

**CALIFORNIA
BOARD OF BARBERING AND COSMETOLOGY**



DECEMBER 2, 2019

Health and Safety Advisory Committee

**Crowne Plaza San Diego-Mission Valley
2270 Hotel Circle N.
San Diego, CA 92108**



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Health and Safety Advisory Committee Meeting Agenda

December 2, 2019

Crowne Plaza San Diego-Mission Valley
2270 Hotel Circle N.
San Diego, CA 92108
1:00 P.M.- Until Completion of Business

- 1. Call to Order/Roll Call**
- 2. Executive Officer's Opening Remarks (Kristy Underwood)**
- 3. Public Comment on Items Not on the Agenda***
- 4. Approval of August 28, 2018 Committee Meeting Minutes**
- 5. Approval of July 29, 2019 Committee Meeting Minutes**
- 6. Presentation by Green Circle Salons on Recovering and Repurposing Beauty Waste**
- 7. Discussion and Recommendations on Revised Health & Safety Regulations**
- 8. Agenda Items for the Next Meeting**
- 9. 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 Committee 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.

**Government code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Committee prior to the Committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee 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 at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.



DRAFT
CALIFORNIA STATE BOARD
OF
BARBERING AND COSMETOLOGY

HEALTH AND SAFETY ADVISORY COMMITTEE MEETING

MINUTES OF AUGUST 28, 2018

Board of Barbering and Cosmetology
2420 Del Paso Road
Sequoia Room 1st Floor
Sacramento, CA 95834

BOARD MEMBERS PRESENT

Dr. Kari Williams, President
Lisa Thong

BOARD MEMBERS ABSENT

Jacquie Crabtree

COMMITTEE MEMBERS PRESENT

Janet Blaschke
Amanda Burkhart
Joanie Gonella
Brandon Hart
Fred Jones
Leslie Roste
Lori Schaumleffel
Susanne Schmaling-Smethurst
Delane Sims
Holly Tinloy
Dr. Charles Washington

COMMITTEE MEMBERS ABSENT

Amy Coombe
Idamae Kennedy
Sudabeh Phillips
Marissa Presley

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Tami Guess, Board Project Manager
Marcene Melliza, Board Analyst

1. Agenda Item #1, CALL TO ORDER / ROLL CALL

Dr. Kari Williams, Board President, called the meeting of the California State Board of Barbering and Cosmetology (Board) Health and Safety Advisory Committee to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

2. Agenda Item #2, EXECUTIVE OFFICER'S OPENING REMARKS

Kristy Underwood, Executive Officer, thanked everyone for their continued service. She turned the microphone over to Tami Guess, Board Project Manager.

Ms. Guess stated this was her last Health and Safety Advisory Committee meeting as she will be retiring in December.

Ms. Guess cautioned that some of the subject matter of this meeting is emotionally charged for the industry. She went over ground rules and reiterated the purpose of this Committee. She read Business and Professions Code Section 7314.3(a) where this Committee was set out in statute.

Ms. Guess stated several state agencies and an association have been invited to speak with the Committee today with the goal of providing information so the Committee can make recommendations to staff on these issues.

3. Agenda Item #3, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No members of the public addressed the Committee.

4. Agenda Item #4, APPROVAL OF May 21, 2018, COMMITTEE MEETING MINUTES

MOTION: Dr. Charles Washington made a motion to approve the meeting minutes of May 21, 2018 and Delane Sims seconded. The motion carried 11 yes, 0 no, and 2 abstain per roll call vote.

5. Agenda Item #5, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION ON VARIOUS STATE AND INDUSTRY ENTITIES AND RECOMMENDATIONS FROM THESE ENTITIES TO BOARD LICENSEES ON STAYING COMPLIANT WITH THE DECISION

Employment Development Department

Patrick Henning, Director, Employment Development Department (EDD), provided an overview of the role of the EDD. He stated the Dynamex case primarily affects the Department of Industrial Relations (DIR) because it addresses wage and hour rules and regulations and the way that the state needs to view the working relationship that the worker has with their employer. Broadly, this issue will not apply to the way that the EDD looks at the employment relationship between employees and their employers with the exception of the common law definition of employee.

