

## TITLE. 16. BOARD OF BARBERING AND COSMETOLOGY

### INITIAL STATEMENT OF REASONS

Hearing Dates: July 17, 2013 and July 22, 2013

**Subject Matter of Proposed Regulations:** This proposal updates, clarifies and strengthens the Board's existing health and safety regulations.

Section(s) Affected:

- Adopt Sections 977 and 980.4 to Article 12, Division 9 of Title 16, California Code of Regulations.
- Amend Sections 978, 979, 980, 980.1, 980.2, 980.3, 981, 982, 983, 984, 986, 987, 988, 989, 990, 991, 992, 993 and 994 of Article 12, Division 9 of Title 16, California Code of Regulations;

Specific Purpose of the Proposed Changes:

**Amend Sections 978, 979, 980, 980.1, 980.2, 980.3, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990 (non-substantive changes in terminology only — substantive changes proposed for these sections are individually addressed later in this statement)**

Problem Addressed and Anticipated Benefit: The board is proposing a number of non-substantive terminology changes to the existing text of these sections that update the Board's regulations to reflect terms more commonly used in the barbering and cosmetology industry and/or to make them clearer or more detailed. These are as follows:

- "Container" instead of "receptacle."
- "Tools" instead of "instruments."
- "Debris" instead of "foreign matter" or "residue."
- "Client" instead of "patron."
- "New, clean paper towel" instead of "clean paper towel."
- "U.S." rather than "federal" when referring to agencies of the United States government.
- "Pedicure equipment-cleaning" log rather than "pedicure-cleaning" log.
- Where the regulations address items made of fabric or cloth, the items are described as as towels, gowns, smocks, linens and sheets for consistency reasons.
- Including "hair clippings," which are common in barbering and cosmetology establishments, along with waste or refuse under Section 994.

There are instances in these sections where capitalized words were changed to lowercase, and/or vice versa, for reasons of typographical consistency with other sections. There are also instances where subsections are re-numbered or a single section is broken up into lettered subsections without altering its substance.

Factual Basis/Rationale: By updating/clarifying the language of these sections, the Board makes the regulations more licensee-friendly and easier to understand and follow. This, in turn, is necessary to help protect consumers.

### **Adopt Section 977**

Problem Addressed and Anticipated Benefit : The Board proposes to adopt a section defining key terms contained in Article 12 in order to clarify and update its health and safety regulations to eliminate possible confusion on the part of licensees who are required to follow them.

Factual Basis/Rationale: Defining key terms is necessary to ensure that licensees have a clearer understanding of various terms contained in Article 12, making the Board's regulations easier to understand and follow. This will, in turn, increase the safety of consumers who visit barbering and cosmetology establishments.

### **Amend Section 978**

Problems Addressed and Anticipated Benefit: There are several portions of the existing regulation that are unclear or outdated. The proposed amendments will make the section clearer by addressing labeling issues and requiring that establishments keep the manufacturers' empty disinfectant containers on the premise to demonstrate they are using a product approved by the Board.

Factual Basis/Rationale: It is necessary to keep the empty manufacturer's disinfectant containers on the premises so that the Board's inspectors can be reasonably sure the disinfectant used in a barbering and cosmetology establishment is one that is approved by the Board. The use of an effective disinfectant is vital to maintaining consumer safety.

### **Amend Section 979**

Problems Addressed and Anticipated Benefit: The existing regulation doesn't take into account manufacturer recommendations for changing disinfectants or detail procedures for cleaning shears, which are commonly used in the industry. The proposed amendments remedy these oversights in the Board's regulations.

Factual Basis/Rationale: Licensees have expressed confusion over when they must change out disinfectant, because the Board's existing regulations sometimes contradict the manufacturer's instructions. Revising the regulations to allow licensees to follow the

manufacturer's instructions is necessary to remove the confusion. The shears-cleaning procedures are necessary to promote better sanitary practices among licensees. The amendments to this section will improve consumer safety.

### **Amend Section 980**

Problems Addressed and Anticipated Benefit: The Board's existing regulation neglects to address where licensees should keep soiled electrical tools until they can be cleaned, or specify that either a disinfectant "spray or wipe" is acceptable to clean electrical tools. This amendment corrects those oversights.

Factual Basis/Rationale: Licensees are sometimes confused about how to store soiled electrical tools and whether they may use disinfectant "wipes." This amendment is necessary to ensure that soiled electrical tools are properly stored and that licensees know they can use disinfectant wipes to clean them.

