

## TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

### INITIAL STATEMENT OF REASONS

Hearing Date: July 24, 2019

Subject Matter of Proposed Regulations: Fines & Payment Plans

Section(s) Affected: 974, 974.3

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

The board is seeking to amend its administrative fine schedule to make it fairer for licensees, help ensure the effectiveness of the board's inspection program, and to add fines relating to a new legislative mandate concerning the posting of a labor rights notice, and to establishments that employ persons with an expired license. The Board is also amending the schedule to describe which fines apply strictly to individual licensees or establishment license holders, and which fines may be levied on both the individual licensee and the establishment license holder for the same violation. Finally, the Board is proposing to adopt language regarding payment plans for persons with a fine exceeding \$500. The language specifying which licensee each fine applies to and the section defining the payment plan's terms are being added to comply with the requirements of SB 1044, which was passed by the Legislature during the 2015-16 session and signed into law by the Governor.

#### Factual Basis/Rationale/Benefits

- 1) The fines the Board wishes to amend or adopt, and the reasons for the amendment or adoption, are for the following Business and Professions Code (BPC) sections:

**7404(I)** — This fine, which is levied on licensees who seek to delay and/or prevent, sometimes physically, an inspection that is in progress, would be increased to \$1,000 regardless of whether it is a first or a repeat violation. This proposal is being made to address a problem raised by the board's enforcement staff: that the existing fines for first, second and third offenses are so small that some licensees — especially at establishments facing many health and safety violations — interfere with inspections in order to end them and avoid a possibly larger fine for other violations the inspector would be expected to uncover had the inspection continued. The proposed \$1,000 fine is the maximum administrative fine handed down by the Board for any violation and would be levied without regard to whether the violation is a first, second or third offense. This action is expected to deter interference with inspections and help ensure the effectiveness of the Board's enforcement program.

**7349** — BPC Section 7349 prohibits any person, firm or corporation from hiring, employing or allowing an unlicensed person to work in a licensed establishment. The Board proposes to amend the board's fine schedule with regard to BPC Section 7349 to distinguish between employing someone with no license at all, and employing someone with an expired license. The problem with the existing fine for violating BPC Section 7349 is that it is inconsistent with the fines that the Board levies on unlicensed persons and establishments pursuant to BPC Section 7317. Under BPC Section 7317, the Board makes a distinction between persons who have never had a license and persons whose license is merely expired. The Board believes the same distinction

should be made pursuant to BPC Section 7349 and proposes levying a smaller fine on persons who employ someone whose licensed is merely expired. The Board's proposed fine level of \$250/\$300/\$500, depending on whether the violation is a first, second, or third offense, mirrors the fine level for establishments and individuals under BPC 7317. The higher fine is warranted for hiring someone who has never had a license, because all an establishment license holder needs to do to verify that an employee has a valid license at the time of his or her hiring is to ask to see their license or check with the Board of Barbering and Cosmetology, which an employer ought to do with any new hire. The higher fine is already established in regulation, and it encourages employers to take the simple step of checking the license of prospective employees before hiring. An unlicensed individual also presents a more serious threat to consumer health and safety because he or she in most cases will not have had the formal training that a person whose license is merely expired possesses, and the higher fine deters employers from hiring unlicensed persons. The smaller fine for an expired license is warranted because an establishment license holder operating a busy establishment might not be aware that a previously-licensed employee's license had expired during the course of his or her employment. The Board's proposal will make the fine schedule more equitable and fair.

**7353.4** — In 2016, the Legislature passed AB 2437, which was signed by the Governor and filed with the Secretary of State on September 14, 2016. The bill required the California Labor Commissioner to create a notice regarding workplace rights and wages and hour laws that would be posted in Barbering and Cosmetology establishments on or after July 1, 2017. The bill also requires the Board of Barbering and Cosmetology set an administrative fine for establishments that fail to post the notice. Because the violations are similar in nature, the Board is setting the fine for failure to post the labor rights notice at the same amount as the board's fine for failure to post the board's consumer information message (CCR title 16, section 905), which is \$50-\$150.

**984(a),(b),(e)** — These subsections are not new, nor do they create new fines. Under the current schedule, Section 984 and its accompanying fines apply to subsections (a),(b) and (e). But in order to clearly identify whether it is the establishment license holder or the individual licensee who is responsible for a particular violation and fine pursuant to BPC 7407.1 (see (2) below), it is necessary to break up Section 984 in into its subparagraphs, which clearly identify who is responsible for the violation.

The Board also proposes to amend the following Section of the CCR:

**905** — The Board has removed the reference to text size in the section description because the poster is now produced by the Board and proper text size is no longer an issue.