Mr. Henning stated the number one issue that employers come to him with when it comes to regulation is to ask for an easy definition of who an employee is, but it is difficult to define that in the law. Dynamex was an attempt to codify the definition of employee. It is a three-part test, which has become known as the ABC standard: (a) the worker is not controlled by an entity; (b) the work provided is done outside the usual course of business; and (c) the worker is customarily involved in independent work. This still is not an easy definition.

Alex Acupido, Chief, Field Audit Compliance Division, EDD, provided an overview of the outreach activities of the EDD.

Velma Bardin, Tax Administrator, Sacramento Area Audit Office, EDD, stated the EDD auditors try to work with employers by offering a questionnaire, DE-1870, for employers requesting a determination regarding one of their workers to be filled out and sent in to the EDD. Auditors send the employers a ruling letter on whether that person should be an employee or an independent contractor. There are also Information Sheets on barbering and cosmetology.

Ms. Guess stated the Information Sheets are posted on the Board website.

Questions and Answers

Ms. Sims: There are salon suites in the industry and then there are suites that are not designated as a salon suite where there are individual salon operators in one suite. Who would the principal be in that scenario where everyone had an establishment license, or could they all have establishment licenses?

Mr. Henning: Everyone could have an establishment license but the issue is what the relationship is between the operators and the landlord.

Ms. Guess: There are also blended salons with employees working alongside booth renters where the B portion of the ABC standard is creating havoc.

Mr. Henning: How each individual is treated would have to be looked at as to how they would fall under the law.

Ms. Guess: How do you become aware that there is a problem? Through a tax audit?

Mr. Henning: There are two customary ways. One way is that someone files a plaintiff insurance claim asserting that they are an employee because independent contractors do not qualify for unemployment insurance. The other way is if there were several obstructed claims, several disagreements on that employee/employer relationship.

Joanie Gonella: If a worker feels they were misclassified and their supervisor does not provide any help, what is the best way for the worker to begin a claim? Is it with the EDD, the DIR, or their employer?

Mr. Henning: In law, the employer has a responsibility to ensure that that is clear, but it is not always the case. An individual who is struggling with how they fall into the definition of employee should file with the Labor Commissioner's Office or the EDD, depending on where they feel they are being violated.

Mr. Acupido: Also, they can submit a DE-230 form to the EDD to learn their status.

Fred Jones: Does the EDD see a quantum shift with the Dynamex decision or is it just a series of decisions from Borello, Martinez, and Ayala?

Mr. Henning: The Dynamex decision is part of a continuum. Employment lawyers would say that the Borello decision was a shift, the wage order was another shift, and defining the IWC might be another shift. Lawyers will not be done until they come up with a definition for employee that stands the test of time. Upcoming court cases will further help define what this is.

Mr. Jones: The experts in the field think it is a shift, not just a continuum. The Dynamex decision was a unanimous decision, written by a Chief Justice, adopting an out-of-state criteria. The decision was a message-sender. The first few pages mention nothing about wage orders but are about common law, agency law, and the long, muddled history of it. Also, wrongly classifying someone as an independent contractor directly impacts the worker and state treasuries. The Chief Justice and her colleagues looked out-of-state to find something clear, simple, and concise to provide workers and employers with some clarity. That is the backdrop to Dynamex. The beauty industry in the late '80s and early '90s was 90-plus percent employee-based salons. It is almost flipped today. A huge percentage of booth-rental salons were propped up to avoid exactly what the Chief Justice described in the first two pages of the Dynamex decision.

