

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



**JULY 23, 2018
Board Meeting**

**Department of Consumer Affairs
1747 North Market Blvd
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834**



P.O. Box 944226, Sacramento, CA 94244-2260
P (800) 952-5210 F (916) 575-7281 www.barbercosmo.ca.gov

BOARD MEETING

July 23, 2018

**Department of Consumer Affairs
1747 North Market Blvd.
HQ2 Hearing Room 186, 1st Floor
Sacramento, CA 95834**

*Action may be taken on any item
listed on the agenda.*



MEMBERS OF THE BOARD

Dr. Kari Williams, President
Lisa Thong, Vice President
Bobbie Jean Anderson
Polly Codorniz
Jacquelyn Crabtree
Andrew Drabkin
Joseph Federico
Coco LaChine
Steve Weeks

AGENDA

10:00 A. M.

UNTIL COMPLETION OF BUSINESS

OPEN SESSION:

1. Call to Order/ Roll Call/ Establishment of Quorum (**Dr. Kari Williams**)
2. Public Comment on Items Not on the Agenda
Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))
3. Discussion and Possible Action Related to the Sunset Review
4. Discussion and Possible Action Regarding Proposed Regulatory Language to Implement BPC section 7402.5, Personal Service Permit (BPC § 7402.5)
5. Progress Report Regarding Inspector Salaries, Classifications, and Vacancies
6. Legislative Update:

Discussion and Possible Action on Proposed Bills:

- a. AB 2138 (Chiu and Low) Denial of Application, Revocation or Suspension of License: Criminal Conviction
- b. SB 999 (Morrell) – Cosmetology and Barbering Scope of Practice Revisions

7. Proposed Regulations:

Discussion and Possible Action on Proposed Regulatory Changes:

- Title 16, CCR Section 974 (Administrative Fine Schedule and Citation of Establishments, Individuals for Same violation)
- Title 16, CCR Section 974.3 (Installment Payment Plan for Fines)

8. Agenda Items For the Next Meeting

9. **CLOSED SESSION:**

Discussion on Reconsideration and Disciplinary Cases (Closed Pursuant to Government Code Section 11126(c)(3))

OPEN SESSION:

10. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. Note: This meeting will be Webcast, provided there are no unforeseen technical difficulties or limitations. To view the Webcast, please visit <https://thedcapage.wordpress.com/webcasts/>. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

**Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).*

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting: Marcene Melliza at (916) 575-7121, email: marcene.melliza@dca.ca.gov, or send a written request to the Board of Barbering and Cosmetology, PO Box 944226, Sacramento, CA 94244. Providing your request is a least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

No Attachment



Business, Consumer Services and Housing Agency – Governor Edmund G. Brown Jr.
Board of Barbering and Cosmetology-Department of Consumer Affairs
 PO Box 944226, Sacramento, CA 94244
 P (800) 952-5210 F (916) 574-7574 | www.barbercosmo.ca.gov



Date: July 9, 2018
 To: Members, Board of Barbering and Cosmetology
 From: Kristy Underwood, Executive Officer
 Subject: New Issues to be Presented During Sunset Review

Each time a Board participates in the sunset review process, there is an opportunity to present new issues and possibly obtain legislative changes. This memo is to facilitate the discussion on what new issues the Board would like to present in the sunset review report that is due later this year. Staff have attached the following recommendations:

Pages 1-4

- Various statute amendments.

Pages 5-8:

Scope of Practice updates that will:

- Clarify that shaving the face, neck or scalp is the practice of barbering.
- Add consistency to the cosmetology scope, manicuring scope and esthetic scope so that the language matches.
- Enhances the skin care scope of practice (esthetics) to bring into current industry standards by allowing for chemical lash perming, lash/brow tinting and specifying the use of esthetic machines/devices. Additionally, the language clarifies that skin care may be performed over the full body.
- Creates a Hairstylist License which will allow for easier more targeted access to the industry.
- Creates a waxing technician license which will allow for easier more targeted access to the industry.
- Creates a make-up artist license which will allow for easier more targeted access to the industry.

Pages 9-11:

- Statutory changes that would be needed if the above scope of practice changes are approved.

In addition, we are providing the new issues that were presented in 2014 (the Board's last sunset review) for reference only.



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RECOMMENDED STATUTORY CHANGES

Amend section 7303 (b) to clarify that Board members receive per diem and expenses.

7303 (b) The board shall consist of nine members. Five members shall be public members, and four members shall represent the professions. The Governor shall appoint three of the public members and the four professional members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms. Each member of the board shall receive per diem and expenses as provided in Section 103.

Amend section 7313 (b) to clarify access to approved schools for the purposes of ensuring the approved curriculum is being provided to students.

7313 b) To ensure compliance with health and safety requirements adopted by the board and requirements for a board approved school as set forth in this chapter and in regulations, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice of violation shall be provided to the Bureau for Private Postsecondary Education.

Amend section 7314.3 to allow for members of the Health and Safety Advisory Committee to receive per diem and expenses.

7314.3. (a) The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws. Basic labor laws include, but are not limited to, all of the following:

- (1) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.
- (2) Wage and hour rights of an hourly employee.

(3) Antidiscrimination laws relating to the use of a particular language in the workplace.
(4) Antiretaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations.

(5) How to obtain more information about state and federal labor laws.

(b) Each member of the committee shall receive per diem and expenses as provided in Section 103.

~~(b)~~ (c) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed.

Amend section 7317 to prevent unlicensed activity from being offered by app-based organizations.

7317. Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in or facilitate barbering, cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which barbering, cosmetology, or electrolysis is practiced unless licensed under this chapter. Persons licensed under this chapter shall limit their practice and services rendered to the public to only those areas for which they are licensed. Any violation of this section is subject to an administrative fine and may be subject to a misdemeanor.

Amend section 7320 to strengthen the prohibition of practicing medicine to be specific that individuals cannot perform services and establishments cannot allow the practice of medicine.

7320: This chapter confers no authority to practice medicine or surgery. The practice of medicine shall not be performed by or offered by a licensee under this chapter unless that licensee is licensed to to perform those services.

Amend section 7334(c) and 7334 (d) to require the board to approve the course of pre-apprentice training and require that the training come after licensure but before working on the public.

7334 (c): All persons ~~making an application~~ licensed as an apprentice in barbering shall also complete a minimum of 39 hours of pre-apprentice training that is approved by the board in a facility approved by the board prior to serving the general public. The board may provide pre-apprentice training.

7334 (d): All persons ~~making an application~~ licensed as an apprentice in cosmetology, skin care, nail care or electrology shall also complete a minimum of 39 hours of pre-apprentice training that is approved by the board ~~for the length of time established by~~

the board in a facility approved by the board prior to serving the general public. The board may provide pre-apprentice training.

Amend section 7342 for clarity because the Board has a Personal Service Permit.

7342. Licenses in the practice of the occupation for which the license was sought shall be issued by the board to any applicant who satisfactorily passes an examination, who possesses the other qualifications required by law and who has remitted the license fee required by this chapter. The license shall entitle the holder to engage in the practice of that occupation in a licensed establishment or outside of a licensed establishment with a valid Personal Service Permit. The license shall be issued by the board on the same day that the applicant satisfactorily passes the examination.

Amend section 7348 to clarify that the establishment shall have a licensee in charge when services are being offered and clarify the definition of a licensee in charge.

7348. An establishment shall at all times that barbering, cosmetology and/or electrology services are being offered be in the charge of a person licensed pursuant to this chapter except an apprentice. A person licensed pursuant to this chapter means an individual who holds a cosmetologist, barber, manicurist, esthetician, electrologist or establishment owner.

Amend section 7349 for clarity because the Board has a Personal Service Permit and that the board does not specifically license cosmetology establishments.

7349. It is unlawful for any person, firm, or corporation to hire, employ, or allow to be employed, or permit to work, ~~in or about an establishment,~~ any person who performs or practices any occupation regulated under this chapter and is not duly licensed by the board, except that a licensed ~~cosmetology~~ establishment may utilize a student extern, as described in Section 7395.1.

Add section 7363 to strengthen the Board's authority on inspecting schools.

7363 (a) The board shall inspect a school prior to approval of that school to determine the following:

Minimum equipment

Text books of use

Course of instruction including curriculum, lesson plans, method of instruction and tracking of hours.

(b) The board or its duly authorized representatives shall inspect schools to reasonably determine compliance levels.

(c) The board shall maintain a program of random and targeted inspections of schools to ensure compliance with applicable laws relating to the operation of schools as well as laws pertaining to the health and safety of the public.

Amend section 7362 to add the selling of hours and not teaching the approved curriculum to grounds for discipline.

(c) Notwithstanding any other law, the board may revoke, suspend, or deny approval of a school, in a proceeding that shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when an owner or employee of the school has engaged in any of the acts specified in paragraphs (1) to (8), inclusive.

(1) Unprofessional conduct which includes, but is not limited to, any of the following:

(A) Incompetence or gross negligence, including repeated failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology, or disregard for the health and safety of patrons.

(B) Repeated similar negligent acts.

(C) Conviction of any crime substantially related to the qualifications, functions, or duties of the owner of an approved school, in which case, the records of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(D) Providing fraudulent Proof of Training documents to individuals who have not completed the required course.

(E) Not providing to students the full course of instruction in the specified field.

(2) Repeated failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Public Health, for the regulation of board-approved schools.

(3) Repeated failure to comply with the rules adopted by the board for the regulation of board-approved schools.

(4) Continued practice by a person knowingly having an infectious or contagious disease.

(5) Habitual drunkenness, or habitual use of, or addiction to the use of, any controlled substance.

(6) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(7) Refusal to permit or interference with an inspection authorized under this chapter.

(8) Any action or conduct that would have warranted the denial of a school approval.

SCOPE OF PRACTICE RECOMMENDATIONS

7316.

(a) The practice of barbering is all or any combination of the following practices:

- (1) Shaving the face, neck or scalp or trimming the beard or cutting the hair by the use of razors, shears or clippers.
- (2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
- (3) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
- (5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

(b) The practice of cosmetology is all or any combination of the following practices:

- (1) Arranging, dressing, curling, waving, machineless chemical permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
- (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- ~~(3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.~~
- ~~(4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.~~
- ~~(5) (2) Cutting, trimming, polishing, tinting, coloring, cleansing, massaging, manicuring (from the elbow to the fingertips), or pedicuring (from the knee to the toes) the nails of any person. or manicuring the nails of any person.~~
- ~~(6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.~~
- ~~(c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.~~
- ~~(1) Skin care is any one or more of the following practices:~~
 - ~~(A) (3) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing,~~

or applying eyelashes to any person, or massaging, stimulating, exfoliating, cleansing, or beautifying the face, scalp, neck or body by the use of hands, esthetic devices, cosmetic preparations, antiseptics, lotions, tonics, or creams that does not result in the ablating or destruction of live tissue.

(A) Esthetic devices include, but are not limited to, steamers, mechanic brushes, high frequency, galvanic current, vacuum and spray, light emitting diode (LED), and skin analysis equipment.

(B) Esthetic devices shall be operated in accordance with the manufacturer's instructions. The devices shall be intended for improving the appearance of the skin and shall not be designed to ablate or destroy live tissue.

~~(B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.~~

(4) Performing light or superficial exfoliation procedures on the non-living upmost layers of the skin, known as the epidermis, on the face and body using commercially available products, in accordance with the manufacturer's instructions, including, but not limited to, all of the following:

(A) Manual scrubs, including mechanical brush use, which includes application of a cosmetic product with mild abrasive ingredients that remove dead skin cells.

(B) Light or superficial chemical exfoliation of the epidermis.

(C) Enzyme or herbal exfoliation of the epidermis.

(5) Extraction with a non-needle extraction tool. Extraction include the manual removal of comedones (blackheads) and other surface impurities with the use of fingers or sterile swabs.

(6) Mechanical exfoliation devices such as microdermabrasion.

(7) Applying makeup or eyelashes to any person.

(8) Tinting the eyelashes or eyebrows of any person.

(9) Chemically perming the eyelashes of any person.

(10) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, sugaring, non-prescription chemicals, waxing, preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(c) The practice of **hairstyling** is all or any combination of the following practices:

(1) Arranging, dressing, curling, waving, chemical permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

(+) (d) **Skin care** is any one or more of the following practices:

(1) Giving facials, ~~applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person,~~ massaging, stimulating, exfoliating, cleansing, or beautifying the face, scalp, neck or body by the use of hands, esthetic devices, cosmetic preparations, antiseptics, lotions, tonics, or creams that does not result in the ablating or destruction of live tissue.

(A) Esthetic devices include, but are not limited to, steamers, mechanic brushes, high frequency, galvanic current, vacuum and spray, light emitting diode (LED), and skin analysis equipment.

(B) Esthetic devices shall be operated in accordance with the manufacturer's instructions. The devices shall be intended for improving the appearance of the skin and shall not be designed to ablate or destroy live tissue.

(2) Performing light or superficial exfoliation procedures on the non-living upmost layers of the skin, known as the epidermis, on the face and body using commercially available products, in accordance with the manufacturer's instructions, including, but not limited to, all of the following:

(A) Manual scrubs, including mechanical brush use, which includes application of a cosmetic product with mild abrasive ingredients that remove dead skin cells.

