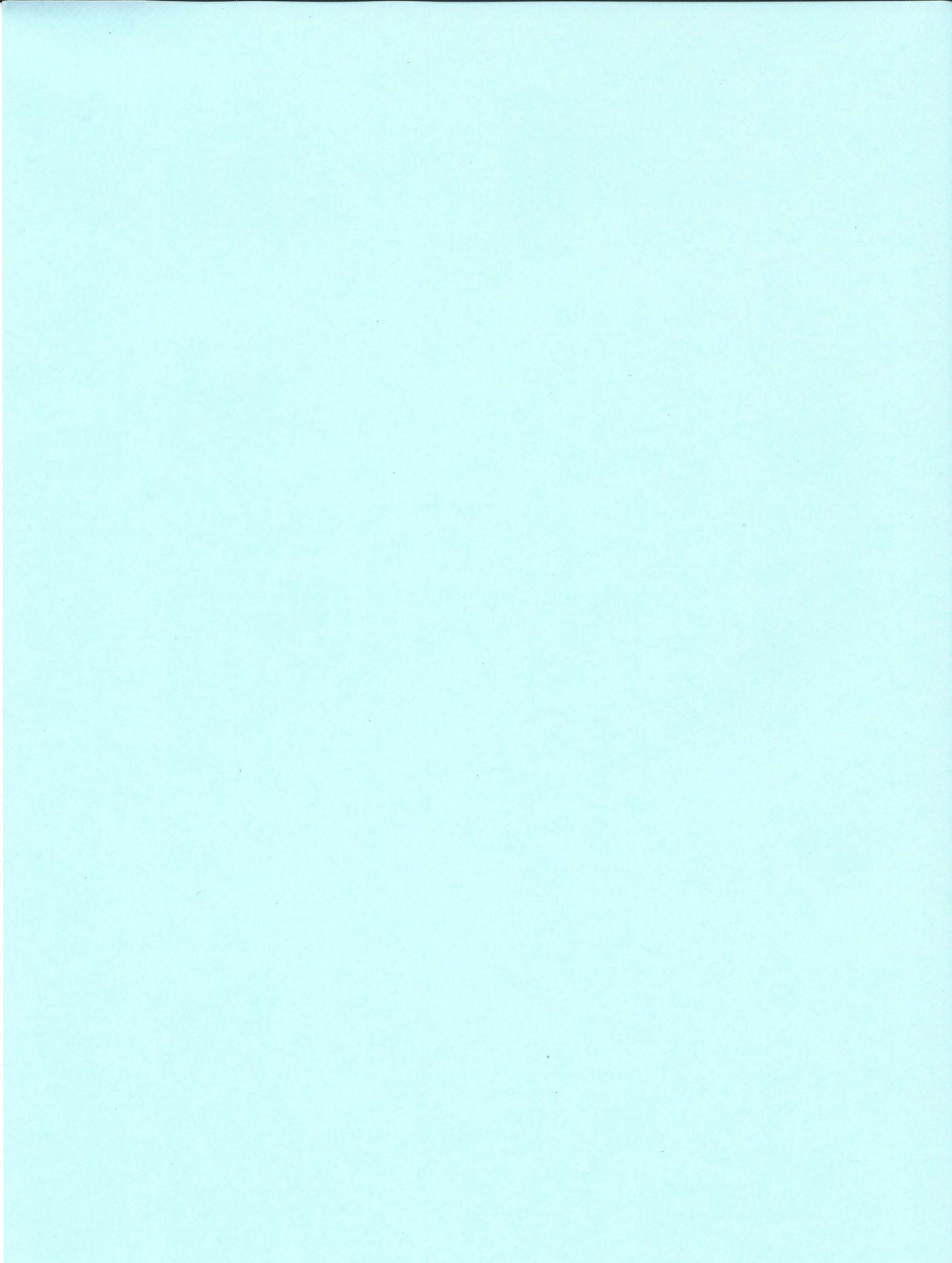
It is a violation of the dental act for a cosmetologist or student of cosmetology to engage in teeth whitening services. (***B & P Code*** sections 1625 (b) (d), 1626, 1701.1, 1752.4 and section 1752 (a)(3); ***Dental Board regulation***, Title 16, California Code of Regulations section 1086, subdivision (d)(12) and (13)) If Board inspectors see this activity taking place within an establishment and/or school, it should be reported to the dental board for resolution.