When laws are skirted, often health and safety protocols are skirted, which ends up hurting the clientele, which ends up hurting the reputation of the beauty industry at large. It is important to raise and maintain high professional standards in the beauty industry. Booth rental has become a problem in that regard. Those who are trying to do it legitimately, like suite operators, spend more and charge more for those suites; those who are not trying to do it legitimately put all the legitimate businesses at a competitive disadvantage. Employees who are converted to "independent contractors" lose their worker's compensation coverage and Social Security and are now responsible for covering disability, employment tax, et cetera.

With these industry and legal backdrops, has or do you anticipate Dynamex changing this type of information that the EDD is providing to the public?

Mr. Henning: The EDD will be as reflective of the current state of the business economy as possible. The EDD's current test does not include Dynamex but only includes things that fall under the Unemployment Insurance Code. Employers are expected to follow the law as it applies to the Labor Code and the cases and case law that are affected under it.

Mr. Jones: If everyone in California is looking for clarity in the definition of employee, why do all executive agencies not embrace the ABC standard, which offers a high degree of clarity, especially the B test?

Mr. Henning: The EDD does not have the authority. The Legislature in California is constantly updating laws and there are rules, regulations, and processes and could be brought in front of the EDD. To this point, that has not been the case. There may be a move one way or another in that regard.

Mr. Jones: The EDD will keep on the current trajectory and criteria it has used for a number of years?

Mr. Henning: It is beyond the EDD's regulatory structure.

Mr. Jones: The unanimous California Supreme Court decision lays out a clear standard. Why would executive agencies not, absent legislative action, use that new standard moving forward?

Mr. Henning: Because it is not the standard under the rules and regulations that have been set out for them to follow.

Lisa Thong: The Dynamex case is to distinguish between an employee/employer relationship versus an independent contractor situation. The EDD governs and oversees unemployment insurance and disability as it pertains to employee relationships only. Regardless of what the Dynamex case states about employees, if the DIR and labor relations side determined an individual to be an independent booth renter or in an independent contractor situation, the EDD would have no jurisdiction over the disability and unemployment compensation or insurance portion of that. Is that correct?

Mr. Henning: No. The EDD has authority over those programs whether or not an individual receives benefits under an employment insurance or state disability insurance.

Ms. Thong: What if they are determined to be an independent contractor by the DIR or the Dynamex case definition?

Mr. Henning: The DIR is guided under a separate code of regulations and laws under the Labor Code. The EDD, unemployment insurance, and disability insurance are governed under the Unemployment Insurance Code and, in this situation, the EDD and the DIR have different views on that relationship and how that determination is made.

Ms. Thong: Regardless of who makes the determination, does an independent contractor receive unemployment or disability insurance?

Mr. Henning: Who made the determination does matter. Unemployment insurance and disability insurance eligibility is under the sole jurisdiction of the EDD.

Mr. Jones: Can there be a situation where the same worker is determined by the DIR to be an employee and therefore has to have worker's compensation, but is perceived by the EDD not to be an employee and therefore does not have unemployment insurance?

Mr. Henning: That happens.

Mr. Jones: That is an intolerable situation. The beauty industry is 85 to 90 percent booth rental. This decision will have a great impact on this single sector of the economy. It is intolerable to tell the professionals in the beauty industry that they must talk to the Labor Commissioner, the DIR, and the EDD, and they may end up with three conflicting decisions. The executive branch needs to speak clearly with one voice. This was the purpose of Dynamex.

Mr. Henning: I agree. Difficult decisions are worth the effort.

Lori Schaumleffel: How many employees in the state of California find themselves in this situation?

Mr. Henning: The EDD will provide that number to staff.

Dr. Washington: Do EDD staff maintain statistics broken down by industry on the complaints received?

Mr. Acupido: Claims and phone calls are broken down by industry.

Dr. Washington: Where does the hair care industry fall within that breakdown?

Mr. Acupido: I cannot tell you with specificity. Construction is high.