(B) Light or superficial chemical exfoliation of the epidermis.

(C) Enzyme or herbal exfoliation of the epidermis.

(3) Extraction with a non-needle extraction tool. Extraction include the manual removal of comedones (blackheads) and other surface impurities with the use of fingers or sterile swabs.

(4) Mechanical exfoliation devices such as microdermabrasion.

(5) Applying makeup or eyelashes to any person.

(6) Tinting the eyelashes or eyebrows of any person.

(7) Chemically perming the eyelashes of any person.

(8) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, sugaring, non-prescription chemicals, waxing, preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(e) The practice of **nail care** is all or any combination of the following practices:

(1) Cutting, trimming, polishing, tinting, coloring, cleansing, massaging, manicuring (from the elbow to the fingertips), or pedicuring (from the knee to the toes) the nails of any person.

(f) The practice of **hair removal (waxing)** is all or any combination of the following practices:

(1) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, sugaring, non-prescription chemicals, waxing or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(g) The practice of **make-up** is all or any combination of the following practices:

(1) Applying makeup, prosthetics, or eyelashes to any person.

(2) For the purposes of this chapter, "makeup" is defined as a cosmetic substance such as, but not limited to, a cream, lotion, or powder used to color and beautify the face and body in order to improve, alter, or enhance the appearance and includes fashion makeup, theatrical makeup, special effects makeup, airbrushing, high-definition makeup, and corrective makeup.

The following sections would be required to be added/amended if the previous scope of practice changes are approved:

7325. Qualifications for Admittance to Take a Hairstylist Exam

The board shall admit to examination for a license as a hairstylist, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 10th grade in the public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.
- (d) Has done any of the following:
 - (1) Completed a course in hairstyling from a Cosmetology or barber school approved by the board.
 - (2) Practiced the application of hairstyling, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in hairstyling from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

7325. Qualifications for Admittance to Take Make-up Artist Exam

The board shall admit to examination for a license as a make-up artist, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 10th grade in the public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.
- (d) Has done any of the following:
 - (1) Completed a course in make-up artistry from a Cosmetology school approved by the board.
 - (2) Practiced the application of make-up, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in make-up application from a school the curriculum of which

complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

7325. Qualifications for Admittance to Take a Hair Removal (Waxing) Exam

The board shall admit to examination for a license as a wax technician, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in hair removal (waxing) from a Cosmetology school approved by the board.

(2) Practiced the application of hair removal (waxing), as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in hair removal from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

7362.5.

(a) A course in barbering established by a school shall consist of not less than 1,500 hours of practical training and technical instruction in the practice of barbering as defined in Section 7316.

(b) A course in cosmetology established by a school shall consist of not less than 1,600 hours of practical training and technical instruction in the practice of cosmetology as defined in Section 7316, except as provided in this chapter.

(c) A course in hairstyling established by a school shall consist of not less than 1,300 hours of practical training and technical instruction in the practice of cosmetology as defined in Section 7316, except as provided in this chapter.

(d) A course in makeup artistry established within a school of cosmetology shall consist of not less than 250 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

(e) A course in hair removal (waxing) established within a school of cosmetology shall consist of not less than 275 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

7364.

A skin care course established by within a school of cosmetology shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

(Amended by Stats. 2003, Ch. 788, Sec. 45. Effective January 1, 2004.)

7365.

A nail care course established by within a school of cosmetology shall consist of not less than 350 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

(Amended by Stats. 2003, Ch. 788, Sec. 46. Effective January 1, 2004.)

Board of Barbering and Cosmetology
**Report to the California Legislature on the
Regulation of Booth Rental Licensure**

Purpose

On April 16, 2013, the Board of Barbering and Cosmetology (BBC) submitted its "Responses to Identified Issues and Recommendations for the Board of Barbering and Cosmetology" to the Senate and Assembly Business and Professions Committees. Within the report, members of the Senate and Assembly recommended that Board staff update the Committees on its current stance on booth rentals and the status of stakeholder conversations regarding this topic. The BBC advised the Committees that it would convene stakeholder meetings for the purpose of discussing booth rental licensure and would report its findings and recommendations during the next scheduled Sunset Review Hearing, to be held, in early 2015.

Definition of a Booth Renter / Independent Contractor

A Board defined booth renter/independent contractor is a practitioner who qualifies as an independent contractor under California tax law and who is not under the control and direction of an establishment license holder. Board-defined booth renters/independent contractors pay their own worker's compensation insurance and taxes, and maintain their own business license, establish their own work schedules, and have access to the establishment at any time. The booth renter is literally a separate business entity operating within the establishment. For the purposes of clarity, this is the type of booth renter the Board is considering for licensure.

Worker classification affects how practitioners will pay their federal income tax, Social Security and Medicare tax, and file his or her tax return. Many facts are considered in deciding whether a practitioner is an independent contractor or an employee. These relevant facts fall under three main categories:

Behavioral Control

A practitioner can be classified as an employee when the business has a right to direct and control the worker. If the practitioner receives extensive instructions on how the work is to be done, such as, how, when or where to do the work, or what tools to use, or where to purchase supplies, chances are the practitioner is an employee. If the business provides the practitioner with training in the required procedures and methods, this indicates that the business wants the work to be done in a certain way. This suggests, the practitioner may be an employee.

Financial Control

You may be an independent contractor if:

- you can realize a profit or loss.
- you are not reimbursed for some or all business expenses.
- you have a significant investment in your work, while there is no precise dollar test, the investment must have substance.

Relationship of the Parties

If the practitioner receives benefits such as insurance, a pension, or paid leave, this indicates the practitioner is an employee. An employer withholds income tax and a portion of the practitioner's Social Security and Medicare taxes. Independent contractors pay their own tax and self-employment tax.

Current Law

California Business and Professions Code:

7346. (a) For purposes of this chapter, "establishment" means any premises, building or part of a building where any activity licensed under this chapter is practiced.

(b) "Establishment" also includes any premises, building, or part of a building in which natural hair styling is practiced for compensation.

7347. Any person, firm, or corporation desiring to operate an establishment shall make an application to the bureau for a license accompanied by the fee prescribed by this chapter. The application shall be required whether the person, firm, or corporation is operating a new establishment or obtaining ownership of an existing establishment. If the applicant is obtaining ownership of an existing establishment, the bureau may establish the fee in an amount less than the fee prescribed by this chapter. The applicant, if an individual, or each officer, director, and partner, if the applicant is other than an individual, shall not have committed acts or crimes which are grounds for denial of licensure in effect at the time the new application is submitted pursuant to Section 480. A license issued pursuant to this section shall authorize the operation of the establishment only at the location for which the license is issued. Operation of the establishment at any other location shall be unlawful unless a license for the new location has been obtained upon compliance with this section, applicable to the issuance of a license in the first instance.

7424. The amounts of the fees payable under this chapter relating to licenses to operate an establishment are as follows:

(a) The application and initial license fee shall be not more than eighty dollars (\$80).

(b) The renewal fee shall be not more than forty dollars (\$40).

(c) The delinquency fee is 50 percent of the renewal fee in effect on the date of renewal.

(d) Any application and initial license fee for the change of ownership of an existing establishment may be established by the board in an amount less than the fee prescribed for a new establishment, but sufficient to cover the costs of processing the application and issuing the license.

California Code of Regulations:

904. Enforcement

(a) A copy of the board's Health and Safety Rules, as specified in Article 12 of the Rules and Regulations, shall be conspicuously posted in:

- (1) Reception areas of both schools and establishments, and
- (2) Theory rooms of schools.

(b) The holder or holders of an establishment license or a mobile unit license, and the person in charge of any such establishment or mobile unit, shall be responsible for implementing and maintaining the Health and Safety Rules in such establishment or mobile unit individually and jointly with all persons in or employed by or working in or on the premises of such establishment or mobile unit.

(c) All licensed barbers, cosmetologists, estheticians, manicurists, electrologists, instructors, or apprentices shall be held individually responsible for implementation and maintenance of the Health and Safety Rules.

(d) All persons performing acts of a barber, cosmetologist, esthetician, manicurist or electrologist, except students in schools, shall, upon request of an authorized representative of the board, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other recognized government entity.

(e) Failure to present valid proof of identification shall be grounds for disciplinary action.

NOTE: Authority cited: Section 7312, Business and Professions Code.
Reference: Sections 7312, 7313, 7317 and 7404, Business and Professions Code.

Effects of Current Law

The law, as written, allows the BBC to issue citations to establishment owners for violations committed by every practitioner offering services in the establishment. This

has created a conflict within the industry as establishment owners exercise very little control over independent contractors' day-to-day practices. Establishment owners complain that they are being cited unfairly for booth renters who are unwilling to come into compliance with the BBC standards.

In contrast, booth renters are often taken advantage of by establishment owners, who treat booth renters like employees by requiring specified work hours, work protocol and structured payments, all the while, not paying taxes or worker's compensation insurance on these "employees".

Stakeholder Meetings

On July 16, 2013, the BBC held a Licensing and Examinations Committee meeting and the subject of booth rental licensure was broached. Members of the public, which included legal representation of an industry association, a school owner and a salon owner, made the following assessments and recommendations:

- 60 to 75 percent of salons use the booth rental option.
- The BBC needs to send out a clear message of the roles and responsibilities of salon owners and the booth renters who work in their establishments.
- Would like to see a booth renter's license implemented that would 'travel' with the stylist and not be attached to any one establishment.
- Suggested a clear identifying notice posted in view of the public that identifies the stylist is not an employee of the establishment, but rather a booth renter working in the establishment.
- Recommended that the BBC encourage schools to incorporate, in their curriculum, information about what is fair compensation and the different kinds of ownership structures that can be found within an establishment setting.

At the conclusion of the meeting, Joseph Federico, Board President, recommended the BBC move forward with discussions on enacting a booth rental license.

On October 21, 2013, the BBC held a Board Meeting in which the recommendations of the Licensing and Examinations Committee were discussed. Regulatory language was proposed that would attach a booth renter's license to an establishment license instead of a personal license. Richard Hedges, Board member, moved that the BBC staff should continue to work with members of the industry who are interested in booth rental licensure to develop a bill that the BBC can support in the future.

Industry Associations

There exist several barbering and beauty industry associations. The intent of these associations is to encourage education and elevate professionalism within the industry, share experiences, and protect the industry from unnecessary regulatory restriction. Board staff reached out to the following organizations and asked for their official position on the creation of a booth renter's license, as defined by the BBC. The Professional

Beauty Federation of California and the Professional Beauty Association responded and their responses of support are attached.

Professional Beauty Association

Professional Beauty Federation of California

California Cosmetology Association

National Association of Barber Boards

Social Media

The Board conducted a poll on its Facebook account. The poll asked, "Do you feel the BBC should institute a booth renter's license? Yes or No." The poll stayed on our site for 30 days. 18 people said the Board should offer a booth renters license and 64 said "no".

Other State Boards

In September 2013, Board staff polled other state boards. It was found that 22 of the 51 states polled had some sort of booth rental licensure.¹ Implementation of the booth renter's license varied among the boards. Notable examples are as follows:

- Ohio - requires a practitioner who possesses a booth renter's license to also maintain a manager's license.
- Idaho – requires the primary establishment owner to submit a detailed floor plan of the entire primary and contiguous shop area. The contiguous area to be licensed must be highlighted and clearly designated on the floor plan.
- Louisiana – requires an executed agreement between the salon owner and the practitioner that states both parties agree: (1) that the practitioner is not an employee of the establishment, (2) that the salon owner has no right to control the methodology used by the practitioner to produce a given result and (3) a statement indicating the basis of the practitioner's compensation.
- North Dakota – requires booth renters provide proof they are authorized to do business in the state by registering the name of their business with the secretary of state.
- South Dakota – outlines in its general guidelines items that booth renters can share with other booth renters, such as, the reception area; restroom facilities; fire extinguishers; health and safety posters; the 'unregulated services sign'; and the ventilation system for the total area.

¹ Other names utilized for a Booth Renter's license includes: Independent Contractor's license, Contiguous Cosmetology Establishment license, Chair Renter's license, Area Renter's License or a Renter's license.

- Oregon – requires its independent contractors to post the most recent inspection certificate in public view at the establishment or the contractor’s work station.
- Texas – requires establishment owners submit a booth renter’s list. This list provides the Texas board with the name, license number, expiration date and date of inspection of all booth renters operating within the establishment.

Pros and Cons of Implementing a Booth Renter’s License

Pros

- Establishment owners are protected against citations and a fines caused by renters who chose not to comply with BBC law.
- Owner/renter roles would be established, and both parties would clearly know what is required of them with regards to scheduling, establishment access, insurance provision, and use of supplies/equipment.

Cons

- Increased workload for the Board of Barbering and Cosmetology
- Costs associated with changes to the BreEZe database.
- Increased regulatory oversight on licensees, additional/increased fees (initial license and renewal fees).

Conclusion

The Board recommends adoption of legislative language to allow for booth rental licensure.



**Board of Barbering and Cosmetology
To the California Legislature on
Allowing Applicants to take the Written
Examination Prior to the Completion of School**

Purpose

To allow applicants to take the written examination prior to the completion of school.