- 2) The Board has also added language to the schedule that describes which fines apply strictly to individuals or establishment license holders, and which fines may be levied on both the individual licensee and the establishment license holder for the same violation. These revisions have been made to meet the mandate of SB 1044, which was passed by the Legislature during the 2015-16 session. SB 1044 added Section 7407.1 to the BPC, which reads:

*The board shall determine by regulation when a fine shall be assessed to both the holder of the establishment license and the individual licensee for the same violation. The board shall also determine by regulation when a fine shall be assessed to only the holder of the establishment license or to only an individual licensee for the same violation. In making these determinations, the board shall consider the egregiousness of the violation of the health and safety regulations*

*and whether the violation is a repeated violation by licensees within the same establishment.*

None of the determinations listed in the proposed schedule represents a new policy or practice by the Board. Pursuant to its authority under BPC Section 7312 to “make rules and regulations in furtherance of (the Barbering and Cosmetology Act)”, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Currently, the Board’s Cite and Fine Unit makes the determination based on inspection reports submitted by the Board’s inspectors in the field, and issues citations to the individual, business, or both, according to the established policies presented in the fine schedule being proposed in this rulemaking.

Some of the citations and fines listed in the schedule are not being amended to specify whether the fine applies to the individual licensee or establishment, because BPC Section 7407.1 is inapplicable. The citations and fines associated with BPC section 7317 for unlicensed establishments and unlicensed individuals will not be amended because section 7407.1 applies to licensed persons and establishments. In all events, the application of these citations to establishments and individuals is clear. The citations and fines associated with BPC sections 7358, 7359, and 7360 are also not being amended because they apply to mobile unit licensees, not individual or establishment licensees.

The determinations for each violation and the reasons for them are as follows:

7313. Access to Establishment for Inspection	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7313 specifically addresses the inspection of establishments. For this reason and because the establishment license holder controls access to the establishment, the establishment license holder is solely responsible for granting board representatives access to an establishment for the purpose of inspection. Therefore, the fine for violating this section applies to the establishment license holder.	
7317. Expired Establishment License	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7317 prohibits “any person, firm or corporation” from engaging in barbering and cosmetology services in an establishment that does not have a valid, unexpired license. It also prohibits persons, firms or corporations from operating an establishment or other place of business where barbering and cosmetology services are provided without a license. This means the holder of the establishment license cannot allow that license to expire and continue to provide services. Therefore, the fine applies to the establishment license holder.	
7317. Expired Individual License	Fine applies to the individual licensee.
<b>Reason:</b> BPC Section 7317 prohibits “any person” from engaging in barbering and cosmetology services with an expired license. The fine applies to the individual licensee, because he or she would be responsible for keeping their personal license up-to-date.	
7317. Individual Working in an Expired Establishment	Fine applies to the individual licensee.
<b>Reason:</b> BPC Section 7317 prohibits “any person, firm or corporation” from engaging in barbering and cosmetology services in an establishment that does not have a valid, unexpired license. This means an individual cannot work in an establishment that has an expired establishment license. Therefore, the fine applies to the individual licensee.	

7317. Individual Working in an Unlicensed Establishment	Fine applies to the individual licensee.
<b>Reason:</b> BPC Section 7317 prohibits “any person” from engaging in barbering and cosmetology services in an establishment that is not licensed by the board. Therefore, the fine applies to the individual licensee.	
7320. Practice of Medicine	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.
<b>Reason:</b> BPC Section 7320 prohibits licensees from practicing medicine, but it does not specify which license-holder is responsible when this section is violated. The Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. The Board considers illegally practicing medicine to be an egregious violation because of the potential for serious consumer harm. Due the extreme potential for consumer harm both the establishment license holder and the individual licensees share the responsibilities of ensuring that practice of medicine is not happening in the establishment. Therefore, this fine applies to the establishment license holder and to the individual licensee, if the latter can be identified and is present at the time of the violation.	
7320.1. Use of Illegal Metal Tools	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.
<b>Reason:</b> BPC Section 7320.1 prohibits the use of certain metal tools, but it does not specify which license-holder is responsible when this section is violated. The Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. The Board considers the use of illegal metal tools – razor blades or metal rasps to remove calluses during a pedicure, for example – a health and safety rule and an especially egregious one to violate because of the potential for serious consumer harm. (See Cal. Code Regs., tit. 16, § 993 [prohibited tools].) Because of that potential, extra vigilance by all parties in the establishment is necessary to prevent violations and protect consumers. Therefore, this fine applies to the establishment license holder and to the individual licensee, if the latter can be identified and is present at the time of the violation.	
7320.2. Illegal Treatment Methods	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.
<b>Reason:</b> BPC Section 7320.2 prohibits the use of X-ray machines and certain chemical applications. Section 7320.2 is applicable to either an individual that specifically utilizes an X-ray machine or applies certain chemicals during a particular treatment, or to establishment licensee that utilizes X-ray machines or chemical applications in their business operations. The Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. The Board considers illegal treatment methods – such as the use of X-ray devices – to be an especially egregious violation because of the great potential for consumer harm. Because of that potential, extra vigilance by all parties in the establishment is necessary to prevent violations and protect consumers. Therefore, this fine applies to the establishment license holder and also to the individual licensee, if the latter can be identified and is present at the time of the violation.	
7336. No Supervision of Apprentice	Fine applies to the individual licensee.
<b>Reason:</b> BPC Section 7336 specifically prohibits a licensed apprentice from working unless supervised by a licensee approved by the Board. Therefore, a violation of this section can only be caused by the individual licensed apprentice and that individual is solely responsible for the fine.	

