

TITLE. 16. BOARD OF BARBERING AND COSMETOLOGY

INITIAL STATEMENT OF REASONS

Hearing Date: April 10, 2014

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

Sections 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 and 994 (non-substantive changes 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. The problem is that there has been some confusion regarding these terms. The Board is proposing to clarify those terms 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 has determined that a number of terms contained in Article 12 are unclear to licensees and is therefore proposing to adopt a section in which key terms are defined to eliminate confusion. In some cases, the definitions are reiterated in the rest of the regulations' text in order to reinforce the meaning and also to take into account that some people might not check Section 977 for the meaning of certain terms.

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 does not 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, but also takes into account situations where the disinfectant is visibly cloudy or contains debris. Also, requiring tongs or protective gloves to be used when removing tools from the disinfectant will help insure the tools are not contaminated.

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 "Not in 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 not in service. The Board has determined that inspectors will be better able to verify that equipment is not in service if the licensee is required to post a sign identifying spas that are not in service.

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 "Not in 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: A number of establishments that offer pedicures have expressed a desire to use these liners. The problem is that there are currently no regulations that allow their use. 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. The Board is requiring that shops that use liners stock at least five liners per pedicure station at all times. The Board is concerned that without this requirement, shops might run out of liners and be tempted to reuse a used liner. Moreover, because a pedicure service takes approximately an hour to perform, the Board has determined that by stocking a minimum of five liners per pedicure station, even the busiest, largest shop was unlikely to run out of fresh liners during a typical eight-hour day.

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. The Board also believes the rule should apply to students.

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 and recommended for routine hand washing by the Center for Disease Control.

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,” a common industry term, 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 brushes and neck and nail dusters 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 does not 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 989

Problem Addressed and Anticipated Benefit: The Board has determined this section is too narrow and should include other agencies beside the U.S. Food and Drug Administration that might conceivably prohibit or ban the use of cosmetic products.

Factual Basis/Rationale: The Board has determined that broadening the scope of this section will help better protect consumers, barbering and cosmetology workers and students.

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 licensees cannot perform medical services or use certain tools and products. This proposed regulatory change would make the prohibition against such tools and products more detailed to avoid confusion among licensees regarding what services they can and cannot perform, and what tools and products they can and cannot use. “Exfoliation” would be specified under subsection (b)(4) because “abrasion” alone does not 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 prohibition against exfoliating products that “affect” the dermis is too broad because many such products may be said to “affect” the dermis, if only incidentally. For example, there is often a temporary redness to the living layer of the skin after chemical exfoliation. Consequently, the Board has determined it’s necessary to clarify that the prohibition applies to the “destruction” of the dermis. The Board has also determined that “beautification” is too vague a term and that “improving the appearance of the skin” better expresses the purpose of exfoliation. The Board has determined that the existing regulation regarding “commercially available” products was too vague by itself and could be interpreted by a licensee to mean any product that is sold. The Board has decided that “over-the-counter” – a widely understood term — products “that are not sold for physician’s use only” is clearer.

Factual Basis/Rationale: The amendments proposed by the Board make the regulation more specific, which will help protect the public from potentially dangerous products, tools and practices.

Amend Section 993

Problem Addressed and Anticipated Benefit: The Board has determined the existing regulation could be construed by licensees as only relating to calluses. By broadening the prohibition to include similar uses, the Board will make it clear the section covers such things as the removal of skin tags, moles and other imperfections of the skin.

Factual Basis/Rationale: The Board has determined that broadening the section beyond calluses will make the regulation clearer and help further protect consumers.

Underlying Data

- Infection Control Standards for the Practice of Electrology (undated), American Electrology Association, <http://professionals.electrology.com/be-an-electrologist/infection-prevention-standards.html>

- Guideline for Handwashing and Hospital Environmental Control, Section 6: Laundry (1985), Center for Disease Control
<http://wonder.cdc.gov/wonder/prevguid/p0000412/p0000412.asp>
- Guideline for Hand Hygiene in Health-Care Settings (2002) —
<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5116a1.htm>

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 does not 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.