Background

Sections 7321(d) (1), 7321.5 (d) (1), 7324 (d) (1), 7326 (d) (1) and 7330 (d) (1) of the California Business and Professions Code require students complete the curriculum (theory and practical) in cosmetology, barbering, skin care, manicuring or electrology before taking the Board of Barbering and Cosmetology's (Board) examination for licensure. The following state boards allow applicants to take their written examination prior to completion of their coursework: Idaho, Kansas, Maryland, Minnesota, New Jersey, North Carolina, Pennsylvania, South Carolina and Texas. The number of school hours students must complete before testing varies from State to State, with the average being 70-90 percent. The consensus among these States is that early testing has yielded positive results. States have noted a higher written passing rate as students can test on the information right after learning the material. In addition, early written testing allows students to complete the necessary licensure requirements to enable a faster issuance of a license.

Current Law

Business and Professions Code:

Section 7321:

The board shall admit to examination for a license as a cosmetologist to practice cosmetology any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 10th grade in the public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.
- (d) Has done any of the following:
 - (1) Completed a course in cosmetology from a school approved by the board.

(2) Practiced cosmetology as defined in this chapter outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in cosmetology from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1) of this subdivision.

(3) Holds a license as a barber in this state and has completed a cosmetology crossover course in a school approved by the board.

(4) Completed a barbering course in a school approved by the board and has completed a cosmetology crossover course in a school approved by the board.

(5) Completed the apprenticeship program in cosmetology specified in Article 4 (commencing with Section 7332).

Section 7321.5:

The board shall admit to examination for a license as a barber to practice barbering, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in barbering from a school approved by the board.

(2) Completed an apprenticeship program in barbering approved by the board as conducted under the provisions of the Shelley-Maloney Apprentice Labor Standards Act of 1939, Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(3) Practiced barbering as defined in this chapter outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in barbering from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(4) Holds a license as a cosmetologist in this state and has completed a barber crossover course in a school approved by the board.

(5) Completed a cosmetology course in a school approved by the board and has completed a barber crossover course in a school approved by the board.

(6) Completed comparable military training as documented by submission of Verification of Military Experience and Training (V-MET) records.

Section 7324:

The board shall admit to examination for a license as an esthetician to practice skin care, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 10th grade in the public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.
- (d) Has done any of the following:
 - (1) Completed a course in skin care from a school approved by the board.
 - (2) Practiced skin care, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in skin care from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).
 - (3) Completed the apprenticeship program in skin care specified in Article 4 (commencing with Section 7332).

Section 7326:

The board shall admit to examination for a license as a manicurist to practice nail care, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 10th grade in the public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.
- (d) Has done any of the following:
 - (1) Completed a course in nail care from a school approved by the board.
 - (2) Practiced nail care, as defined in this chapter, outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in nail care from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).
 - (3) Completed the apprenticeship program in nail care specified in Article 4 (commencing with Section 7332).

Section 7330:

The board shall admit to examination for a license as an electrologist to practice electrolysis, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

- (a) Is not less than 17 years of age.
- (b) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.
- (c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course of training in electrolysis from a school approved by the board.

(2) Practiced electrolysis, as defined in this chapter, for a period of 18 months outside of this state within the time equivalent to the study and training of a qualified person who has completed a course in electrolysis from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(3) Completed the apprenticeship program in electrology specified in Article 4 (commencing with Section 7332).

Effects of Current Law

Candidates usually have a lower score on the written examination. Members of the industry stress this is likely because individuals choosing to enter into the industry are usually more visual/hands-on learners and may struggle more with the written aspect of testing. Because of this, the Board feels allowing students to test early in the written portion may allow for a higher pass-rate percentage.

Fiscal Impact

If early testing is implemented within the State of California, the Board will sustain a significant fiscal impact.

Programming changes would be required to the current BreEZe database. Currently, any changes to programming start at \$ 20,000.00 per incident and it is unknown, at this time, how many programming changes would need to be addressed. A change of this magnitude could be up to \$100,000.00.

The Board is under contract for the administration of computer-based testing and the printing of initial licenses with Physiological Services Incorporated (PSI) until December 31, 2015. Significant programming changes would be required for both PSI and the Board's examination sites. It is unknown, at this time, how many programming changes would need to be addressed.

Changes would be required among Board staff to implement early written testing. Currently, applications are processed and scheduled at the same time. In order to allow the written examination to be conducted prior to the completion of schooling, the process would take two steps. The licensing staff would be required to process the pre-application for the written examination and notify the computer-based testing vendor of the applicant's eligibility and then separately process the scheduling for the practical examination.

Recommendation

The Board is requesting statutory changes be considered to Sections 7321(d) (1), 7321.5 (d) (1), 7324 (d) (1), 7326 (d) (1) and 7330 (d) (1) of the California Business and Professions Code to allow for early written examination after the required theory hours have been satisfied.



B. I. C.



Board of Barbering and Cosmetology To the California Legislature on Industry Certification

Purpose

To establish industry certification.

Background

In recent years there has been a demand from the industry to establish educational programs beyond the minimal competency programs now offered as a path to licensure. Whether in the form of continuing education, advanced education or education provided by manufacturers, the need is growing and desired for licensees to advance their skills.

The Board is responsible for consumer protection and it does this by ensuring licensees are minimally competent when they enter the workforce. However, to distinguish valuable education programs, the Board should play a role in the area of advanced education. The Board believes that encouraging licensees to continuously expand their skills and knowledge will ultimately improve consumer protection.

Industry certifications recognized by the Board would allow an organization to become approved by the Board, and, once approved, that organization could then issue a Board-approved certification. For example, a cosmetologist who would like to be certified as a master colorist could obtain an industry-issued certification from organizations that have met the standards set by the Board.

Recommendation

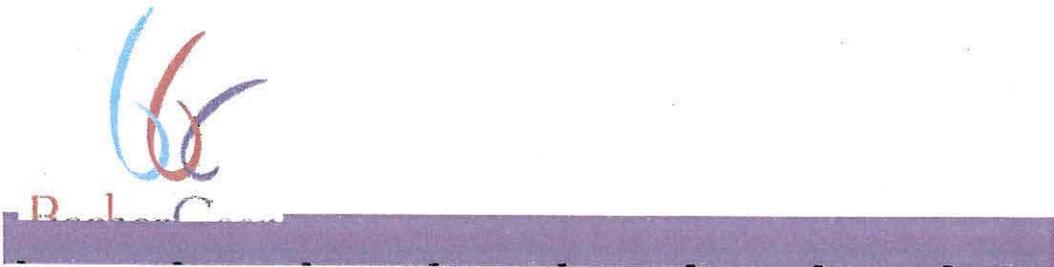
The Board recommends the following statutory language be amended to provide Board-recognized industry certifications:

Business and Professions Code section 7312.

The board shall do all of the following:

- (a) Make rules and regulations in aid or furtherance of this chapter in accordance with the Administrative Procedure Act.
- (b) Conduct and administer examinations of applicants for licensure.
- (c) Issue licenses to those applicants that may be entitled thereto, and encourage those licensees to continue to develop their skills in the appropriate application and use of evolving industry techniques, products,

and equipment by recognizing industry certifications that meet the appropriate standards approved by the board.



Board of Barbering and Cosmetology
**To the California Legislature on the Establishment
of a Freelance Certification for Licensees**

Purpose

To establish a freelance certification for licensees.

Background

A current industry trend has developed of providing services outside of a licensed establishment for the convenience of the client. The services are performed in the homes of clients, places of work, bridal suites, and other such venues. Chapter 10, Division 3, Section 7317 of the California Business and Professions Code states, in part, that it is unlawful to engage in the practice of barbering, cosmetology or electrology, for compensation, outside of a Board-licensed establishment.

The concept of instituting a freelance authorization by the Board was discussed at its June 3, 2013 and July 16th, 2013 Licensing and Examinations Committee meetings and again at the October 21, 2013 Board Meeting. It was decided the Board should include the information gathered on the subject of freelance licensure into the Board's Sunset Review report to be submitted to the Senate Business and Professions Committee in late 2014.

The pros of establishing a freelance certificate are many.

- Mobile licensees will be held accountable for health and safety laws and regulations.
- Provides a viable solution to mobile unlicensed activity.
- The Board will be able to revoke the authorization if the licensee does not stay compliant with the Board-defined requirements of the freelance authorization.
- Consumers who are already receiving this type of service will now have accessibility and knowledge as to where to report any health and/or safety concerns.
- In the event of consumer harm, insurance requirements ensure compensation to the victim.
- Creates a new employment opportunities for both licensees and State employees.

Other State Boards

Washington

Washington offers a Personal Service license. This license allows professionals to work outside of a licensed salon. They may perform their services at a client's home, office or other location that is convenient for the client. They are required to:

- Submit and pay for the Personal Service application.
- Provide company contact information.
- Provide current insurance information. (They must maintain a certificate of insurance not less than \$100,000 for public liability insurance for combined bodily injury and property damage)
- Answer specific questions related to background information. (criminal and civil)
- Renewable yearly for \$110.00.

Washington has 220 active Personal Service licenses. Currently, they have 60,000 cosmetologist and 12,000 licensed establishments. The cost of the application is \$110.00. Implementation of this program was consumer-complaint driven.

Oregon

Oregon offers a Freelance Authorization application. This authorization allows practitioners to provide services outside of a licensed establishment. They may perform their services at a client's home, office or other location that is convenient for the client. They are required to:

- Submit and pay for the Freelance Authorization application.
- List current, valid Oregon cosmetology practitioners' certifications.
- Submit an examination fee of \$35.00 and pass the Oregon laws and rules examination. (Completion of the examination is not required if the applicant passed the Oregon Laws & Rules Examination within two years before the date of the application for Freelance Authorization.)
- Provide a current copy of the Assumed Business Name (ABN).
- Submit a current registration as required by the Secretary of the State, Corporations Divisions.
- Answer specific questions related to background information (criminal and civil).
- Renewable yearly for \$100.00.

The cost of the application is \$125.00 (application fee and authorization fee).

Cautionary note: If California were to decide to require applicants to perform a written exam every two years, as does Oregon, the Board would have to consider the fiscal impact of the change. Our vendor contract and the actual written exam would have to be reviewed and possibly revised.

Ohio

Ohio offers a Temporary Special Event permit. This permit allows a licensee to provide cosmetology services in a location not licensed by the Board. The permit is only valid for one event lasting no more than 48 hours. A separate application is required for each event. The full name and license number is required for each licensee that plans to participate in the event. The fee is \$ 70.00.

Current Law

Chapter 10, Division 3, Section 7317 of the California Business and Professions Code states, in part, that it is unlawful to engage in the practice of barbering, cosmetology or electrology, for compensation, outside of a Board-licensed establishment.

Recommendation

The Board recommends that statutory changes be made to allow for a licensee to be approved to offer freelance services.



Board of Barbering and Cosmetology Report to the California Legislature on the Regulation of Hair Braiding

Purpose

In response to the Board of Barbering and Cosmetology's 2012 Sunset Review hearing, the Senate Business and Professions and Economic Development Committee suggested the Board conduct a thorough study of the issue of the non-regulation of Natural Hair Care providers. The result of that study is compiled in this report.

History

The Board of Barbering and Cosmetology has been an integral part of the evolution of hair care and the changes produced. In 1930, the California Cosmetology law placed regulation of all hairstyling under the State Board of Cosmetology. On May 16, 1982, the Attorney General issued an opinion finding African hair braiding is covered by cosmetology licensing requirements. On January 28, 1997, the Institute of Justice filed a lawsuit in a federal district court in San Diego challenging California's cosmetology licensing statute and regulations on behalf of practitioners of African hair braiding and other forms of natural hairstyling.¹

The plaintiff's challenged the constitutionality of the Barbering and Cosmetology Act as it relates to hair braiding as an act of cosmetology. The suit was not for monetary damages. On August 18, 1999, the court ruled in favor of the plaintiff. Noted below is an excerpt from this judgment:

"As set forth, the basis of this Order is the finding that the State's mandated curriculum, on its face and upon review of its actual implementation and associated texts and exam, does not teach braiding while at the same time it requires hair braiders to learn too many irrelevant, and even potentially harmful, tasks. The vice is not the statute, but the implementing regulations. If an individual does more than braid – if he or she routinely shampoos or cuts or dyes hair, or uses chemicals at all – they are not a hair braider. If they do such activities, they are subject to the Act and regulations."

On June 9, 2000, SB 235 was chaptered which amended Sections 7316 and 7346 of the California Business and Professions Code. This law removed the practice and further defined specified activities commonly referred to as natural hair braiding from the practice of cosmetology.

In an effort to further fine-tune the Board's correlation to the profession of hair braiding a legal opinion was requested on November 9, 2011 from the legal counsel representing the Department of Consumer Affairs Board of Barbering and Cosmetology. The legal opinion clarified the Board's inspectors are not to cite hair braiders who are not licensed with the Board for using a brush or comb.

¹ Cornwell v. California Board of Barbering and Cosmetology, 962 F.Supp. 126 (S.D. Cal, 1997).