### **Amend Sections 980.1 and 980.2**

Problems Addressed and Anticipated Benefit: The Board's existing regulation offers a range of time ("6 to 10 hours") that disinfectant must be left undisturbed in whirlpool and pipe-less foot spas. The Board has determined this is confusing to some licensees and that a minimum time of 6 hours is sufficient. This amendment will clarify when it is safe to rinse and wipe down the basin.

This Board is also proposing to add language addressing spas that are "out of service." Board inspectors report that licensees will sometimes explain gaps in the pedicure-equipment log or other compliance issues as being the result of the pedicure station being out-of-service. The Board has determined that inspectors will be better able to verify that equipment is out of service if the licensee is required to post a sign identifying out-of-service spas.

Factual Basis/Rationale: It's necessary that the Board clarify how long disinfectant must be kept in a whirlpool or pipe-less spa and that spas that are not being used be identified as "out-of-service." Both provisions help protect the safety of pedicure customers.

### **Amend Section 980.3**

Problem Addressed and Anticipated Benefit: The Board's existing regulation fails to address how licensees should store their pedicure tubs. This amendment rectifies that oversight and provides better direction to licensees.

Factual Basis/Rationale: By specifying how licensees must store their clean basins, the Board helps insure that basins will be sanitary when used by customers. This improves consumer safety.

#### **Adopt Section 980.4**

Problem Addressed and Anticipated Benefit: There are currently no regulations regarding the use of liners in pedicure foot spa tubs. The Board proposes to adopt new regulations regarding the use of tub liners in order to ensure they are used safely and to give licensees another option for safely providing pedicure services to consumers.

Factual Basis/Rationale: Board staff has noted that a number of barbering and cosmetology establishments have begun to use tub liners for pedicure services. The Board has determined these liners may be used safely, provided their use is accompanied by proper tub cleaning procedures. This makes the proposed regulation necessary.

#### **Amend Section 981**

Problem Addressed and Anticipated Benefit: While this particular regulation has existed for some time, licensees often ask if particular items such as pumice stones, buffers and gloves qualify as items that cannot be disinfected. While the Board cannot offer an exhaustive list of every type of item that cannot be disinfected, it has determined it would be helpful to include more common examples in the regulation. The Board is also proposing to prohibit the carrying of tools in pouches and holsters because it has determined that these are unlikely to be able to be disinfected properly. Finally, the Board also has determined that this regulation should include directions for licensees on how to store new supplies. The amendments to this section will improve the health and safety of the public.

Factual Basis/Rationale: The Board has determined that offering greater detail regarding health and safety practices for tools and supplies is necessary to better protect consumers from harm.

#### **Amend Section 982**

Problem Addressed and Anticipated Benefit: The Board's existing regulation is obsolete. The proposed amendments are a recognition by the Board that single-use, disposable electrolysis needles/wire filaments and dry-heat sterilizers or autoclaves are the electrology industry standard. The proposed changes follow the recommendations of the American Electrology Association.

Factual Basis/Rationale: The proposed amendments, which reflect electrology industry standards, are necessary to help keep consumers safe.

#### **Amend Section 983**

Problem Addressed and Anticipated Benefit: The existing subsection (b) is vague with regard to what other kind of cleansing agents beside soap and water can be used. Specifying that they be "alcohol-based" eliminates possible confusion.

Factual Basis/Rationale: This regulatory change is necessary to promote the use of

alcohol-based sanitizers, which are widely used to prevent the spread of disease.

#### **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.

#### **Amend Section 985**

Problem Addressed and Anticipated Benefit: The Board has determined that the term “protective covering” is vague. The amendment to reference client “capes” makes the regulation clearer.

Factual Basis/Rationale: The Board has determined this regulatory change is necessary to make the section easier for licensees to follow and in turn improves consumer safety.

#### **Amend Section 986**

Problem Addressed and Anticipated Benefit: The Board has determined that this particular section wasn’t detailed enough both with regard to what kind of items it references and the procedures for their use, cleaning and storage. The proposed amendment makes the regulation clearer.

Factual Basis/Rationale: The more detailed regulation is necessary to improve consumer safety by reducing the likelihood of disease being transmitted during barbering and cosmetology services.

#### **Amend Section 987**

Problem Addressed and Anticipated Benefit: Subsection (b) is out of date with regard to laundering procedures. This amendment updates the Board’s rules to conform with Center for Disease Control recommendations.

