

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. The Board, by striking the words “physician or” also makes clear that clients with tuberculosis would need to be declared non-infectious by a local health department authority before they could receive services from a Board licensee. This change was made at the request of the California Department of Public Health, citing Health and Safety Code Section 121365.

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 of 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

Comments No 1:

1. 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 rejects 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.