On March 19, 2013, representatives from the Board of Barbering and Cosmetology appeared before the Senate Business and Professions and Economic Development Committee in a Sunset Review Hearing. During this hearing the Board formally recommended braiding of the hair be considered part of the scope of practice for a cosmetologist.

The Senate Business and Professions and Economic Development Committee responded that hair braiding should remain exempt, as a practice, but that the Board should conduct a thorough study and convene stakeholder meetings to further explore the issue and provide a report to the Committee on those efforts.

Current Law

California Business and Professions Code:

Section 7316 (b) (1) defines the scope of cosmetology as arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

Section 7316 (d) (2) states that the practice of barbering and cosmetology does not include natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.

Section 7316 (e) states notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.

California Code of Regulations

Section 950.2 (1) states that the curriculum for cosmetology includes hairstyling, which includes (but is not limited to) hair analysis, shampooing, finger waving, pin curling, comb outs, straightening, waving, curling with hot combs, hot curling irons, and blow styling.

Effects of Current Law

Due to Section 7316 (d) (2) of the California Business and Professions Code, there are no health and safety regulations that natural hair care/braiding providers and braiding studios must follow. There is no guarantee that natural hair care/braiding is being performed properly and safely for consumers. The Board has seen multiple blogs on the internet abounding with suggestions on proper/improper braiding techniques and

suggestions on how to treat scalp conditions. It is unclear as to the training these bloggers have retained. Braiding when done incorrectly can cause traction alopecia, a gradual hair loss caused primarily by the inappropriate level of pulling force being applied to the hair by improperly trained braiders. In addition, the internet abounds with anecdotal stories of cases of traction alopecia, hair loss and bacterial infections caused by improper braiding techniques and/or improper disinfection.

Photographs, as seen here, are a common occurrence when a person does an internet search for the word, "traction alopecia".



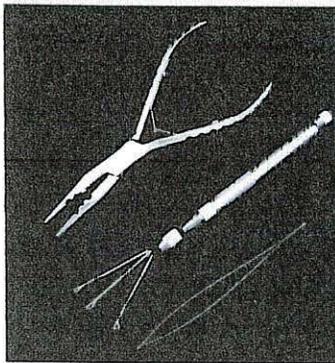
Since the Board does not regulate hair braiding, client complaints remain low. However, we do occasionally receive a complaint such as this one (personal information has been removed for confidentiality reasons):

"I found X on yelp and contacted her about doing my hair extensions. I went to her house on 5/8/14 to have my old extensions removed and new ones installed. Within an hour of leaving, I had a throbbing headache and my scalp was really sore. It was so bad that I wasn't able to sleep that night because it hurt too much to put my head on the pillow. I told X and she tried to say that's normal, but I've been getting extensions for 10 years so I knew that wasn't normal. The following morning I went to 4 different salons to find out what was wrong and why I was in so much pain. I was told that she took big, wide locks of hair instead of small, deep locks which is what you are supposed to do. I had to have them removed immediately and when I did I had welts on my scalp!! I contacted X and she refused to take any responsibility for it and said I just have a "sensitive scalp". I asked her if she was licensed and she said she was but she refused to show me her license or give her license number to me. When I looked on the board of barbering and cosmetology site I saw that she is not licensed, nor is her business. I also assume she is not licensed to work out of her home either.

I paid \$400 to have the extensions she applied removed and redone. She also removed my old extensions with the wrong tools which I am sure further damaged my hair. The incident occurred on 5/8/14 at X's home. Her address is: X, Corona, CA. X. Her phone number is XXX-XXX-XXXX.

I went to her to have my extensions re-moved and new ones put in my hair as the woman who normally does my hair is out on maternity leave. I had shrink link extensions, those use adhesive so it's my understanding that you are supposed to use a chemical (acetone) and a heat tool to remove them. She used a pair of pliers, similar to what is in this photo:

Stainless Steel Pliers + Micro Bead Ring Pulling Needle Hook Hair Extension Kit



Stainless Steel Pliers + Micro Bead Ring Pulling Needle ...

US \$26.28 New with tags in Clothing, Shoes & Accessories, Women's Accessories, Wigs, Extensions & Supplies

View on www.ebay.com

Preview
by
Yahoo

Then she applied a new set of micro bead extensions with the above pliers and tools. She did them all wrong and they were so incredibly painful that I had to have them immediately removed. When I did I had welts on my scalp. Turns out she was unlicensed and had no idea what she was doing. She used tools for the whole thing which I know is against the law without a license."

(See appendix for additional blogs recounting cases of traction alopecia found on the internet.)

Natural Hair Care Task Force

On April 14, 2014, in Sacramento, California a meeting of the Natural Hair Care task force was assembled. The purpose of this task force was to determine if the public's health and safety interests were being served with regard to the non-regulated practice of hair braiding and if natural hair care should be placed under the scope of practice for a cosmetologist. Task force members included salon owners, hair braiders, cosmetology instructors, celebrity stylists, industry representation from an industry association, the author of a natural hair care textbook, currently on the approved textbook list by the National Interstate Council of State Boards of Cosmetology (NIC), two Board members and Board staff. A discussion included defining exactly what constitutes a natural hair stylist, the explosion of consumer harm related to traction alopecia, and how the art and practice of natural hair care is no longer culturally specific. The task force was in agreement that the practice of natural hair care should be regulated by the Board of Barbering and Cosmetology. Several task force members conceded to seeing an increase of cases of fungi, infection and traction alopecia as a result of lack of education of proper braiding techniques, poor disinfection procedures

and lack of understanding in basic hair histology. With a resounding, unified voice, the task members stated that natural hair care and the practice of braiding is no longer culturally specific. Infection, fungi and scarring from traction alopecia is non-discriminate to race. Task force members were in unanimous agreement that the practice of natural hair care/braiding needs to be regulated for the safety and care of California consumers. For clarity, members defined natural hair care as:

"A natural hair care stylist provides a service for compensation that result in tension on hair strands or roots by braiding, locking, twisting, wrapping, weaving, finishing, and extending the hair with or without natural hair or synthetic fibers or applying cornrows to the hair. Such a practice may include: shampooing, drying the hair, incidental trimming or singeing the ends of the hair to complete the service; applying antiseptics, powders, oil, clays, lotions or applying tonics to the hair, head, or scalp to condition the hair; the use of tools such as combs, hair rods, hair rollers, hair clips, brushes or shears. **Such practice shall not include:** the application of glues and/or adhesives; the use of preparations or the use of any device or tool designed to alter the color or chemically straighten/curl the hair; the application of extreme heat applications, such as, flat irons, straightening combs or curling irons."

Non-Licensed Hair Braiders

In June 2014, a representative from the Board of Barbering and Cosmetology initiated contact/visits to five (5) non-licensed braiding studios in and around the Sacramento, California area. Three (3) braiders agreed to meet with the Board representative. Some interviewed worked in a braid bar others out of their homes. The goal of the visit was to determine how non-licensed braiders educated themselves on health and safety and if they saw the value in being regulated by the State of California. The representative asked the braiders the following questions:

- How long have you been providing braiding services to the public for a fee?
- How did you learn to braid?
- Do you feel that braiding is culturally specific?
- Have you ever received training in infection control and sanitation procedures?
- What safety precautions do you utilize to ensure consumer health and safety?
- Have you seen consumer harm resulting from improper braiding techniques or improper infection control?
- Do you feel that Braiding should be regulated? Why or Why not?

The general consensus of these interviews was that natural hair care should remain unregulated by the State. Included below is a brief synopsis of each of the visits.

Braider #1

This braider operates out of her home and has been doing professional braiding for the last 10 years. She learned braiding from her cousin and other friends in West Africa. She noted that all of the women in her family are taught braiding at an early age. She does feel that braiding is culturally specific to the African American population. She mentioned that she has seen Caucasians have their hair braided but generally, it is not

in the same fashion as African braiding. When the Board representative entered her home, it was observed that the braider had a barber chair set up in the living room and had disinfectant made up and ready for use. When asked where she learned how to disinfect her tools she stated that other braider friends had taught her about infection control. She ensures health and safety by maintaining a clean home environment. She mentioned that she has not seen consumer harm, such as traction alopecia, in the years she has performed braiding. When asked if she felt that natural hair care should be regulated, in general, she said "No", but then noted that it might be good to have a license and be educated professionally. She is considering going to cosmetology school so that she can perform chemical work. She currently does do hair extensions including, the sew-in type.

Braider #2

The braider was hesitant to meet with the board representative in person and asked to be interviewed via telephone. She currently works out of her home. This braider is a third generation braider. Infection control, safe practice protocol and braiding techniques have been passed down to her through family generations. She does feel that braiding is culturally specific to African Americans. She feels that it is specific to race due to the fact that African Americans contend with a specific hair type. Regarding infection control, this braider stated she throws out the comb used to braid a clients hair and doesn't ever reuse combs on clients, thus preventing the need to disinfect her tools. If she were to see any type of skin condition on a client's hair, she has them sign a release waiver before administering services. She feels that the unlicensed braider does not need to be regulated. They do not need to attend school. You can learn braiding techniques from You Tube. She became interested in braiding at 5 years of age and feels that braiders are capable of educating themselves. She did state that if braiding were to be regulated that it may present a higher level of professionalism within the braiding community.

Braider #3

Originally, the Board representative was to meet at the braider's studio. Due to a medical emergency with the braider, the interview had to be administered over the telephone. The Board staffer was able to observe the braider's studio and noted that there still remains some confusion by the interviewed braider as to what was allowable within her practice. This braider's studio displayed signage on the window of the studio that indicated that chemical work could be performed. (Chemical work, such as, chemical straightening, hair coloring and perming is currently under the scope of practice for a cosmetologist and is a regulated practice). This would constitute unlicensed activity.

This braider has been conducting professional braiding services for the last two years. She was taught how to braid in Africa by family and friends. She stated that learning to braid is a part of everyday life in Africa. It is considered a form of art and that not everyone who learns to braid can or is successful at it. She does feel that braiding is culturally specific to the black race. She has never "formally" received any training in infection control but states that by working in a studio she has observed that cosmetologists use Barbicide in the disinfection of their tools. She has adopted this form of infection control. She states she has seen cases of traction alopecia from

improper braiding techniques and that many times she will be called upon from clients dissatisfied by the techniques of their previous braider. She does not feel braiders should be regulated since they do not use chemicals and since braiding is an art you need to have the gift for it and she doesn't feel that schooling can provide that gift.

Natural Hair Care Associations

There exist several natural hair care/braiders associations. The intent of these associations is to encourage education, share experiences and protect their industry from regulatory restriction. Most of the organizations have either a Facebook account or a blog in which participants can ask for guidance. Board staff reached out to the following organizations and asked for their official position on the regulating of natural hair care. The positions of those associations that chose to respond are attached.

Illinois Natural Hair Care Association

743 East 75th Street
Chicago, IL 60619
(773) 301 2318

Natural Healthy Hair Society

(866) 578-2008

<http://healthyhair.weebly.com/>

Atlanta National Hair Care Professional (ANHC Pro)

2479 Peachtree Road Suite 1316
Atlanta, GA 30308
(678) 459-5212

Professional@AtlantaNaturalHair.com

Natural Hair Care Association - Uniting professionals and consumers in the natural hair community.

[https://www.facebook.com/pages/Natural-Hair Associationorg/160036050696616](https://www.facebook.com/pages/Natural-Hair%20Associationorg/160036050696616)

The Institute for Justice

Founded in 1991, the Institute for Justice is a civil liberties law firm dedicated to defending the rights of natural, African-style hair braiders to earn an honest living without submitting to overly-burdensome government regulations.

On June 17, 2014, the Institute of Justice filed lawsuits in three states challenging various laws governing natural hair braiding practices. The States under litigation are: Washington, Missouri and Arkansas. The Institute of Justice does not feel that braiders should be required to complete a cosmetology course of instruction and/or be licensed, in order to braid hair.

Currently, the Institute of Justice is promoting the campaign initiative #braidingfreedom in which they are encouraging braiders to come forward and pursue litigation against states currently regulating or proposing regulation for natural hair care/braiding. The Institute has had prior legal success (two victories in court and six legislative victories).

Medical Community

Currently, cases of traction alopecia are treated primarily by dermatologists. The internet abounds with the advertizing of multiple clinics designed to treat hair loss. In general, to determine why alopecia is occurring on a person a dermatologists performs a visual inspection and performs a scalp biopsy. The biopsy is used to determine the cause of hair loss. (Hereditary, nutritional deficiency or environmental)

It would not be the intent of a natural hair care stylist to treat or diagnose hair loss but rather to learn proper braiding techniques that allow for the correct amount of tension on the hair and proper disinfection techniques to reduce the amount of traction alopecia cases seen within the medical community.

The natural hair care stylist could be compared to how a licensed esthetician works cohesively with a dermatologist.

Social Media

The Board conducted a poll on its Facebook account. The poll asked, "Do you feel the practice of Natural Hair Care should be regulated by the Board of Barbering and Cosmetology?" The poll stayed on our site for 42 days. 35 people responded the Board should regulate Natural Hair Care and 5 people responded the Board should not regulate Natural Hair Care.