7348. No Licensee in Charge of Establishment	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7348 requires an establishment to have the holder of the establishment license or an individual licensee in charge of the establishment at all times. Because the establishment license holder is ultimately responsible for staffing his or her establishment, the fine applies to the establishment license holder.	
7349. Employing Unlicensed Persons	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7349 specifically prohibits an establishment from employing or permitting to work any person who is not fully licensed. Because the holder of the establishment license is ultimately responsible for employing or allowing people to work in his or her establishment, the fine applies to the holder of the establishment license.	
7349. Employing Unlicensed Persons – Expired License	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7349 specifically prohibits an establishment from employing or permitting to work any person who is not fully licensed. Because the holder of the establishment license is ultimately responsible for employing or allowing people to work in his or her establishment, the fine only applies to the holder of the establishment license.	
7349.1. Illegal Use of a Barber Pole	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7349.1 prohibits any person, firm, or corporation from displaying a barber pole when no licensed barber is employed in the establishment. Barber poles are typically exhibited as part of the establishment's décor; therefore, the fine applies to the holder of the establishment license.	
7350. Establishment – Residential Use/Entrance/Prohibited Use	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7350 prohibits the license holder of an establishment or an employee in charge of the establishment from allowing a room in which barbering and cosmetology services are performed to be used for residential purposes or some other use that would render it unfit for consumers. The holder of the establishment license would have the ultimate authority to allow someone to live there or use the room inappropriately. Consequently, the fine applies to the holder of the establishment license. BPC Section 7350 also specifically requires an establishment connected to private quarters have a separate entrance. The fine for this violation also applies to the establishment license holder, who would have control over the physical configuration of his or her establishment.	
7351. Restroom Requirement – Clean/Storage/Floor/Vented	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7351 requires that establishments provide at least one public toilet room located in or near the establishment's premises. The establishment license holder typically has control over the physical configuration of the establishment. Consequently, the holder of the establishment license is responsible for the fine.	
7352. No Soap/Towels or Air Hand Dryers in Hand Washing Facilities	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7352 requires that establishments provide handwashing facilities. The establishment license holder would have control over the physical configuration of the establishment. Consequently, the holder of the establishment license is responsible for the fine.	
7353.4. Labor Rights Notice Not Posted	Fine applies to the holder of the establishment license.
<b>Reason:</b> BPC Section 7353.4 requires the establishment post the notice. The establishment license holder has control over what is posted on the walls of an establishment. Consequently, the holder of the establishment license is responsible for the fine.	
7400. No Change of Address Notice Filed	Fine applies to the individual licensee.

<b>Reason:</b> BPC Section 7400 specifically requires individual licensees file changes of address, while exempting establishment licensees. Therefore, the fine only applies to the individual licensee.	
7404(l). Interference with Inspection	Fine applies to the holder of the establishment license and may also apply to an individual licensee when that individual is solely responsible for interfering with an inspection.
<b>Reason:</b> BPC Section 7404 makes interfering with an inspection grounds for disciplinary action. This section of the BPC applies to all licensees of the Board. Because establishment license holders are ultimately responsible for the activities at their establishments, the fine would apply to the holder of the establishment license, even if there was no direct indication that the establishment license holder interfered with an inspection. Enforcement staff believes that some licensees — especially at establishments facing many health and safety violations — interfere with inspections in order to end them and avoid a possibly larger fine for other violations the inspector would be expected to uncover had the inspection continued. Since interfering with an inspection is a serious matter and may prevent the Board from discovering other violations at an establishment, it is necessary to cite the establishment to help deter such conduct and assist the Board in performing inspections. Additionally, when it is clear that the interference is caused only by an individual licensee at the establishment, that licensee may also be cited and fined, since the licensee would be the directly-responsible party. It is necessary to cite the individual licensee to deter such misconduct and assist the Board in performing inspections.	
904(d). No Photographic Identification Available	Fine applies to the individual licensee.
<b>Reason:</b> Section 904(d) of the CCR requires all persons – except students in schools – who perform barbering and cosmetology services to present photographic identification if requested to do so by an authorized Board representative. The fine therefore only applies to the individual licensee.	
905. Consumer Info. Not Posted	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 905 of the CCR specifically requires the licensed establishment holder to post the consumer information message in the reception area. Therefore, the fine only applies to the establishment license holder.	
920. Apprentice Training Records Not Available/Incomplete	Fine applies to the individual licensee.
<b>Reason:</b> Section 920 of the CCR requires the apprentice’s trainer, who must him- or herself be a licensee, maintain the apprentice training records. The fine therefore only applies to the individual licensee.	
965. Display of Licenses	Fine applies to the establishment license holder 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 license is not conspicuously posted at his or her primary work station.
<b>Reason:</b> Section 965 of the CCR requires all individual licensees to display their license at their work stations, while establishment licenses must be displayed by the license holder in the reception area. Therefore, the fine applies to the establishment license holder and the individual licensee when they do not display their respective licenses properly. The establishment license holder shares the responsibility for the posting of individual licenses at work stations because the establishment license holder is ultimately responsible for activities at the establishment and is mandated under Section 7317 of the BPC to have only persons with valid licenses performing barbering and cosmetology services in their establishment. It is also necessary to cite the establishment license holder to ensure that licensees at the establishment comply with their duty to conspicuously post the license.	
978(a)(1), (a)(2),(a)(3),(a)(4). Receptacles, Cabinets and Containers	Fine applies to the holder of the establishment license.