Inspectors may cite the licensee for the practice of medicine (B & P Code, section 7320). However, as a practical matter this would be difficult for the Board to prove and the Board should also consider the recent legal victories with regard to restricting the practice of dentistry as it relates to teeth whitening services.

Staff Recommendation

The Board's inspection staff should note the practice of teeth whitening services, if found being performed by a Board licensee or student on the inspection report at the time of inspection. The Board's Enforcement/Cite and Fine unit should forward the names and locations of the establishments to the Dental Board for resolution and follow up. The Board should not cite the practice of medicine (B & P Code 7320) for teeth whitening services, until the legality of restricting such practice has been resolved within the Courts. The Board's legal staff should continue to monitor the legal challenges involving teeth whitening services and the restricted practice of dentistry.

¹ *Martinez v. Mullen* (2014) WL 1315658 (D. Conn.), March 28, 2014, p.5





MEMORANDUM

DATE	September 16, 2014
TO	Members, Enforcement Committee
FROM	Tami Guess, Board Policy Analyst Board of Barbering and Cosmetology
SUBJECT	Storing Washers and Dryers in Board Licensed Establishments

Section 7351, of Article 7351, Chapter 10, Division 3 of the California Business and Professions Code on the provision and maintenance of adequate facilities pertaining to establishment owners reads as follows:

“Every establishment shall provide at least one public toilet room located on or near the premises for its patrons. Any toilet room installed on or after July 1, 1992, shall be not less than 18 square feet in area. The entrance to the room shall be effectively screened so that no toilet compartment is visible from any workroom. The room shall be kept in a clean condition and in good repair, well lighted and ventilated to the outside air, and effectively screened against insects and free from rodents. The floor shall be of concrete, tile laid in cement, vitrified brick, or other nonabsorbent material. All sewer drains shall be connected to an approved disposal system, and shall be properly trapped. **No restroom shall be used for storage.**”

The question has come up that this section does not provide enough authority to cite an establishment for a washer/dryer being stored in a restroom.

The Merriam-Webster on-line dictionary at <http://www.merriam-webster.com/dictionary/storage> defines “storage” as:

Storage:

- space where you put things when they are not being used
- the state of being kept in a place when not being used : the state of being stored somewhere
- the act of putting something that is not being used in a place where it is available, where it can be kept safely, etc. : the act of storing something

The Committee may want to consider defining exactly what can and cannot be stored in a restroom.