In addition, the Board posted the following to its own Facebook page:

"Have you or someone you know been a victim of improper braiding techniques? Have you experienced traction alopecia, contracted a fungus or infection from an unlicensed hair braider? If so, we want to hear from you. Please email your experience to Tandra.Guess@dca.ca.gov. Let's all have a safe, healthy, salon experience."

In addition, the Board requested the Black Hair Media Facebook page and the Naturally Curly.com Facebook page to post the above inquiry.

The Board did not receive any responses. The Board was not surprised by these results as hair loss continues to be an embarrassing subject to discuss. Shame and confusion continues to be cited as to why more victims do not come forward to discuss their condition.

Other State Boards

In a poll by the California State Board of Barbering and Cosmetology it was found that at least 19 States have some sort of hair braiding/natural hair styling license or certification. The average number of theory/instructional hours required was 300 hours.

Pros and Cons of Regulating Natural Hair Care

Pros

- Required education providing minimal competency in hair histology, conditions of the scalp and infection control standards.
- Provides consumers with an avenue for complaint, if consumer harm occurs.
- Alleviates confusion as to the scope of practice for a cosmetologist and the Natural Hair Care provider.
- Possible reduction in consumer harm, specifically, traction alopecia.

Cons

- Costs incurred to attend schooling, passing a State examination, and licensure fees.
- Invasion by a regulatory entity on a previously viewed culturally specific profession.

Conclusion

The Board recognizes that some forms of braiding are passed down by generations. The Board believes that individuals that perform this type of braiding, to family and friends, without charging a fee, should continue to be exempt. However, the Board does realize that braiding is no longer culturally specific. The popularity of braiding has allowed the practice of natural hair care to become more and more diverse. The art of natural hair care is being practiced through every ethnic culture universally. Photographs of consumer harm are flooding the internet and words like "traction alopecia" are being coined to identify the types of consumer harm being administered.

The Board does realize that natural hair care is a specialized practice under the scope of practice for a cosmetologist.

The Board recommends that:

- if an individual is offering natural hair care services, including braiding, for a fee, they must in fact be trained in infection control and proper braiding techniques to prevent further consumer harm.
- the Legislature consider enacting a bill for the development of a natural hair care license, with a theory hour requirement of 400 hours and a curriculum to be determined by the Board.
- a grandfathering clause be added to the bill to allow persons currently engaging in natural hair care to be able to be licensed by passing a State exam without the inclusion of school training. This clause would be in effect for a two-year period. New natural hair care stylists would be required to attend schooling and pass the State exam.

Board of Barbering and Cosmetology To the California Legislature on Oversight of Barbering, Cosmetology and Electrology Schools

Purpose

The Board recommends it be granted sole oversight over barbering, cosmetology and electrology schools as opposed to dual oversight by the Board and the Bureau for Private Postsecondary Education (BPPE), two entities under the Department of Consumer Affairs.

Background

The Board believes it is the appropriate entity to regulate barbering, cosmetology and electrology schools. Currently, beauty schools are regulated by two DCA entities, the Board and the BPPE. The problems associated with dual oversight have been an on-going issue for many years and have been discussed in prior Sunset Reviews under the old BPPVE. Not only is this not a cost-effective method, it is confusing to students and the lack of sufficient oversight by the Board permits potentially harmful practices to be carried into the industry.

To differentiate between the two regulatory entities, listed below are the areas of oversight that each entity is responsible for:

Board Oversight of Beauty Schools

- Curriculum
- Minimum Equipment
- Minimum Enrollment
- Minimum Floor Space
- Textbooks
- Health and Safety on Clinic Floor
- Licensing Examination
- School Approval

BPPE Oversight

- Student protection concerns -- tuition issues, catalog, student contracts, unqualified instructors etc.
- School Approval

Section 7362 of the Business and Professions Code states a school must be both licensed by BPPE and approved by the Board. Schools are encouraged to begin the application process with both DCA agencies at the same time. Once the BPPE issues an "intent to approve" letter, the Board will issue its approval. When the Board receives an application, a review is conducted of the requirements stated above, followed by an initial inspection. An approved school is issued a school code from the Board that must be noted on the Proof of Training (POT) Document that is provided to a student who completes a course of instruction (a completed POT is required to qualify for the licensing examination).

Problems

1. To approve a school, the Board reviews the application and curriculum, and conducts an inspection, all without receiving an application fee.
2. Students invariably contact the Board to file complaints against schools and must be referred to another DCA entity (all students are familiar with the "State Board"; very few-if any-know about the BPPE).
3. Lack of communication between the Board and the BPPE is causing student harm and potentially increases unlicensed activity in the industry. The BPPE regularly fails to respond to the Board.
4. The selling of hours continues to take place. The Board investigates this based on fraudulent POT's being issued; however, the lack of oversight prevents the Board from conducting internal investigations and requires the Board to utilize costly options for investigating and prosecuting these fraudulent schools. With sole oversight, the Board could require schools to provide the Board with the records of each registered student from day-one of their schooling, immediately ending this fraudulent practice of selling hours to individual enrollees.
5. The Board has no authority for the renewal of the school approval; therefore, schools are not held accountable to the Board's requirements.

Discussion

The Board has been attempting to work with the BPPE since it was reconstituted in January 2010. However, many of the same problems that the Board experienced with the prior iteration of the BPPE -- the "BPPVE" -- remain. While dual oversight explains a lot of the confusion and issues, there are also communication issues and a lack of consistent action on the part of BPPE enforcement staff. This has created an environment where fraudulently operated schools continue to exist. The Board does not receive the information it needs to ensure applicants (students) are attending approved schools. For example, the Board is not made aware of schools that

are out of compliance with the BPPE. Schools that are no longer approved (expired) should not be providing services to consumers nor should they be teaching students. The Board must go online and monitor schools on a regular basis to determine if schools are in compliance with the BPPE. When a school is out of compliance with BPPE, the Board must notify the school that the Board will no longer admit their students into the examination. Students often are the last to know and are usually informed by being denied admittance to the exam from the Board.

The Board often inspects schools and finds students performing services on consumers with no instructor present. The Board also often finds students that are "clocked-in" but are not present, therefore, gaining hours toward their education without even attending school. These cases are forwarded to the BPPE. However, the Board is not aware of any action taken.

Prior to the early 1990's, schools were regulated solely by the barbering and cosmetology Boards. As part of that oversight, schools were required to register each student with the Board at the time of enrollment. Therefore, the Board would be able to monitor if a student had indeed completed the full course of instruction. The above-outlined infraction would have been detected immediately without any costly investigation, if the Board had sole oversight authority.

The Board attempts to conduct annual inspections of existing schools, in addition to the timely inspections of new schools seeking approval. The Board receives complaints from students and consumers on the cleanliness of schools and therefore the Board's enforcement staff will request a directed inspection of schools. The Board often finds various health and safety violations. A citation without fine is issued to the school owner, with current law only allowing the Board to forward such violations to BPPE for further actions.

Statistics

FY	Schools Opened	Complaints Received	Cases Opened	Cases Closed	Inspections Requested
2007/2008	14	5	3	50	0
2008/2009	26	1	0	0	0
2009/2010	16	169	51	156	29
2010/2011	8	134	69	127	36
2011/2012	10	178	90	177	43
2012/2013	12	84	45	67	57
2013/2014	8	84	42	75	56
Total	94	655	300	652	221

Types of Complaints Received

FY	Health and Safety	Non-Jurisdictional	Instructor	Financial	Hours	Consumer Harm
2007/2008	3	2	0	0	0	0
2008/2009	0	1	0	0	0	0
2009/2010	47	120	19	17	23	0
2010/2011	56	73	8	5	8	2
2011/2012	84	90	6	2	17	2
2012/2013	4	61	0	3	16	0
2013/2014	29	40	0	13	2	0
Total	223	387	33	40	66	4

Recommendation

The Board believes that it is the best positioned regulatory entity to have sole oversight of schools. Dual oversight is not cost-effective and it is redundant to have two DCA entities regulating the same business. The Board cannot be removed from the school oversight because schools offer industry specific, Board regulated services, to consumers. Therefore, the Board should be the sole DCA agency in charge of regulating beauty schools. With regard to tuition recovery assurances, there are three options: (a) cosmetology, barbering and electrology schools can be required to post bonds (as was required before the Student Tuition Recovery Fund); (b) BPPE will continue to handle this for barbering, cosmetology and electrology schools (as they do with all other private postsecondary's); or (c) this function be transferred to the Board.



Board of Barbering and Cosmetology
To the California Legislature on
Title Protection for all Board Individual License
Types

Purpose

To establish title protection for all individual license types issued by the Board.

Background

Sections 7320.3 and 7320.4 of the Business and Professions Code state that persons who are not licensed as a cosmetologist or barber may not represent themselves as a cosmetologist or barber.

The Board issues licenses to cosmetologists and barbers, and also to electrologists, manicurists and estheticians. All of these license categories require minimum education be completed, and the applicant must take and pass both a written and practical examination.

As stated above, title protection is provided to cosmetologists and barbers but not to the remaining three licensed professions.

Current Law

Business and Professions Code:

Section 7320.3: Persons who are not licensed to perform all of the practices of a cosmetologist may not represent themselves as a cosmetologists.

Section 7320.4: Persons who are not licensed as barbers in this state may not represent themselves as barbers.

Recommendation

The Board recommends the following statutory language be added to provide title protections to all of the professions that it regulates:

Persons who are not licensed to perform nail care may not represent themselves as a manicurist or nail technician.

Persons who are not licensed to perform skin care may not represent themselves as an esthetician or aesthetician.

Persons who are not licensed to perform electrology may not represent themselves as an electrologist.



P. L. C.



§ 965.2. Personal Service Permit.

- (a) The Board may issue a personal service permit (PSP) authorizing the holder of the permit to perform limited barbering and cosmetology services outside of an establishment if the applicant meets the following conditions:
 - (1) Is licensed by the Board as a barber, cosmetologist, esthetician, or manicurist.
 - (2) Submits via Live Scan a full and complete set of his or her fingerprints for use in conducting a criminal background check through the California Department of Justice and the Federal Bureau of Investigation. Applicants may be denied a PSP pursuant to Chapter 10 of Division 3 of the Business and Professions Code, pursuant to Division 1.5 (commencing with Section 475) of that same code.
 - (3) Is an employee of an establishment licensed by the Board and is working outside of the establishment under the direction and at the discretion of the establishment.
 - (4) Provides a certificate that he or she has completed, within the year prior to submitting his or her application, an OSHA-compliant blood-borne pathogen training class, either in a classroom setting or online.
 - (5) Pays the appropriate fee(s) to the Board.
- (b) An establishment that employs a PSP holder to perform limited services outside the establishment shall:
 - (1) Carry proof of liability insurance in a minimum amount of \$ XXXXXXXXXXXX.
 - (2) Maintain a list of PSP holders who work outside the establishment.
 - (3) Maintain an appointment log listing:
 - (A) The name, address, and telephone number if available, of each patron who has received services, or who is scheduled to receive services, from a PSP holder employed by the establishment;
 - (B) The time, date and location of the appointment;
 - (C) The service(s) rendered or scheduled;
 - (D) The name and license number of the PSP holder who performed or will perform the service(s).
 - (4) Schedule no limited services more than 50 miles from the location of the establishment.

- (c) The limited services that may be performed outside of an establishment by a barber under a PSP are limited to:
- (1) Shampooing;
 - (2) Cutting, styling, dressing, arranging, curling, or waving hair;
 - (3) Applying hair tonics;
 - (4) Applying antiseptics, powders, clays, or oils to the scalp, face, or neck;
 - (5) Trimming the beard.
- (d) The limited services that may be performed outside of an establishment by a cosmetologist under a PSP are limited to:
- (1) Shampooing;
 - (2) Cutting, styling, dressing, arranging, curling, or waving hair;
 - (3) Applying hair tonics;
 - (4) Applying powders, clays or oils to the scalp, face, or neck;
 - (5) Cleaning, massaging, or stimulating the face and neck by the means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams. This does not include chemical exfoliation or exfoliation with the use of a tool, machine, or device;
 - (6) Removing hair from the body of any person with tweezers;
 - (7) Applying make-up or strip lashes;
 - (8) Buffing or filing nails with non-electrical tools;
 - (9) Applying nail polish.
- (e) The limited services that may be performed outside of an establishment by an esthetician under a PSP are limited to:
- (1) Cleaning, massaging, or stimulating the face and neck by the means of the hands with the use of cleansing agents, antiseptics, tonics, lotions, or creams. This does not include chemical exfoliation or exfoliation with the use of a tool, machine, or device.
 - (2) Applying make-up or strip lashes;
 - (3) Removing hair from the body of any person with tweezers.
- (f) The limited services that may be performed outside of an establishment by a manicurist under a PSP are limited to:

- (1) Filing or buffing of nails with non-electrical tools;
- (2) Applying nail polish.
- (g) Any non-disposable tool used by a PSP holder shall be disinfected according to the Barbering and Cosmetology Act and the Board's health and safety rules found in Title 16, Division 9 of the California Code of Regulations.
- (h) A PSP holder shall not schedule or perform limited services more than 50 miles from the location of the establishment in which he or she is employed.