<b>Reason:</b> Section 978 of the CCR places the responsibility for maintaining minimum supplies and equipment on the establishment license holder. Consequently, the fine only applies to the establishment license holder.	
978(a)(5). Insufficient Disinfectant in Container for Total Immersion	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 978 of the CCR places the responsibility for maintaining minimum supplies and equipment on the establishment. Consequently, the fine only applies to the establishment license holder.	
978(a)(6). No Steam/Dry Heat Sterilizer for Electrolology Tools	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 978 of the CCR places the responsibility for maintaining minimum supplies and equipment on the establishment. Consequently, the fine only applies apply to the establishment license holder.	
978(b). No Disinfectant Solution Available for Use	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 978 of the CCR places the responsibility for maintaining minimum supplies and equipment on the establishment. Consequently, the fine only applies to the establishment license holder.	
978(c). No Manufacturer-Labeled Container for Disinfectant	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 978(c) of the CCR places the responsibility for maintaining minimum supplies and equipment on the establishment. Consequently, the fine only applies to the establishment license holder.	
979. Disinfecting Non-Electrical Tools and Equipment	Fine applies to the individual licensee when the individual licensee can be determined and is present. Fine applies to holder of the establishment license when the individual licensee is not present or cannot be determined, or the violation is repeatedly found at the establishment.
<b>Reason:</b> Section 979 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. This fine therefore applies to the individual licensee if he or she can be identified as causing the violation and is present in the establishment, because they are the primary user of these tools and their presence indicates a present awareness of the violation. However, in situations where the individual licensee cannot be identified or is not present, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within their establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.	
980(a). Incorrect Disinfection of Electrical Items	Fine applies to the individual licensee when the individual licensee can be determined and is present. Fine applies to holder of the establishment license when the individual licensee is not present or cannot be determined, or the violation is repeatedly found at the establishment.
<b>Reason:</b> Section 980(a) of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under	

section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. This fine therefore applies to the individual licensee if he or she can be identified as causing the violation and is present in the establishment, because they are the primary user of these tools and their presence indicates a present awareness of the violation. However, in situations where the individual licensee cannot be identified or is not present, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within their establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.

980 (b). Incorrect Storage of Electrical Disinfected Items	Fine applies to the individual licensee when the individual licensee can be determined and is present. Fine applies to holder of the establishment license when the individual licensee is not present or cannot be determined, or the violation is repeatedly found at the establishment.
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**Reason:** Section 980 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. This fine therefore applies to the individual licensee if he or she can be identified as causing the violation and is present in the establishment, because they are the primary user of these tools and their presence indicates a present awareness of the violation. However, in situations where the individual licensee cannot be identified or is not present, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety of their establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.

980(c). Incorrect Storage of Soiled Electrical Tools	Fine applies to the individual licensee when the individual licensee can be determined and is present. Fine applies to holder of the establishment license when the individual licensee is not present or cannot be determined, or the violation is repeatedly found at the establishment.
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**Reason:** Section 980 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. This fine therefore applies to the individual licensee if he or she can be identified as causing the violation and is present in the establishment, because they are the primary user of these tools and their presence indicates a present awareness of the violation. However, in situations where the individual licensee cannot be identified or is not present, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within their establishment, and citing the establishment license holder in such cases is necessary to ensure that the

establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.

