

## TITLE. 16. BOARD OF BARBERING AND COSMETOLOGY

### INITIAL STATEMENT OF REASONS

Hearing Date: June 17, 2015

Subject Matter of Proposed Regulations: Schedule of Administrative Fines

(1) Section(s) Affected: **974**

#### Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed: The Board's administrative fine schedule needs updating due to recently approved changes to health and safety regulations (OAL File No. 2015-0217-02) designed to improve consumer safety.
2. Anticipated benefits from this regulatory action: The new fines will help motivate licensees to follow the Board's health and safety regulations and in doing so help protect the public. The changes in terminology will make the Board's regulations easier for licensees to understand.

#### Factual Basis/Rationale

Business and Professions Code Section 7406 grants the Board broad authority to levy fines for violations of the Barbering and Cosmetology Act. Moreover, Section 7407 states, in part, that the Board "shall establish by regulation a schedule of administrative fines for violations of (the Barbering and Cosmetology Act)." The recent approval of a new regulatory section and amendments to several existing sections requires revising the schedule.

The proposed schedule revisions and the rationale behind them are as follows:

- **7320.1, 978(a)(6), 979, 981(c), 982, 992 and 993** — The Board is proposing to make several minor, non-substantive language changes to the fine schedule's violation descriptions to reflect terminology changes made when the Board revised its health and safety regulations. "Tools" and "Exfoliation" are terms that are more commonly used in the industry. The violation for Section 981(b) has also been renumbered to 981(c).
- **980(c), 980.3(e), 981(b)** — The Board has determined that fines for violations of storage rules should be the same as those already on the schedule.
- **980.1(g) and 980.2(f)** — The Board has determined that failure to list a whirlpool spa or pipe-less foot spa as "Not in Service" warrants the smallest fine levied by the Board because it is essentially a record-keeping violation.
- **980.4** — This is a new section created by the Board when it revised its health and safety regulations to include procedures for cleaning foot basins/tubs when plastic liners are

used. Dirty foot spas — particularly the whirlpool pedicure chair and “pipe-less” varieties, both of which have removable parts that trap bacteria — have been associated with several outbreaks of bacterial infections in California over the years, and failure to disinfect them properly is a serious health and safety violation. While the fine for improper disinfection of simple foot basins or tubs which have no removable parts is \$100 to \$200, depending on whether the licensee has had prior offenses, the fine for improper disinfection of whirlpool chairs and pipe-less foot spas is \$500, even for a first offense, because of the potential for bacteria to remain in the device if cleaning procedures are not rigorously followed. The Board has determined a similar potential exists for licensees who use foot basins or tubs with liners (if the licensee cleans the tub or basin with the liner still inside it, or merely changes the liner without following the other cleaning procedures, for instance).

- **980.4(a)(2)** — The Board has determined that fines relating to failure to keep or maintain the pedicure-equipment log for tubs that use tub liners – which are easier to keep clean and require less complicated cleaning procedures than whirlpool or pipe-less spas -- should be less than those levied for violations involving the log for whirlpool spa chairs and pipe-less foot spas.
- **980.4(a)(4)** — The Board has determined the proposed fine level for this violation is appropriate. The Board believes it is vital that licensees who use tub liners have enough liners on hand so as not to run out of them.

#### Underlying Data

None

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses that follow the rules and regulations of the State of California regarding barbering and cosmetology practices.

#### Economic Impact Assessment

The revisions to the fine schedule will have no economic effect at all on businesses that follow the law and regulations of the State of California. Consequently, this regulatory proposal will not create or eliminate jobs within the State of California; or create or eliminate new businesses; or affect the expansion of existing businesses; or affect worker safety; or affect the state’s environment. The regulatory proposal may help protect the health and welfare of California residents by motivating establishment owners and barbering and cosmetology workers to closely follow health and safety regulations.

#### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

### 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:

- Maintain the status quo: This alternative was rejected because it would leave a number of important health and safety violations without any kind of penalty, thereby making licensees less motivated to following the regulations.