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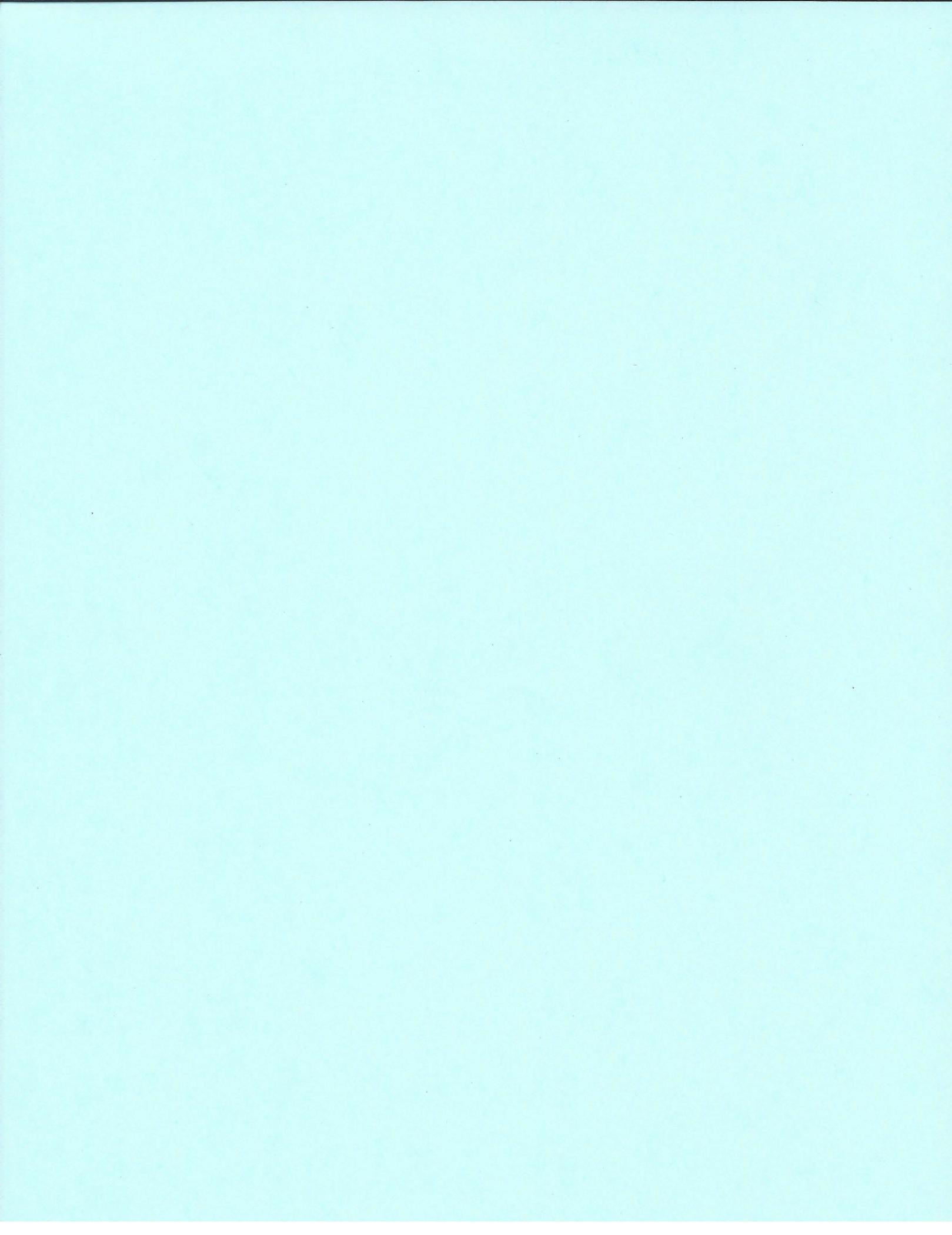
MEMORANDUM

DATE	August 23, 2014
TO	Enforcement Committee
FROM	Kevin Flanagan, Regulations Analyst
SUBJECT	Revisions to Fine Schedule (974 CCR)

Staff has identified the following changes that need to be made to the Board's fine schedule as a result of our new health and safety regulations. They mostly reflect new sections, but there are also a couple instances in which existing subsections have changed.

980(c)	Incorrect storage of soiled electrical tools
980.1(g), 980.2(f)	Failure to list chair as "Not in Service" in log; no sign displayed on chair
980.3 (e)	Improper storage of basins or tubs
980.4	Incorrect disinfection of foot basin or tub after use of disposable liner
980.4(a)(2)	Incorrect/Missing log
980.4(a)(4)	Failure to maintain supply of five (5) disposable liners per foot tub basin
981(b)	Improper storage of new supplies and disposable tools ¹
981(c)	Carrying instruments or supplies in or on garments ²

¹ & ² — the prohibition against carrying tools and supplies on or in garments is currently numbered as Section 981(b) and will need to be changed. Subsection 981(b) in the new H&S regulations refers to improper storage of new supplies and disposable tools.