No Attachment



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Board of Barbering and Cosmetology-Department of Consumer Affairs

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BOARD OF BARBERING & COSMETOLOGY BILL ANALYSIS

Author: Assembly Members Chiu and Low

Subject: Denial of Application, Revocation or Suspension of License: Criminal Convictions

Bill Number: AB 2138

Version: June 20, 2018

IMPACTED LICENSES								IMPACT		
Apprentice	Barber	Cosmo	Mani	Esti	Elect.	Establishment	Schools	Regulations	Enforceable	Fiscal
Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes

Existing Law:

Establishes the Department of Consumer Affairs (DCA) and provides for the licensure and regulation of various professions and vocations by boards/bureaus/commissions/committees within the Department of Consumer Affairs. (BP&C* §§101,101.6)

Provides the licensure and regulation of the practices of barbering, cosmetology, esthetics, manicuring and electrology by the California Board of Barbering and Cosmetology (Board). (BP&C §7312)

Provides that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have the potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BP&C §101.6)

Authorizes a board to deny a license on the grounds that the applicant has:

1. been convicted of a crime;
2. done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; and
3. done any act if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of the license. (BP&C §480)

Provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if her or she has obtained a certification of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the Board. (BP&C §480)

Prohibits a person from being denied a license solely based on a conviction that has been dismissed. (BP&C §480)

Authorizes a board to deny a license because an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure. (BP&C §480)

Requires the board to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BP&C §481)

Requires the board to develop criterial to evaluate the rehabilitation of a person for purposes of considering the denial of a license application or considering suspension or revocation of a current license. (BP&C §482)

This Bill:

- Narrows the board's discretion to deny a license to the following cases:
 1. The applicant has been convicted of a crime; limits denials based on criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding 7 years, except for convictions for a serious felony (the crime must be substantially related to the qualifications, functions, or duties of the business or profession).
 2. The applicant has been subjected to formal discipline by the board within the preceding 5 years based on professional misconduct that would have been cause for discipline (misconduct must be substantially related to the qualifications, functions, or duties of the business or profession). However, prior disciplinary action by the board within the preceding 7 years cannot be the basis for denial if the conviction has been dismissed or expunged.
- Requires a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information.
 1. The board cannot require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.
 2. If the board decides to deny an application based solely on or in part on the applicant's criminal history, the board must notify the applicant in writing of the application denial and must inform the applicant of his/her right to appeal and the process by which the appeal may be made, including the process by which the applicant may secure a copy of their own criminal history record (rap sheet).
- Prohibits a board from denying a person a license based on:
 1. the conviction of a crime if the person has provided evidence of rehabilitation; or
 2. if an arrest resulted in a disposition other than a conviction; or
 3. the basis of the underlying acts of the conviction were dismissed or expunged; or
 4. if an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.
- Requires a board to develop a Criteria for establishing if a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession (summary of criteria to be posted on the board's website). Criteria includes the following:
 1. the nature and gravity of the offense;
 2. the number of years elapsed since the date of the offense; and
 3. the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.
- Requires the board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding the actions taken by a board based on an applicant or licensee's criminal history information.
- Requires the board to retain all the following information:

1. The number of applications received for each license.
 2. The number of applications requiring inquiries regarding criminal history.
 3. The number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had their license suspended or revoked.
 4. The number of licensees with a criminal record who provided evidence of mitigation or rehabilitation.
 5. The number of licensees with a criminal record who appealed any suspension or revocation of license.
 6. The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.
- Establishes a retention schedule of a minimum of three years for application forms and other documents submitted by an applicant including:
 1. the application;
 2. any notice provided to the applicant;
 3. all other communications received from and provided to the applicant; and
 4. criminal history reports.
 - Establishes that the board cannot categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
 - Requires the board to revise the board's current rehabilitation criteria to include consideration of the applicant or licensee's rehabilitation. A showing of rehabilitation would be established if either of the following were met:
 1. completion of the criminal sentence without a violation of parole or probation; or
 2. the applicant or licensee has satisfied criteria for rehabilitation developed by the board.

Analysis:

This bill applies to the agencies under the Department of Consumer Affairs. On an average, the Board does not deny, revoke or suspend more than 62 licenses per year. Rarely have these denials, revocations or suspensions been based solely on a criminal conviction.

Year	Licenses Disciplined due to Criminal Convictions	Enforcement Cases	Percent Disciplined due to Criminal Convictions
2013	3	55	5.5%
2014	--	58	--
2015	3	54	5.6%
2016	--	45	--
2017	--	100	--
Total	6	312	1.9%

Very rarely does it become necessary to deny a licensing applicant due to a criminal conviction (see table below). Applicant denials represent .009% of the licensing examination applications received over the last five years.

Year	Initial Applications Received	Application Denials Due to Criminal Convictions	Percent of Application Denials due to Criminal Convictions
2013	15714	4	.025%
2014	27484	1	.003%
2015	26264	2	.007%
2016	25296	1	.003%
2017	23830	3	.125%
Total	118588	11	.009%

The Board currently reviews licensing applications and licensure denials, revocations and suspensions on a case by case basis. The Board takes a big picture approach and considers numerous facets and complexities surrounding the individual's circumstances, prior to deciding to revoke or suspend a license or deny a licensing examination application.

Additionally, the Board makes the following informal option available to applicants with criminal convictions:

- Prior to starting school, the applicant may submit their licensing examination application, have it reviewed by enforcement unit staff, and be informed if the criminal convictions would prevent the Board from approving his/her licensing application.

The Board works with the Department of Corrections to make sure inmates do not face barrier to entry issues upon prison release. One way this is accomplished is by administering the licensing examination at participating prisons, prior to an inmate's release from prison.

All applicants that are denied by the Board have the option of requesting an appeal review by an Administrative Law Judge.

Application Process

Currently, the Board's applications ask questions regarding the applicant's criminal history. The Board relies on good faith that the applicant is supplying all information requested. If this bill is passed, the Board will be unable to ask criminal conviction questions on any applications and will be required to access criminal records from the Department of Justice (DOJ). The new process will include requiring applicants to submit a live scan record (fingerprinting) to the DOJ (at an approximate cost of \$22.00 to the applicant). At the time of exam application submittal, license renewal and licensing reinstatement, subsequent arrest reports will be reviewed by Board staff, creating a significant increased workload. In addition, the Board will be required to conduct annual training with staff and each staff member will need to complete the Criminal Offender Record Information (CORI) Annual Employee Statement Form. All employees with access to CORI must undergo a fingerprint background record clearance review and complete training on the proper handling and storage of CORI. The Department of Investigations (DOI) receives subsequent arrest information on Board employees cleared for CORI access. The DOI reviews the subsequent arrest information and will advise the Board if an employee is disqualified from CORI access. If an employee is disqualified from CORI access the Executive Officer must restructure the employee's duties. CORI may only be used for licensing purposes. Use of CORI for a purpose not associated with licensing, constitutes a misuse of CORI. Maintenance of the CORI records include destruction of the CORI hard copy when once the purpose for which CORI was obtained no longer exists. In addition, the Board will need to issue No Longer Interested (NLI) forms to DOJ to discontinue subsequent arrest information. The NLI forms are submitted when a former licensee no longer holds at least one valid Board license, an applicant whose application was denied and at the time period when all appeals have exhausted or an applicant with an abandoned application.

Staff Notes: Since the Board currently does not have access to subsequent arrest reports, the bill as written, may have the unintended consequence of more license revocations, suspensions and licensing examination application denials by this Board, as the Board will then have access to the arrest/conviction history of an applicant or licensee on file with the DOJ and FBI.

Staff Recommendations:

- Given that this bill pertains to **all** DCA entities, and will have a IT impact upon the Board, staff recommends suggesting to the bill’s author a delayed implementation of one year to allow for interface implementation and changes to be made to the BreEZe system.
- Given that holders of the Personal Service Permit would be allowed into the personal residences of consumers, staff recommends suggesting to the bill’s author that applications that allow access to individuals homes be excluded in the current licensing application denial process.

Fiscal Impact:

The bill as written will have a significant workload impact to the Board.

Workload impact:

- The Board’s applications will need to be revised and reposted to the website
- Training and implementation of the DOJ record inquiry/tracking process (staff recruitment needed)
- Review of subsequent arrest reports prior to approving exam applications, license renewals, licensing restatement requests and probationers. (staff recruitment needed)
- Submittal of No longer Interested reports to DOJ. (staff recruitment needed)
- Applicant and licensee statistical tracking
- Creation and adoption of specified criteria
- Legislative reports compilation, submittal and posting to the Board’s web site

Regulatory impact:

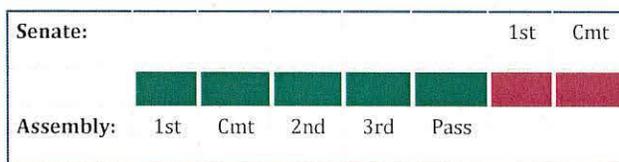
The costs involved in the promulgation of regulations are estimated at \$1,000.00 per regulatory package. It is estimated the Board may need two regulatory packages.

BreEZe impact:

While DCA maintains an interface with the DOJ, the Board would need access implementation. In addition, three to five new activity codes will need to be constructed and implemented within the BreEZe system. At this point, the complete extent of the IT adjustments is unknown, but it is assumed work effort should be absorbable within existing maintenance resources. However, given that it is possible that several DCA entities will need interfacing and implementation, it can be assumed that it may take some time for the IT department to fully implement all of the work requests.

Current Bill Status:

Progress:



Committee Location:

Senate Appropriations Committee

Last Historical Action:

From committee: Do pass and re-refer to Committee on Appropriations. (Ayes 4. Noes 2. Abstain 1.) (June 26). Re-referred to Senate Appropriations Committee.
Senate Appropriations Committee hearing scheduled for August 6, 2018 at 10 a.m.

Board Position:

On May 20, 2018, the Board took an OPPOSED position.

- On May 31, 2018, a letter of opposition was submitted to the Assembly Members Chiu and Low.
- On June 14, 2018, a letter of opposition was submitted to the Senate Business and Professions Committee (Hill).
- On June 27, 2018, a letter of opposition was submitted to the Senate Appropriations Committee (Portantino).

*BP&C refers to the California Business and Professions Code.

AMENDED IN SENATE JUNE 20, 2018

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend Sections 7.5, 480, 481, 482, 488, ~~490, 492, 493,~~ and 11345.2 ~~of, and to add Section 481.5 to,~~ of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to

determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding ~~5~~ 7 years, except for violent *serious* felonies, and would require the crime to be ~~directly and adversely~~ *substantially* related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has ~~made a showing provided evidence~~ of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. ~~The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.~~

The bill would require the board to develop criteria for determining whether a crime is ~~directly and adversely~~ *substantially* related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

~~Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the~~

~~licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.~~

~~This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.~~

Existing law authorizes a board *board*, after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license. *actions in relation to denying or granting the applicant the license.*

~~This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days. *revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.*~~

This bill would also make necessary conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7.5 of the Business and Professions Code
- 2 is amended to read:
- 3 7.5. (a) A conviction within the meaning of this code means
- 4 a judgment following a plea or verdict of guilty or a plea of nolo
- 5 contendere or finding of guilt. Any action which a board is
- 6 permitted to take following the establishment of a conviction may

1 be taken when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting
3 probation is made suspending the imposition of sentence. However,
4 a board may not deny a license to an applicant who is otherwise
5 qualified pursuant to subdivision (b) or (c) of Section 480.

6 (b) (1) Nothing in this section shall apply to the licensure of
7 persons pursuant to Chapter 4 (commencing with Section 6000)
8 of Division 3.

9 (2) *The changes made to this section by the act adding this*
10 *paragraph do not in any way modify or otherwise affect the existing*
11 *authority of the following entities in regard to licensure:*

12 (A) *The State Athletic Commission.*

13 (B) *The Bureau for Private Postsecondary Education.*

14 (c) Except as provided in subdivision (b), this section controls
15 over and supersedes the definition of conviction contained within
16 individual practice acts under this code.

17 SEC. 2. Section 480 of the Business and Professions Code is
18 amended to read:

19 480. (a) ~~(1)~~ Notwithstanding any other provision of this code,
20 a board may deny a license regulated by this code on the grounds
21 that the applicant has been convicted of a crime or has been subject
22 to formal discipline only if either of the following conditions are
23 met:

24 ~~(A)~~

25 (1) The applicant has been convicted of a crime for which the
26 applicant is presently incarcerated or for which the conviction
27 occurred within the preceding ~~five~~ *seven* years. However, the
28 preceding ~~five-year~~ *seven-year* limitation shall not apply to a
29 conviction for a ~~violent~~ *serious* felony, as defined in ~~Section 667.5~~
30 ~~of~~ the Penal Code.

31 The board may deny a license pursuant to this subparagraph only
32 if the crime is ~~directly and adversely~~ *substantially* related to the
33 qualifications, functions, or duties of the business or profession
34 for which application is made.