Factual Basis/Rationale: Barbering and Cosmetology establishments use a wide variety of cloth items in the course of conducting business. Making sure these items are clean and sanitary is necessary to protect consumer safety. The Board has determined this regulatory change will accomplish that goal.

#### **Amend Section 988**

Problem Addressed and Anticipated Benefit: The existing section doesn’t address the

fact that poisonous substances often come in their own manufacturer-labeled container, making it unnecessary for a licensee to label the container themselves. It also fails to take into account that products such as nail polish do not transmit pathogens and do not need to be removed from their containers when used on a customer to prevent contamination of the rest of the material.

Factual Basis/Rationale: The Board has determined that removing unneeded requirements that could pose a burden to licensees makes this regulatory change necessary.

### **Amend Section 990**

Problem Addressed and Anticipated Benefit: The Board's existing regulation fails to consider that treatment tables, like headrests, can also be covered with towels or sheets rather than paper. This regulation addresses that oversight and gives licensees another option for covering their treatment tables.

Factual Basis/Rationale: The Board has determined that licensees should be able to cover their treatment tables with clean sheets or towels, which makes this regulatory change necessary.

### **Amend Section 991**

Problem Addressed and Anticipated Benefit: Given the proliferation of so-called "medical spas" in which barbering and cosmetology services are performed alongside medical services (such as using lasers to improve the appearance of the skin) performed by medical professionals, it is important to stress that Board licensee can neither perform a medical service, nor represent a service they perform as having a medical benefit. This proposed regulatory change would broaden the prohibition to avoid confusion. "Exfoliation" would be specified under subsection (b)(4) because "abrasion" alone doesn't include chemical skin peels.

Factual Basis/Rationale: The Board has determined it is necessary to broaden the regulatory language against invasive procedures in order to increase protection of consumers from misrepresentation and procedures that could put their health and safety at risk.

### **Amend Section 992**

Problem Addressed and Anticipated Benefit: The Board has determined that the existing regulation regarding "commercially available" products was too vague and could be interpreted by a licensee to mean any product that is sold. This amendment makes the regulation more specific, which will help protect the public from potentially dangerous products.

Factual Basis/Rationale: The Board has adopted the acidity/alkalinity standards set by an expert panel of the Cosmetics Ingredient Review (CIR), a Washington-based industry

group that works with the U.S. Food and Drug administration to evaluate the safety of substances used in cosmetics. The Board has determined this regulatory change will help protect consumer safety.

### Underlying Data

- Infection Control Standards for the Practice of Electrology
- Center for Disease Control Recommendations
- Guidelines for Professional Cosmetic Resurfacing Exfoliating Procedures

### Business Impact

This regulation will not have a significant adverse economic impact on businesses. On the contrary, barbering and cosmetology establishments that maintain high standards for health and safety are likely to attract and maintain customers.

### Economic Impact Assessment

- This regulatory proposal will not create or eliminate jobs within the State of California, or create new business or eliminate existing businesses in California, or affect the expansion of businesses currently doing business in California, because these proposals mostly update and revise existing health and safety regulations without increasing costs for businesses.
- This regulatory proposal will benefit the health and welfare of California residents because it will help make it safer for consumers to enjoy barbering and cosmetology services by making them less likely to suffer harm from communicable diseases or dangerous professional practices.
- This regulatory proposal benefits worker safety because workers in establishments that meet the Board's health and safety standards are less likely to suffer harm from communicable diseases.
- This regulatory proposal benefits the state's environment because proper health and safety standards will help prevent the spread of disease.

### Specific Technologies or Equipment

This regulation mandates the use of single-use, disposable, pre-sterilized needles/wire filaments for electrolysis. This mandate or prescriptive standard is required because electrologists, unlike other licensees of the Board of Barbering and Cosmetology, are authorized to use metal needles/wire filaments. Although electrolysis properly performed doesn't involve puncturing or breaking the skin, the type of implements used in the procedure means there is a potential for accidents that could cause the spread of blood-borne pathogens. The disposable needle

requirement conforms to infection control standards developed by the American Electrology Association (see Underlying Data).

### Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Board considered not updating its health and safety regulations. But failure to do so had the potential of leaving the public more exposed to communicable diseases and dangerous professional practices and would ignore the Board's legislative mandate to make protection of the public its first priority.