980.1. Incorrect Disinfection of Pedicure Spas (Per Chair)	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.
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**Reason:** Section 980.1 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Board inspectors often discover a foot spa is dirty by disassembling it and finding leftover debris that would not have been there had the footspa cleaning procedures been followed. There is often no way to identify which individual left the footspa dirty. Given the severity of the offense, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.1(c)(7). 980.1(d)(8). Incorrect/Missing Log 980.1(e)(4).	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.
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**Reason:** Section 980.1 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Maintaining the footspa cleaning log is an important step in making sure that the footspas have been cleaned properly and timely. Given the importance of the log, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.1(g). Failure to List Chair as "Not in Service" in Log; No Sign Displayed on Chair	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.
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**Reason:** Section 980.1 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board's regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who

work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Board inspectors often discover a foot spa is dirty by disassembling it and finding leftover debris that would not have been there had the footspa cleaning procedures been followed. The notation in the cleaning log and posting of a “Not in Service” sign are necessary to inform inspectors and consumers that the footspa is not in service and cleaning is not required. The sign is also necessary as a warning for all licensees in the establishment not to use the footspa. Given the importance of the log and severity of potential consumer harm if a dirty foot spa is used, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.2. Incorrect Disinfection of “Pipeless” Footspas (Per Unit)	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.
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**Reason:** Section 980.2 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Board inspectors often discover a foot spa is dirty by disassembling it and finding leftover debris that would not have been there had the footspa cleaning procedures been followed. There is often no way to identify which individual left the footspa dirty. Given the severity of the offense, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.2(b)(7). 980.2(c)(6). Incorrect/Missing Log 980.2(d)(3).	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.
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**Reason:** Section 980.2 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Maintaining the footspa cleaning log is an important step in making sure that the footspas have been cleaned properly and timely. Given the importance of the log, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be

identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.2(f). Failure to List Chair as “Not in Service” in Log; No Sign Displayed on Chair	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.
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**Reason:** Section 980.2 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Board inspectors often discover a foot spa is dirty by disassembling it and finding leftover debris that would not have been there had the footspa cleaning procedures been followed. The notation in the cleaning log and posting of a “Not in Service” sign are necessary to inform inspectors and consumers know that the footspa is not in service and cleaning is not required. The sign is also necessary as a warning for all licensees in the establishment not to use the footspa. Given the importance of the log and severity of potential consumer harm if a dirty foot spa is used, the fine applies to the establishment license holder as the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.3. Incorrect Disinfection of “Non-Whirlpool Foot Basin” (Per Unit)	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.
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**Reason:** Section 980.3 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Board inspectors often discover visibly dirty foot spa basins that clearly have not been cleaned properly. There is often no way to identify which individual left the footspa basin dirty. Given the severity of the offense, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety of within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.3(b)(6). Incorrect/Missing Log	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.
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**Reason:** Section 980.3 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and

safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. The maintenance of the pedicure log is an integral part of protecting the health and safety of the public because it helps motivate licensees to be diligent about footspa safety and allows inspectors to see if the proper procedures are being followed. Given the importance of the log, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety of the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.3(e). Improper Storage of Basins or Tubs	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.
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**Reason:** Section 980.3 of the CCR does not specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board, pursuant to its authority under 7312 of the BPC to “make rules and regulations in furtherance of (the Barbering and Cosmetology Act)” has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since it can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Improperly storing pedicure basins or tubs can cause them to become dirty and put consumers at risk. Given the severity of the offense, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.4. Incorrect Disinfection of foot basin or tub after use of disposable liner	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.
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**Reason:** Section 980.4 of the CCR does not in all cases specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since it can lead to communicable diseases, specifically mycobacterial infections. There have been several highly publicized outbreaks in California and around the nation in recent years that have been traced to dirty footspas. Failure to follow the cleaning procedures under Section 980.4 defeats the purpose of the liners, which are designed to protect consumers from disease. Given the severity of the offense, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.