35 ~~(B)~~

36 (2) The applicant has been subjected to formal discipline by a
37 licensing board within the preceding five years based on
38 professional misconduct that would have been cause for discipline
39 before the board for which the present application is made and that
40 is ~~directly and adversely~~ *substantially* related to the qualifications,

1 functions, or duties of the business or profession for which the
2 present application is made. However, prior disciplinary action by
3 a licensing board within the preceding ~~five~~ *seven* years shall not
4 be the basis for denial of a license if the basis for that disciplinary
5 action was a conviction that has been dismissed pursuant to Section
6 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable
7 dismissal or expungement.

8 ~~(2) Denial of a license includes denial of an unrestricted license
9 by issuance of a restricted or probationary license.~~

10 (b) Notwithstanding any other provision of this code, a person
11 shall not be denied a license on the basis that he or she has been
12 convicted of a crime, or on the basis of acts underlying a conviction
13 for a crime, if he or she has obtained a certificate of rehabilitation
14 under Chapter 3.5 (commencing with Section 4852.01) of Title 6
15 of Part 3 of the Penal Code, has been granted clemency or a pardon
16 by a state or federal executive, or ~~has made a showing~~ *provided*
17 *evidence* of rehabilitation pursuant to Section 482.

18 (c) Notwithstanding any other provision of this code, a person
19 shall not be denied a license on the basis of any conviction, or on
20 the basis of the acts underlying the conviction, that has been
21 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the
22 Penal Code, or a comparable dismissal or expungement. An
23 applicant who has a conviction that has been dismissed pursuant
24 to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code
25 shall provide proof of the dismissal if it is not reflected on the
26 report furnished by the Department of Justice.

27 (d) Notwithstanding any other provision of this code, a board
28 shall not deny a license on the basis of an arrest that resulted in a
29 disposition other than a conviction, including an arrest that resulted
30 in an infraction, citation, or a juvenile adjudication.

31 (e) A board may deny a license regulated by this code on the
32 ground that the applicant knowingly made a false statement of fact
33 that is required to be revealed in the application for the license. A
34 board shall not deny a license based solely on an applicant's failure
35 to disclose a fact that would not have been cause for denial of the
36 license had it been disclosed.

37 (f) A board shall follow the following procedures in requesting
38 or acting on an applicant's criminal history information:

- 1 (1) A board shall not require an applicant for licensure to
2 disclose any information or documentation regarding the
3 applicant's criminal history.
- 4 (2) If a board decides to deny an application based solely or in
5 part on the applicant's conviction history, the board shall notify
6 the applicant in writing of all of the following:
- 7 (A) The denial or disqualification of licensure.
- 8 (B) Any existing procedure the board has for the applicant to
9 challenge the decision or to request reconsideration.
- 10 (C) That the applicant has the right to appeal the board's
11 decision.
- 12 (D) The processes for the applicant to request a copy of his or
13 her complete conviction history and question the accuracy or
14 completeness of the record pursuant to Sections 11122 to 11127
15 of the Penal Code.
- 16 (g) (1) For a minimum of three years, each board under this
17 code shall retain application forms and other documents submitted
18 by an applicant, any notice provided to an applicant, all other
19 communications received from and provided to an applicant, and
20 criminal history reports of an applicant.
- 21 (2) Each board under this code shall retain the number of
22 applications received for each license and the number of
23 applications requiring inquiries regarding criminal history. In
24 addition, each licensing authority shall retain all of the following
25 information:
- 26 (A) The number of applicants with a criminal record who
27 received notice of denial or disqualification of licensure.
- 28 (B) The number of applicants with a criminal record who
29 provided evidence of mitigation or rehabilitation.
- 30 (C) The number of applicants with a criminal record who
31 appealed any denial or disqualification of licensure.
- 32 (D) The final disposition and demographic information,
33 including, but not limited to, voluntarily provided information on
34 race or gender, of any applicant described in subparagraph (A),
35 (B), or (C).
- 36 (3) (A) Each board under this code shall annually make
37 available to the public through the board's Internet Web site and
38 through a report submitted to the appropriate policy committees
39 of the Legislature deidentified information collected pursuant to

1 this subdivision. Each board shall ensure confidentiality of the
2 individual applicants.

3 (B) A report pursuant to subparagraph (A) shall be submitted
4 in compliance with Section 9795 of the Government Code.

5 (h) "Conviction" as used in this section shall have the same
6 meaning as defined in Section 7.5.

7 ~~(i) This section supersedes any contradictory provision in a~~
8 ~~licensing act under this code or initiative act referred to in Division~~
9 ~~2 (commencing with Section 500) that authorizes license denial~~
10 ~~based on a criminal conviction, arrest, or the acts underlying an~~
11 ~~arrest or conviction.~~

12 *(i) The changes made to this section by the act adding this*
13 *subdivision do not in any way modify or otherwise affect the*
14 *existing authority of the following entities in regard to licensure:*

15 *(1) The State Athletic Commission.*

16 *(2) The Bureau for Private Postsecondary Education.*

17 SEC. 3. Section 481 of the Business and Professions Code is
18 amended to read:

19 481. (a) Each board under this code shall develop criteria to
20 aid it, when considering the denial, suspension, or revocation of
21 a license, to determine whether a crime is ~~directly and adversely~~
22 *substantially* related to the qualifications, functions, or duties of
23 the business or profession it regulates.

24 (b) Criteria for determining whether a crime is ~~directly and~~
25 *adversely substantially* related to the qualifications, functions, or
26 duties of the business or profession a board regulates shall include
27 all of the following:

28 (1) The nature and gravity of the offense.

29 (2) The number of years elapsed since the date of the offense.

30 (3) The nature and duties of the profession in which the applicant
31 seeks licensure or in which the licensee is licensed.

32 (c) A board shall not deny a license based in whole or in part
33 on a conviction without considering evidence of rehabilitation.

34 (d) Each board shall post on its Internet Web site a summary of
35 the criteria used to consider whether a crime is considered to be
36 ~~directly and adversely~~ *substantially* related to the qualifications,
37 functions, or duties of the business or profession it regulates
38 consistent with this section.

1 (e) The changes made to this section by the act adding this
2 subdivision do not in any way modify or otherwise affect the
3 existing authority of the following entities in regard to licensure:

4 (1) The State Athletic Commission.

5 (2) The Bureau for Private Postsecondary Education.

6 ~~SEC. 4. Section 481.5 is added to the Business and Professions~~
7 ~~Code, to read:~~

8 ~~481.5. (a) Probationary terms or restrictions placed on a license~~
9 ~~by a board shall be limited to two years or less. Any additional~~
10 ~~conditions may be imposed only if the board determines that there~~
11 ~~is clear and convincing evidence that additional conditions are~~
12 ~~necessary to address a risk shown by clear and convincing~~
13 ~~evidence.~~

14 ~~(b) Each board under this code shall develop criteria to aid it~~
15 ~~when considering the imposition of probationary conditions or~~
16 ~~restrictions to determine what conditions may be imposed to~~
17 ~~address a risk shown by clear and convincing evidence.~~

18 ~~(c) (1) A licensee or registrant whose license or registration~~
19 ~~has been placed on probation may petition the board for a change~~
20 ~~to the probation, including modification or termination of~~
21 ~~probation, one year from the effective date of the decision. The~~
22 ~~board shall issue its decision on the petition within 90 days of~~
23 ~~submission of the petition. The petition shall be deemed granted~~
24 ~~by operation of law if the board does not file a decision denying~~
25 ~~the petition within 90 days of submission of the petition.~~

26 ~~(2) The one-year time period to petition for modification or~~
27 ~~termination of penalty shall control over longer time periods under~~
28 ~~a licensing act under this code or initiative act referred to in~~
29 ~~Division 2 (commencing with Section 500).~~

30 ~~SEC. 5.~~

31 ~~SEC. 4. Section 482 of the Business and Professions Code is~~
32 ~~amended to read:~~

33 482. (a) Each board under this code shall develop criteria to
34 evaluate the rehabilitation of a person when doing either of the
35 following:

36 (1) Considering the denial of a license by the board under
37 Section 480.

38 (2) Considering suspension or revocation of a license under
39 Section 490.

1 (b) Each board shall ~~find~~ *consider* that an applicant or licensee
2 has made a showing of rehabilitation if ~~any~~ *either* of the following
3 are met:

4 (1) The applicant or licensee has completed the criminal
5 sentence at issue without a violation of parole or probation.

6 ~~(2) (A) The applicant or licensee documents that he or she has~~
7 ~~worked in a related field continuously for at least one year prior~~
8 ~~to licensure or successfully completed a course of training in a~~
9 ~~related field, unless the board finds a public record of an official~~
10 ~~finding that the applicant committed professional misconduct in~~
11 ~~the course of that work:~~

12 ~~(B) Work in a related field may include, but is not limited to,~~
13 ~~work performed without compensation and work performed while~~
14 ~~incarcerated:~~

15 ~~(C) "Related field," for purposes of this paragraph, means a~~
16 ~~field of employment whose duties are substantially similar to the~~
17 ~~field regulated by the board:~~

18 ~~(3)~~

19 (2) The applicant or licensee has satisfied criteria for
20 rehabilitation developed by the board.

21 (c) *The changes made to this section by the act adding this*
22 *subdivision do not in any way modify or otherwise affect the*
23 *existing authority of the following entities in regard to licensure:*

24 (1) *The State Athletic Commission.*

25 (2) *The Bureau for Private Postsecondary Education.*

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 488 of the Business and Professions Code is
28 amended to read:

29 488. Except as otherwise provided by law, following a hearing
30 requested by an applicant pursuant to subdivision (b) of Section
31 485, the board may take any of the following actions:

32 (a) Grant the license effective upon completion of all licensing
33 requirements by the applicant.

34 ~~(b) Grant the license effective upon completion of all licensing~~
35 ~~requirements by the applicant, grant the license and immediately~~
36 ~~issue a public reproof pursuant to Section 495, immediately revoke~~
37 ~~the license, stay the revocation, and impose probationary conditions~~
38 ~~on the license, which may include suspension:~~

39 (c)

40 (b) Deny the license.

1 (d)

2 (c) Take other action in relation to denying or granting the
3 license as the board in its discretion may deem proper.

4 (d) *The changes made to this section by the act adding this*
5 *subdivision do not in any way modify or otherwise affect the*
6 *existing authority of the following entities in regard to licensure:*

7 (1) *The State Athletic Commission.*

8 (2) *The Bureau for Private Postsecondary Education.*

9 SEC. 7. ~~Section 490 of the Business and Professions Code is~~
10 ~~amended to read:~~

11 ~~490. (a) (1) In addition to any other action that a board is~~
12 ~~permitted to take against a licensee, a board may suspend or revoke~~
13 ~~a license on the ground that the licensee has been convicted of a~~
14 ~~crime for which the applicant is presently incarcerated or for which~~
15 ~~the conviction occurred within the preceding five years. However,~~
16 ~~the preceding five year limitation shall not apply to a conviction~~
17 ~~for a violent felony, as defined in Section 667.5 of the Penal Code.~~

18 ~~(2) The board may suspend or revoke a license pursuant to this~~
19 ~~subdivision only if the crime is directly and adversely related to~~
20 ~~the qualifications, functions, or duties of the business or profession~~
21 ~~for which application is made.~~

22 ~~(b) Notwithstanding any other provision of law, a board may~~
23 ~~exercise any authority to discipline a licensee for conviction of a~~
24 ~~crime that is independent of the authority granted under subdivision~~
25 ~~(a) only if both of the following are met:~~

26 ~~(1) The crime is directly and adversely related to the~~
27 ~~qualifications, functions, or duties of the business or profession~~
28 ~~for which the licensee's license was issued.~~

29 ~~(2) The licensee was convicted of the crime within the preceding~~
30 ~~five years or is presently incarcerated for the crime. However, the~~
31 ~~preceding five year limitation shall not apply to a conviction for~~
32 ~~a violent felony, as defined in Section 667.5 of the Penal Code.~~

33 ~~(c) Notwithstanding any other provision of this code, a board~~
34 ~~shall not suspend or revoke a license on the basis of a conviction,~~
35 ~~or of the acts underlying a conviction, where that conviction has~~
36 ~~been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or~~
37 ~~1203.42 of the Penal Code or a comparable dismissal or~~
38 ~~expungement.~~

39 ~~(d) Notwithstanding any other provision of this code, a board~~
40 ~~shall not suspend or revoke a license on the basis of an arrest that~~

1 resulted in a disposition other than a conviction, including an arrest
2 that resulted in an infraction, citation, or juvenile adjudication.

