

## BOARD OF BARBERING AND COSMETOLOGY

### FINAL STATEMENT OF REASONS

**Hearing Date:** June 17, 2015

**Subject Matter of Proposed Regulations:** Schedule of Administrative Fines

**Sections Affected:** Section 974, Title 16 of the California Code of Regulations (CCR)

#### Updated Information

- 1) During the course of this rulemaking, the Department of Consumer Affairs' Division of Legislation and Regulatory Review asked the Board of Barbering and Cosmetology (Board) to clarify the rationale behind the fines for 980.4 and 980.4(a)(2), which concern the disinfection of simple foot spa tubs or basins used in conjunction with disposable plastic liners. The Board has clarified this rationale as follows:
  - **980.4** — The fine for improper disinfection of simple foot spa tubs or basins in which liners are not used (980.3) is \$100, \$150 and \$200, depending on whether the violation is a first, second or third offense. These fines are much smaller than the \$500 levied for improperly disinfecting whirlpool pedicure chairs (980.1) or pipe-less foot spas (980.2). The Board has determined that the fines for improperly disinfecting tubs or basins that use liners should be at the same level as those levied for whirlpool and pipe-less foot spa violations (\$500) in order to discourage any cutting of corners with regard to disinfection. In the Board's experience, licensees are sometime tempted to skip some disinfection steps when they are busy. In the case of whirlpool foot spas, a licensee might forgo running disinfectant through the machine for 10 minutes; in the case of pipe-less foot spas, a licensee might fail to remove and separately clean removable components to save time; salons that use basins or tubs with disposable liners might be tempted to forgo scrubbing the tub with a clean brush and liquid soap on the assumption that the tub is likely still clean because a liner was used. The Board believes the higher penalties for improper disinfection will mitigate the temptation.
  - **980.4(a)(2)** — The Board has determined that because there is less information that must be recorded in the pedicure-equipment log when simple pedicure tubs or basins are used, whether disposable liners are used or not (as opposed to whirlpool and pipe-less foot spas), the fine should be the same whether disposable liners are used or not.
- 2) During the course of this rulemaking, the Board revised its estimate of the fiscal impact of this regulatory proposal. While the Board had originally thought it might collect as much as \$324,000 a year from the eight new fines, the Board now believes it far overestimated the number of new fines that it might issue as a result of this

regulatory proposal, as well as the amount the money the Board would actually collect. It believes a more reasonable estimate is less than \$60,000 a year.

- 3) In the notice of regulatory action filed with the Office of Administrative Law on April 15, 2015, the Board incorrectly stated that this proposed regulatory action will not affect small businesses because it only concerns the ability to obtain a license to practice a profession. However, during the course of this rulemaking, the Board determined that there would in fact be an impact on small businesses that do not follow the Board's regulations. However, the impact would be small in most cases, as most of the fines involved in this rulemaking are \$50 per violation. Two of the fines are significantly larger (\$500 and \$250) and are also relatively rare.
- 4) In the "Business Impact" and "Economic Impact Assessment" sections of the Initial Statement of Reasons, the Board states that businesses will not be impacted by the approval of this regulatory proposal because they will not be fined if they reasonably comply with the State's laws and regulations. The same applies to individuals: licensees who follow the Board's rules and regulations will not be impacted because they will not be subject to fines. Both individuals and businesses that violate the new regulations would of course face fines, however, the impact on the barbering and cosmetology industry would be minor, either because the fine amounts are small and because the larger fines are relatively rare.

#### **Local Mandate**

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

#### **Small Business Impact**

There is no significant impact to small businesses that reasonably comply with the Board's regulations. There would be an impact on businesses that do not follow the Board's rules, however, that impact would be small.

#### **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**

Nghi Tran — San Jose, CA

**Ms. Tran asks that the Board consider removing the requirements that licensees keep written logs of when a pedicure station is cleaned and that stations that are not in service display a sign to that effect. She also asks that no fines be levied for violations of Section 980.1(g) "and the likes."**

Board response:

The Board rejects these comments. California has had several well-publicized mycobacterial outbreaks over the years that were traced to dirty foot spas. While a properly maintained log is not in itself a guarantee that a shop is disinfecting its pedicure equipment properly, the Board believes that if the shop is diligently filling out the log and its equipment appears clean, then it more likely than not is following the proper foot spa cleaning procedures and schedule. This helps protect the public, which is the Board's primary goal. As for spas that are not in service, the Board believes it is vital that a sign be affixed to the pedicure station so that in the event the log is incomplete or lost, the shop cannot explain away a lost or incomplete log by simply telling the inspector the chair isn't being used. Ms. Tran appears to believe that posting a "Not in Service" sign allows a shop to maintain a pedicure station in an unsanitary condition. But this is not the case. Section 980.1(g) specifically states that pedicure stations that are not in service must be "kept in a sanitary condition."

Finally, the ability to levy fines against licensees who violate the Board's regulations is vital to the Board's enforcement effort because the fines help motivate licensees to follow the rules.