980.4(a)(2). Incorrect/Missing Log	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.
<p><b>Reason:</b> Section 980.4 of the CCR does not in all cases specify who is responsible if this section, a health and safety rule under Article 12 of the Board’s regulations, is violated. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Pedicure foot spa violations are among the most common found by the Board and one of the most serious, since they can lead to communicable diseases, specifically mycobacterial infections. There have been several outbreaks in California and around the nation in recent years that have been traced to dirty footspas. The maintenance of the pedicure log is an integral part of protecting the health and safety of the public because it helps motivate licensees to be diligent about footspa safety and allows inspectors to see if the proper procedures are being followed. Given the importance of the log, the fine applies to the establishment license holder because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. It may also apply to the individual licensee if that person can be identified as having caused the violation and is present, since their presence indicates a present awareness of the violation.</p>	
980.4(a)(4). Failure to Maintain Supply of Five (5) Disposable Liners per Foot Tub Basin	Fine applies to the holder of the establishment license.
<p><b>Reason:</b> Section 980.4 of the CCR is specific that the establishment license holder is responsible for maintaining a supply of at least 5 liners per footspa chair. Therefore, the fine applies only to the establishment license holder.</p>	
981(a). No Disposal of Non-Disinfected Items	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 981 of the CCR does not specify who is responsible for violations of the section, a health and safety rule under Article 12 of the Board’s regulations. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the fine applies to the individual licensee if the individual can be identified as causing the violation and is present at the time of the inspection, because the items are used at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found – a used buffer on a workstation counter, for instance – and the individual licensee cannot be identified or is not present, then the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Allowing disposable tools to be available for use is a serious risk to consumer safety. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.</p>	
981(b). Improper Storage of New Supplies and Disposable tools	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 981 of the CCR does not specify who is responsible for violations of the section, a health and safety rule under Article 12 of the Board’s regulations. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the individual licensee is fined when the individual can be identified as causing the violation and is present at the time of the inspection, because the items are used at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found and the individual licensee cannot be identified or is not present, then the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.</p>	
981(c). Carry Tools or Supplies in or on Garments	Fine applies to the individual licensee.
<p><b>Reason:</b> Section 981 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, specifies that the individual licensee is prohibited from carrying tools or supplies in or on garments. Therefore, this fine applies to the individual licensee.</p>	
982. Incorrect Sterilization of Electrology Tools	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 982 of the CCR does not specify who is responsible for violations of the section, a health and safety rule under Article 12 of the Board’s regulations. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the individual licensee is fined if the individual can be identified as causing the violation and is present at the time of the inspection, because the tools are used at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found – a visibly dirty electrology needle at a workstation, for example – and the individual licensee cannot be identified or is not present, then the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.</p>	
983. Personal Cleanliness	Fine applies to the individual licensee.

<b>Reason:</b> Section 983 of the CCR specifically prohibits individual licensees serving clients from wearing dirty attire and requires them to wash their hands before providing services. Consequently, this fine applies to the individual licensee.	
984(a). Allow Licensee with Infectious/Communicable Disease to Work on Person	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 984 of the CCR, a health and safety rule under Article 12 of the Board's regulations, prohibits the establishment license holder from allowing an individual licensee to work on a sick client. This is a necessary prohibition because of the potential of spreading communicable diseases. Consequently, the fine applies to the establishment license holder.	
984(b). Allow or Require a Licensee to Work on Person with Infectious/Communicable Disease	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 984 of the CCR, a health and safety rule under Article 12 of the Board's regulations, prohibits the establishment license holder from requiring or allowing an individual licensee to work on a sick client. This is a necessary prohibition because of the potential of spreading communicable diseases. Consequently, the fine applies to the establishment license holder.	
984(e). Performing Services on Inflamed, Broken, Infected or Erupted Skin or Scalp Surface/Working without Gloves when Skin on Hands Is Inflamed, Broken, Infected or Erupted	Fine applies to the individual licensee.
<b>Reason:</b> Section 984 of the CCR, a health and safety rule under Article 12 of the Board's regulations, prohibits an individual licensee from working on skin or scalp surface that is inflamed, broken, infected, or erupted. This is a necessary prohibition because of the potential of spreading communicable diseases. Consequently, the fine applies to the individual licensee.	
985. No Use of Neck Strips or Towel	Fine applies to the individual licensee.
<b>Reason:</b> While Section 985 of the CCR, a health a safety rule under Article 12 of the Board's regulations, does not identify who is responsible for violation the section, the fine applies to the individual licensee because the use of neck strips or towels occurs at individual work stations as part of a service performed by an individual licensee.	
986. Neck Dusters/Brushes Not Clean or Sanitary	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 if the violation is found repeatedly at the establishment.
<b>Reason:</b> Section 986 of the CCR, a health and safety rule under Article 12 of the Board's regulations, does not specify who is responsible for violating the section. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the individual licensee is fined if the individual can be identified as causing the violation and is present at the time of the inspection, because the cleaning activity is conducted at individual workstations by the individual licensees who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found – a visibly dirty brush at a workstation, for example – and the individual licensee cannot be identified or is not present, then the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.	

987. Towels	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 987 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, does not specify who is responsible for violating the section. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the fine applies to the individual licensee if the individual can be identified as causing the violation and is present at the time of the inspection, because the towels are typically used at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found – a visibly dirty towel at a workstation, for example – and the individual licensee cannot be identified or is not present, the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment,</p>	
988. Liquids, Creams, Powders and Cosmetics	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 988 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, does not specify who is responsible for violating the section. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the individual licensee is fined if the individual can be identified as causing the violation and is present at the time of the inspection, because the activity is conducted at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But if a violation is found – an open cosmetics container at a workstation, for example – and the individual licensee cannot be identified or is not present, then the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment,</p>	
989. Prohibited Hazardous Substance/Use of Product	Fine applies to the holder of the establishment license.
<p><b>Reason:</b> Section 989 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, specifically prohibits establishments from violating the section. Consequently, the fine applies to establishment license holders.</p>	