3 ~~(c) The board shall use the following procedures in requesting
4 or acting on a licensee's criminal history information:~~

5 ~~(1) A board shall not require a licensee to disclose any
6 information or documentation regarding the licensee's criminal
7 history.~~

8 ~~(2) If a board chooses to file an accusation against a licensee
9 based solely or in part on the licensee's conviction history, the
10 board shall notify the licensee in writing of the processes for the
11 licensee to request a copy of the licensee's complete conviction
12 history and question the accuracy or completeness of his or her
13 criminal record pursuant to Sections 11122 to 11127, inclusive,
14 of the Penal Code.~~

15 ~~(f) (1) For a minimum of three years, each board under this
16 code shall retain all documents submitted by a licensee, notices
17 provided to a licensee, all other communications received from or
18 provided to a licensee, and criminal history reports of a licensee.~~

19 ~~(2) Each board under this code shall retain all of the following
20 information:~~

21 ~~(A) The number of licensees with a criminal record who received
22 notice of potential revocation or suspension of their license or who
23 had their license suspended or revoked.~~

24 ~~(B) The number of licensees with a criminal record who
25 provided evidence of mitigation or rehabilitation.~~

26 ~~(C) The number of licensees with a criminal record who
27 appealed any suspension or revocation of a license.~~

28 ~~(D) The final disposition and demographic information,
29 including, but not limited to, voluntarily provided information on
30 race or gender, of any applicant described in subparagraph (A),
31 (B), or (C).~~

32 ~~(3) (A) Each board under this code shall annually make
33 available to the public through the board's Internet Web site and
34 through a report submitted to the appropriate policy committees
35 of the Legislature deidentified information collected pursuant to
36 this subdivision. Each board shall ensure the confidentiality of the
37 individual licensees.~~

38 ~~(B) A report pursuant to subparagraph (A) shall be submitted
39 in compliance with Section 9795 of the Government Code.~~

1 ~~(g) (1) This section supersedes any contradictory provision in~~
2 ~~a licensing act under this code or initiative act referred to in~~
3 ~~Division 2 (commencing with Section 500) that authorizes action~~
4 ~~based on a criminal conviction, arrest, or the acts underlying an~~
5 ~~arrest or conviction:~~

6 ~~(2) This section shall not prohibit any agency from taking~~
7 ~~disciplinary action against a licensee for professional misconduct~~
8 ~~in the course and scope of the licensee's profession that is based~~
9 ~~on evidence that is independent of an arrest:~~

10 ~~SEC. 8. Section 492 of the Business and Professions Code is~~
11 ~~amended to read:~~

12 ~~492. (a) Notwithstanding any other provision of law, successful~~
13 ~~completion of any diversion program under the Penal Code,~~
14 ~~successful completion by a licensee or applicant of any~~
15 ~~nonstatutory diversion program, deferred entry of judgment, or~~
16 ~~successful completion of an alcohol and drug problem assessment~~
17 ~~program under Article 5 (commencing with Section 23249.50) of~~
18 ~~Chapter 12 of Division 11 of the Vehicle Code, shall prohibit any~~
19 ~~board from taking disciplinary action against a licensee or from~~
20 ~~denying a license for professional misconduct:~~

21 ~~(b) This section shall not prohibit any agency established under~~
22 ~~Division 2 (commencing with Section 500) of this code, or any~~
23 ~~initiative act referred to in that division, from taking disciplinary~~
24 ~~action against a licensee for professional misconduct in the course~~
25 ~~and scope of the profession, which is based on evidence that is~~
26 ~~independent of an arrest:~~

27 ~~SEC. 9.~~

28 ~~SEC. 6. Section 493 of the Business and Professions Code is~~
29 ~~amended to read:~~

30 ~~493. (a) Notwithstanding any other provision of law, in a~~
31 ~~proceeding conducted by a board within the department pursuant~~
32 ~~to law to deny an application for a license or to suspend or revoke~~
33 ~~a license or otherwise take disciplinary action against a person~~
34 ~~who holds a license, upon the ground that the applicant or the~~
35 ~~licensee has been convicted of a crime directly and adversely~~
36 ~~substantially related to the qualifications, functions, and duties of~~
37 ~~the licensee in question, the record of conviction of the crime shall~~
38 ~~be conclusive evidence of the fact that the conviction occurred,~~
39 ~~but only of that fact.~~

1 (b) (1) Criteria for determining whether a crime is ~~directly and~~
2 ~~adversely~~ *substantially* related to the qualifications, functions, or
3 duties of the business or profession the board regulates shall include
4 all of the following:

5 (A) The nature and gravity of the offense.

6 (B) The number of years elapsed since the date of the offense.

7 (C) The nature and duties of the profession.

8 (2) A board shall not categorically bar an applicant based solely
9 on the type of conviction without considering evidence of
10 rehabilitation.

11 (c) As used in this section, "license" includes "certificate,"
12 "permit," "authority," and "registration."

13 (d) *The changes made to this section by the act adding this*
14 *subdivision do not in any way modify or otherwise affect the*
15 *existing authority of the following entities in regard to licensure:*

16 (1) *The State Athletic Commission.*

17 (2) *The Bureau for Private Postsecondary Education.*

18 ~~SEC. 10.~~

19 *SEC. 7.* Section 11345.2 of the Business and Professions Code
20 is amended to read:

21 11345.2. (a) An individual shall not act as a controlling person
22 for a registrant if any of the following apply:

23 (1) The individual has entered a plea of guilty or no contest to,
24 or been convicted of, a felony. If the individual's felony conviction
25 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41
26 of the Penal Code, the bureau may allow the individual to act as
27 a controlling person.

28 (2) The individual has had a license or certificate to act as an
29 appraiser or to engage in activities related to the transfer of real
30 property refused, denied, canceled, or revoked in this state or any
31 other state.

32 (b) Any individual who acts as a controlling person of an
33 appraisal management company and who enters a plea of guilty
34 or no contest to, or is convicted of, a felony, or who has a license
35 or certificate as an appraiser refused, denied, canceled, or revoked
36 in any other state shall report that fact or cause that fact to be
37 reported to the office, in writing, within 10 days of the date he or
38 she has knowledge of that fact.

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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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MEMORANDUM

DATE	July 23, 2018
TO	Members, Board of Barbering and Cosmetology
FROM	Kristy Underwood, Executive Officer
SUBJECT	Regulations Update

Staff has revised the language of the administrative fine schedule, which needs approval by the Board. The changes consist of amending the fines for Sections 989, 993 and 994 to reflect that they only apply to the establishment license holder and not the individual.

BOARD OF BARBERING AND COSMETOLOGY

Division 9, Title 16, of the California Code of Regulations.

SPECIFIC LANGUAGE

LEGEND

Underlined Indicates proposed amendments or additions to the existing regulation.

~~Strikeout~~ Indicates proposed deletions to the existing regulation.

- Amend Section 974, Title 16, California Code of Regulations, as follows:

974. Schedule of Administrative Fines

(a) An administrative fine may be assessed for violations of the specified sections of the Business and Professions Code and Division 9 of Title 16 of the California Code of Regulations as follows (in dollars):

Section	1st Violation	2nd Violation	3rd Violation	Waivable
7313. Access to Establishment for Inspection	250	500	750	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7317. Unlicensed Establishment	500	1,000	1,000	No
7317. Unlicensed Individual	1,000	1,000	1,000	No
7317. Expired Establishment License	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7317. Expired Individual License	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
7317. Individual Working in an Expired Establishment	25	50	100	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
7317. Individual Working in an Unlicensed Establishment	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
7320. Practice of Medicine	1,000	1,000	1,000	No

<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine also applies to the individual licensee when the individual licensee can be determined and is present</u>				
7320.1. Use of Illegal Metal Tools	250	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine also applies to the individual licensee when the individual licensee can be determined and is present</u>				
7320.2. Illegal Treatment Methods	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine also applies to the individual licensee when the individual licensee can be determined and is present</u>				
7336. No Supervision of Apprentice	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the individual licensee</u>				
7348. No Licensee in Charge of Establishment	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7349. Employing Unlicensed Persons	1,000	1,000	1,000	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7349. Employing Unlicensed Persons – Expired License	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7349.1. Illegal Use of a Barber Pole	25	50	100	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7350. Establishment – Residential Use/Entrance/Prohibited Use	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7351. Restroom Requirement – Clean/Storage/Floor/Vented	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7352. No Soap/Towels or Air Hand Dryers in Hand Washing Facilities	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7353.4. Labor Rights Notice Not Posted	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
7358. No Licensee in Charge of Mobile Unit	100	150	200	No
7359. Employing Unlicensed Person in Mobile Unit	1,000	1,000	1,000	No
7360. Mobile Unit – Residential/Prohibited Use	50	100	150	No
7400. No Change of Address Notice Filed	50	100	150	No

<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
7404(l). Interference with Inspection	200-1,000	300-1,000	500-1,000	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee is solely responsible for interfering with an inspection</u>				
904(d). No Photographic Identification Available	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
905. Consumer Info. Not Posted/ Incorrect Size of Print (Health & Safety)	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
920. Apprentice Training Records Not Available/Incomplete	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
965. Display of Licenses	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license when an establishment license is not conspicuously posted in the reception area; fine applies to the individual licensee and the holder of the establishment license when the individual's license is not conspicuously posted at his or her primary work station</u>				
978(a)(1), (a)(2),(a)(3),(a)(4). Receptacles, Cabinets and Containers	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
978(a)(5). Insufficient Disinfectant in Container for Total Immersion	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
978(a)(6). No Steam/Dry Heat Sterilizer for Electrology Tools	500	1,000	1,500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
978(b). No Disinfectant Solution Available for Use	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
978(c). No Manufacturer-Labeled Container for Disinfectant	250	300	500	No
<u>For the purposes of Section 7407.1 (BPC), fine applies to the holder of the establishment license</u>				
979. Disinfecting Non-Electrical Tools and Equipment	100	250	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
980(a). Incorrect Disinfection of Electrical Items	100	250	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				

980(b). Incorrect Storage of Electrical Disinfected Items	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
980(c). Incorrect Storage of Soiled Electrical Tools	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
980.1. Incorrect Disinfection of Pedicure Spas (Per Chair)	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.1(c)(7). 980.1(d)(8). Incorrect/Missing Log 980.1(e)(4).	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.1(g). Failure to List Chair as "Not in Service" in Log; No Sign Displayed on Chair	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.2. Incorrect Disinfection of "Pipeless" Footspas (Per Unit)	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.2(b)(7). 980.2(c)(6). Incorrect/Missing Log 980.2(d)(3).	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.2(f). Failure to List Chair as "Not in Service" in Log; No Sign Displayed on Chair	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.3. Incorrect Disinfection of "Non-Whirlpool Foot Basin" (Per Unit)	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.3(b)(6). Incorrect/Missing Log	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				

980.3(e). Improper Storage of Basins or Tubs	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.4. Incorrect Disinfection of foot basin or tub after use of disposable liner	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.4(a)(2). Incorrect/Missing Log	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
980.4(a)(4). Failure to Maintain Supply of Five (5) Disposable Liners per Foot Tub Basin	250	300	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license; fine may also apply to the individual licensee when the individual licensee can be determined and is present</u>				
981(a). No Disposal of Non-Disinfected Items	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
981(b). Improper Storage of New Supplies and Disposable tools	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
981(c). Carry Tools or Supplies in or on Garments	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
982. Incorrect Sterilization of Electrology Tools	100	150	200	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
983. Personal Cleanliness	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				
984. Work on Person with Infectious/Communicable Disease	100	250	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
985. No Use of Neck Strips or Towel	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee</u>				

986. Neck Dusters/Brushes Not Clean or Sanitary	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
987. Towels	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
988. Liquids, Creams, Powders and Cosmetics	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
989. Prohibited Hazardous Substance/Use of Product	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
990. Headrests and Treatment Tables	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
991. Performing Invasive Procedures	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
992. Performing Invasive Skin Exfoliation/Dermis	500	500	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the individual licensee when the individual licensee can be determined and is present; fine also applies to the holder of the establishment license when the individual licensee cannot be determined or is not present, or the violation has been found repeatedly in the establishment</u>				
993. Prohibited Tools	300	400	500	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
994. Cleanliness and Repair	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				
995(b),(c),(d),(e). Plumbing Standards	50	100	150	No
<u>For the purposes of Business and Professions Code section 7407.1, fine applies to the holder of the establishment license</u>				

(b) A violation indicated in subdivision (a) as not waivable means that the Board, in its discretion, has determined that the violation cannot be corrected pursuant to Business and Professions Code section

7407, and therefore that the fine for the first violation may not be avoided as provided for in Section Business and Professions Code section 7409 of the Business and Professions Code.

NOTE: Authority cited: Sections 7312, 7406 and 7407, Business and Professions Code. Reference: Sections 7353.4, 7406, 7407, 7407.1, and 7409, Business and Professions Code.

- **Adopt Section 974.3, Title 16, California Code of Regulations, as follows:**

Section 974.3. Installment Payment Plan.

(a) A licensee with any administrative fine exceeding \$500 may request a payment plan consisting of no more than 12 monthly installments. The licensee must request the payment plan in writing. After the licensee requests a payment plan, the board will provide to the licensee a schedule of payments indicating the due date and amount of the payment.

(b) A Licensee's payment plan will be cancelled by the board if the licensee fails to follow any of the terms and conditions of the payment plan.

(c) If a licensee's payment plan is cancelled by the board, the licensee will not be allowed to:

(1) Renew any board-issued license he or she holds until all outstanding fines are paid in full;

(2) Request a payment plan for any subsequent administrative fine.

(d) A licensee who is paying an administrative fine in accordance with the provisions of this section shall be permitted to renew any board-issued license he or she holds even if the fines have not been paid in full by the renewal date.

Note: Authority cited: Section 7312, 7408.1 and 7414, Business and Professions Code. Reference: Sections 7408.1 and 7414, Business and Professions Code.

Closed Session

No Attachment