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MEMORANDUM

DATE	September 23, 2014
TO	Members, Enforcement Committee Board of Barbering and Cosmetology
FROM	Tami Guess, Board Policy Analyst Board of Barbering and Cosmetology
SUBJECT	Product Demonstrations

The Board has received notification of several establishments and manufacturers claiming exemption under Section 7319 (e), of Article 2, Chapter 10, Division 3, of the California Business and Professions Code pertaining to product demonstrating. In part, here are a few of the scenarios the Board Enforcement Unit is currently contending with:

Eyelash Extension Application

The Board has received reports of non-licensees providing lash extension services in non-licensed establishments. Providers are taking a manufacturer’s “how to” course and then applying the entire application of lashes and having the client pay for the cost of the lashes. Clients are not just paying for the lashes, as the cost for such is relatively low (\$ 20.00 – \$ 30.00) and a lash extension “demonstration” currently runs around \$ 150.00. It should be noted that the average price at a “non-demonstrating” salon is also around \$ 150.00. Again, the argument that keeps being presented is that the provider is merely “demonstrating” how to apply the lashes, in which the point of sale is for the purchase of the lashes themselves, not the application service.

A lash extension training academy currently advertises the following on their website:

“Semi-permanent Eyelash Extensions does not require Licensing, and training can be completed in one class (7-8 hours).”

“NOTE: You will be told by some parties that you need to be a licensed esthetician or cosmetologist, however, that’s only if you set up your business as a “service sale”, in California this holds true as well, BUT you can set up your business as a “retail sale,” and sell the lashes, not your time. In most cases, this is the same set up in other states. As of now the only states that require you to be licensed no matter what is Illinois and

Texas. We provide you with the information, documentation, tips and business support for you whether you are licensed or not. Our Academy does not support any illegal activity, nor can we give you legal advice. Please call us directly with any questions.”

At Home Hair Coloring Services

The Board has seen a similar line of reasoning, as presented, in the excerpt below, from a Hair color manufacturer.

“-- is a company that manufactures and sells at-home hair color and hair care products. -- also offers its “Color to You” product, where a customer may purchase a consultation, full-service color and blow out in the customer’s home and performed by a -- “Colorista” who is licensed with the BBC. The consultation serves as a recommendation of the appropriate -- Hair color of the appropriate -- hair color for the customer; the full-service color and blow out by the -- Colorista demonstrates to the customer how to apply -- hair color to his/her hair at home and to see how the hair color looks on dry hair. The purpose of the “Color to You” product is to both demonstrate and recommend -- at-home hair color products. As the purpose of -- “Color to You” product is to recommend and demonstrate -- at-home hair color products, -- is exempt pursuant to section 7319 (e).”

In this scenario, licensed cosmetologists are going to clients homes (non-licensed establishments) to provide a full hair coloring service, which also includes a blow out style.

Make up

The Board continues to see unlicensed makeup studios opening for business. Within these studios unlicensed makeup artists are performing make up application. The makeup artist is charging a flat, service rate, for his/her service and stating they are merely demonstrating the make-up product.

Current Law

Section 7316 of the California Business and Professions Code defines the scope of cosmetology and skin care:

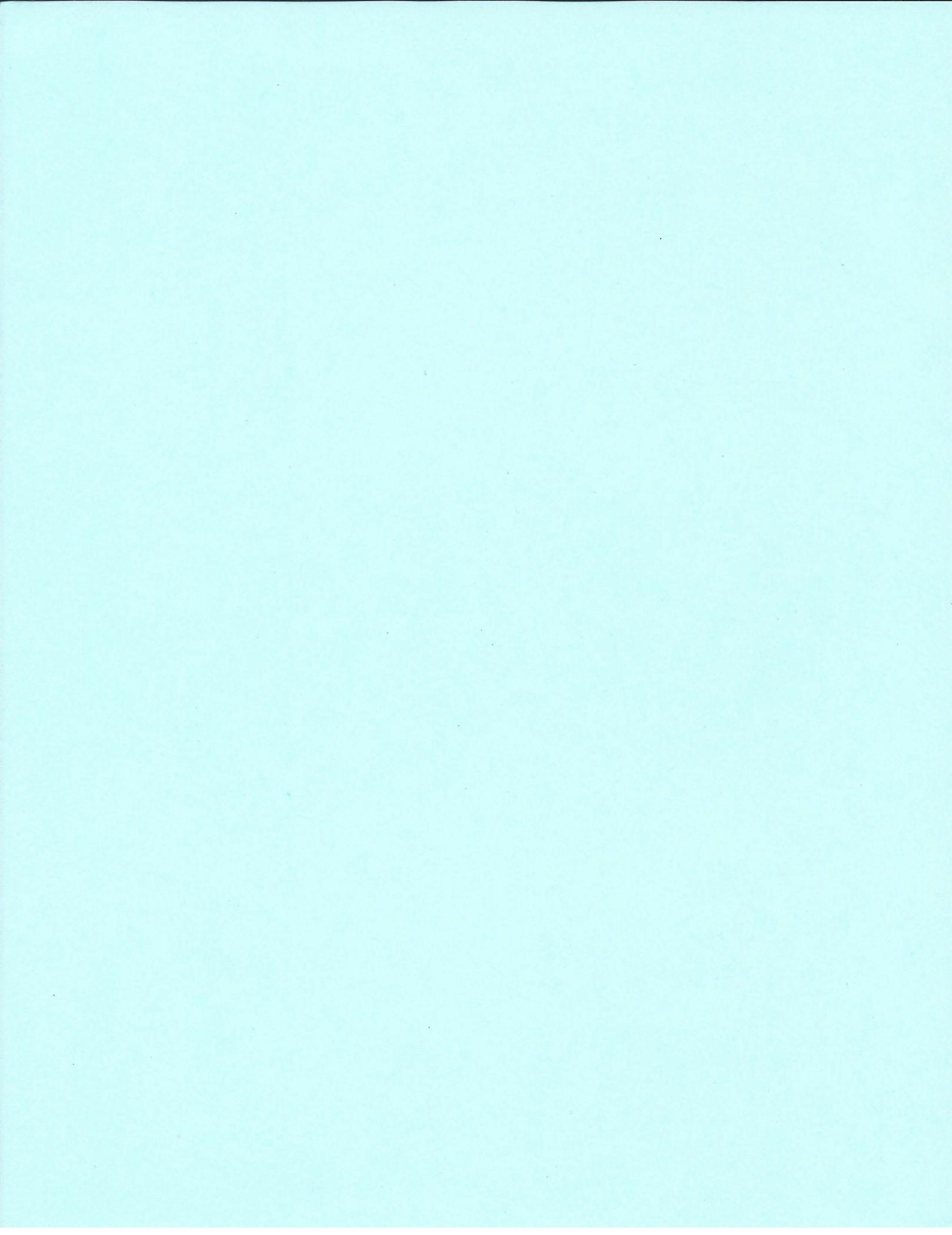
- (b) The practice of **cosmetology** is all or any combination of the following practices:
- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, **bleaching, tinting, coloring**, straightening, **dyeing**, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
 - (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
 - (3) **Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.**
 - (4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or

Factors of Demonstrating

- Pricing would be only for the product being demonstrated. There would not be a 'consultation/service' fee. It would not be the same pricing structure as a full service.
- The product demonstration would be with the intent that a person could perform the service on their own, at home, without a licensee/product instructor present.
- The demonstrator would not be encouraging the repeat of the service but rather the purchase of the product.

Recommendation

Board staff does realize that unlicensed activity is being performed. Product demonstration is not taking place, but rather, a full service is being performed. The Enforcement Committee should discuss this issue and if warranted advise the staff on a course of action.



Closed Session

No Attachment