990. Headrests and Treatment Tables	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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 990 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, does not specify who is responsible for violating the section. However, the Board has long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the Board fines the individual licensee if the individual can be identified as causing the violation and is present at the time of the inspection, because the activity is conducted at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. However, the fine also applies to the establishment license holder if a violation is found and the individual licensee cannot be determined or is not present, because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.</p>	
991. Performing Invasive Procedures	Fine applies to the individual licensee when the individual 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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 991 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, specifically prohibits all licensees from using products and devices to perform invasive procedures. Thus, the fine applies to the individual licensee if the individual can be identified as causing the violation and is present at the time of the inspection. The Board has also long operated under Section 904(b) of the CCR, which states that the responsibility for maintaining the Board’s health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. Because of this, the fine also applies to the holder of the establishment license if a violation is found and the individual licensee cannot be determined or is not present, because the establishment license holder is jointly responsible for the health and safety within the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board’s health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.</p>	
992. Performing Invasive Skin Exfoliation/Dermis	Fine applies to the individual licensee when the individual 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 is found repeatedly at the establishment.
<p><b>Reason:</b> Section 992 of the CCR, a health and safety rule under Article 12 of the Board’s regulations, does not specify who is responsible for violating the section. However, the Board has long operated under</p>	

Section 904(b) of the CCR, which states that the responsibility for maintaining the Board's health and safety rules is shared between the holder of the establishment license and the individual licensees who work in the establishment. In this instance, the Board fines the individual licensee if the individual can be identified as causing the violation and is present at the time of the inspection, because the activity is conducted at individual workstations by the individuals who work at those stations and their presence indicates a present awareness of the violation. But violations of Section 992 are also especially egregious, given the potential for consumer harm. Thus, if a violation is found and the individual licensee cannot be identified or is not present, the holder of the establishment license is fined because the establishment license holder is jointly responsible for the health and safety in the establishment, and citing the establishment license holder in such cases is necessary to ensure that the establishment and individual licensees at the establishment comply with the health and safety rules in the future. Also, pursuant to Section 7407.1 of the BPC, the Board views repeated violations of this regulation as evidence that the establishment license holder is not showing due diligence in maintaining the Board's health and safety rules. Therefore, the fine also applies to the establishment license holder if this violation is found repeatedly (i.e., more than once) at the establishment.

993. Prohibited Tools	Fine applies to the holder of the establishment license.
<b>Reason:</b> Section 993 of the CCR specifically identifies establishments as responsible for violating this section. Consequently, the fine applies to establishment license holders.	
994. Cleanliness and Repair	Fine applies to holder of the establishment license.
<b>Reason:</b> Section 994 of the CCR specifically identifies establishments as responsible for violating this section. Consequently, the fine applies to establishment license holders.	
995(b),(c),(d),(e). Plumbing Standards	Fine applies the holder of the establishment license.
<b>Reason:</b> Section 995 of the CCR identifies the establishment as responsible for violating this section and the establishment license holder would typically be responsible for the physical configuration of the establishment. Therefore, the fine applies to the establishment license holder.	

3) Currently, the Board does not offer a payment plan. Moreover, before January 1, 2017, when SB 1044 went into effect, the Board was required, pursuant to BPC Section 7414, to deny a license or a license renewal to persons whose fines were past due and not paid in full. SB 1044 added Section 7408.1 to the BPC, which requires the Board to adopt regulations defining the parameters of a payment plan for fines exceeding \$500. The Board's proposed Section 974.3 of the CCR will fulfill the mandate of Section 7408.1 of the BPC for the following reasons:

- a. **Subsection (a):** Subsection (a) mirrors BPC Section 7408.1 by specifying that citations with fines exceeding \$500 are eligible for a payment plan. It is necessary for the payment plan to be requested in writing, to ensure that the Board and the person cited have documentary proof that a request was made and the nature of the request. The Board will provide the person requesting the plan with a schedule of payments that indicates due dates and the amount of the payment so that the person cited is fully informed and clear about the plan terms and conditions that he or she must follow. It is necessary to limit the plans to no more than 12 monthly installments to ensure that fines are paid in a reasonably prompt timeframe. It is also reasonable to provide licenses with, at most, 12 months to pay fines. A \$500 fine divided over 12 months would result in a monthly payment of approximately \$40, and it is reasonable to expect licensees to pay a monthly \$40 fine.
- b. **Subsection (b):** This language states the grounds under which a payment plan may be cancelled by the Board, as required under BPC Section 7408.1. The plan will be cancelled

if the licensee fails to comply with its payment and timing terms and conditions. This language is necessary in order for the Board to exercise other options for collecting fines due if the person who owes the fine or fines doesn't comply with the plan. Moreover, it is typical of payment plans to be terminated if their terms are not followed.

- c. **Subsection (c):** Subsections (c)(1) and (c)(2) list the consequences of cancelling the plan. The most serious consequence is to make a person ineligible for a payment plan in the future. This is necessary in order to motivate persons to follow their payment plans and pay their fines on time. Subsection (c)(1) is grounded in BPC Section 7414, which authorizes the Board to refuse to renew a license to persons that do not pay administrative fines. It is the longstanding policy of the Board to withhold renewing a license when the applicant has past due fines until the fines are paid in full. This is necessary to encourage compliance with the Board's regulations and fine assessments.
- d. **Subsection (d):** This subsection permits a licensee that is compliant with a payment plan to renew a license, even if the total fine is not paid at the time of renewal. This is necessary to encourage licensees to fulfill the terms of a payment plan, complete the scheduled payments, and pay their fines in full, and also to ensure that there is no lapse in licensure for licensees who comply with their payment plans.

### Underlying Data

None

### Business Impact

None of these regulations will have a significant adverse economic impact on businesses because none requires any significant expense or reporting, recordkeeping or compliance measures on the part of businesses or individuals who follow the laws of the State of California. For businesses that violate the law, the Board estimates they will save approximately \$237,000 annually due to the reduction in fine for violating BPC Section 7349 (from \$1,000 to \$250—a \$750 reduction). The Board estimates that 316 businesses will be cited for employing persons with expired licenses, and would be subject to the reduced fine. These businesses would see an annual savings of \$237,000 (316 x \$750=\$237,000). The Board estimates that approximately 292 businesses would be cited for interfering with an inspection under BPC Section 7404(l), paying the increased fine (from \$200 to \$1,000—an \$800 increase). This will result in an increase in costs to those businesses of \$233,600 (292 x \$800=\$233,600). The Board also estimates that approximately 1,100 businesses would be cited for failing to post the labor rights notice in violation of BPC Section 7353.4, resulting in a cost to those businesses of \$55,000 (1,100 x \$50=\$55,000). The net total statewide cost that businesses violating the law may incur is estimated at \$51,600.

### Economic Impact Assessment

This regulatory proposal will not create or eliminate jobs or businesses, or affect business expansion for the reasons described in the paragraph above: businesses that follow the laws and regulations of the Board will not be affected at all. For businesses that violate the law, the Board estimates they will save approximately \$237,000 annually due to the reduction in fine for violating BPC Section 7349 (from \$1,000 to \$250—a \$750 reduction). The Board estimates that 316 businesses will be cited for employing persons with expired licenses, and would be subject to the reduced fine. These businesses would see an annual savings of \$237,000 (316 x \$750=\$237,000). The Board estimates that approximately 292 businesses would be cited for interfering with an inspection under BPC Section 7404(l), paying the increased fine (from \$200 to \$1,000—an \$800 increase). This will result in an increase in costs to those businesses of

\$233,600 (292 x \$800=\$233,600). The Board also estimates that approximately 1,100 businesses would be cited for failing to post the labor rights notice in violation of BPC Section 7353.4, resulting in a cost to those businesses of \$55,000 (1,100 x \$50=\$55,000). The net total statewide cost that businesses violating the law may incur is estimated at \$51,600, a relatively minor sum. Nor will this proposal affect the environment within the State of California, because the fines only affect behavior that is against the laws of the State of California. The benefit of the amendment to 7404(l) will be to help ensure Board inspections are complete, which helps promote the health and safety of consumers. The benefit of adopting 7353.4 will be to motivate licensees to follow the laws regarding workers' rights and help ensure persons working in establishments are aware of them. While the proposal will not directly protect worker health and safety, it will help protect workers by helping to ensure that they are informed about their rights in the workplace and the Board's fining policies. The benefit of the amendment to 7349 will be to make the fine fairer for establishment license holders and more in line with the fines levied against unlicensed individuals. Finally, the benefit of the payment plan regulations will be to give licensees who participate the ability to renew their licenses if necessary even if the fine is not paid in full.

### Specific Technologies or Equipment

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

### Consideration of Alternatives

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

The Board rejected the alternative to make no amendments to the fine schedule, because it would hamper its ability to fully inspect barbering and cosmetology establishments (BPC section 7404(l)), leave an inequitable fine in place (BPC section 7349) and ignore a legislative mandate (BPC sections 7353.4, 7407.1 and 7408.1). The Board also rejected the alternative of making the fines lower, as the Board would expect the anticipated benefits of the higher fine for interfering with an inspection (BPC section 7404(l)) – reducing the number of violations – would also be reduced, thereby risking the health and safety of consumers who benefit from full, unfettered inspections by the Board. Reducing the proposed fine for BPC Section 7349 would still leave inequitable fines in place, specifically the fines upon which the proposed fine for BPC 7349 is modeled (the unlicensed/expired license fines of BPC 7317). Board rejected reducing the proposed fine for BPC section 7353.4 for the same reason: reducing that fine would render inequitable the fine upon which is it modeled, Section 904 of the CCR, which is levied for failure to post the Board's Notice to Consumers.