Franchise Tax Board

Ms. Guess stated the Franchise Tax Board (FTB) representative was unable to be in attendance. She read written responses to staff questions submitted by Alvaro Hernandez, Manager, Taxpayers' Rights Advocate's Office, FTB, into the record, as follows:

Q: How is FTB notified that a licensee has been misclassified? Does FTB find it on the tax return or does another entity advise FTB of the error?

A: Our Audit program conducts audits of income tax returns filed by corporate, partnership, and personal income taxpayers. Tax returns are subject to our audit selection process, which compares tax return data to a variety of data or information sources.

Q: Would there ever be a time when the FTB would ignore the Dynamex decision and fall back on prior Borello Standard?

A: FTB would not likely "ignore" a Supreme Court Decision. However, the Dynamex decision will not likely impact an entity's income tax liability.

Q: If a licensee has misclassified an employee (as an independent contractor), how far back will FTB audit their tax returns?

A: Additional tax resulting from an Audit may be proposed within an open statute of limitations, which generally is 4 years from the date the original tax return is filed. If an audit results in additional tax, applicable penalties (e.g., accuracy related penalty, failure to file or furnish information) and interest may apply. For more information regarding our audit process, please see FTB 985.

Q: Are there any tax forgiveness provisions?

A: Not that we are aware of.

Q: What are the tax penalties for filing inappropriately?

A: There could be Accuracy Related Penalties, Delinquent Penalty, or Failure to File or Furnish Information, depending on the additional tax liability resulting from the error.

Q: Speaking generally, after a company realizes they have misclassified an employee as an independent contractor, what is the process?

A: Taxpayers must file an amended tax return if there is any change in their tax liability resulting from errors or omissions of income, deductions, or credits on the original tax return. If an employee (W-2) is reclassified as an independent contractor (1099-misc) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, and attach California Schedule X, California Explanation of Amended Return Changes. They would need to include a copy of their federal income tax return, including a copy of form Schedule C. If an independent contractor (1099-misc) is reclassified as an employee (W-2) after they have filed their income tax return, they would need to file another Form 540, check the box indicating Amended Return, report the income as wages,

and attach California Schedule X, California Explanation of Amended Return Changes.

The General Tax Bureau (GTB) doesn't think the Dynamex Decision has much, if any, impact on entity income tax return of businesses who misclassify an employee as an independent contractor. Businesses deduct expenses they pay whether in the form of wages or 1099 type services. While businesses would be responsible for employee social security taxes, FICA, or other non-income taxes for employees that they would not have had for independent contractors, these taxes would not be paid to FTB and tax returns for the years in error would not likely change because deductions are only allowed for expenses paid.

We see a larger impact on individuals and their tax returns, if classified as independent contractor and then reclassified to an employee. This could result in the disallowance of many deductions taken on the individual return.

California Department of Tax and Fee Administration

Brad Miller, Business Tax Specialist, California Department of Tax and Fee Administration (CDTFA), provided an overview of the role of the CDTFA. He stated the main program that the CDTFA administers is the Sales and Use Tax Program, the CDTFA program that will be impacted the most, if at all, by the Dynamex decision. He summarized how the sales and use tax works and how the Dynamex decision will impact it. When dealing with taxpayers, the main question is who owes the tax and who has to register and pay. In California, any person who is making sales is required to register or any person who is a consumer of property should also be registering and paying taxes. The Dynamex decision may impact who is required to register for the program but it will not impact the sales tax side for the most part.

In an employer/employee situation, the employer is the person who registers with the CDTFA and collects sales tax on any sales that take place. In a salon, services are provided but also products are sold to customers.

In an independent contractor situation, it gets murky – questions must be answered to determine who is responsible for collecting the sales tax and therefore must register with the CDTFA – such as who owns the inventory being sold, how the independent contractor is compensated for sales made, and who the payment is made to. It is not a simple process. Mr. Miller stated taxpayers can call an 1-800-400-7115 number to ask questions about their specific situation, but recommended that taxpayers send their questions in writing, including email, to avoid misunderstandings. He stated the more information and details given in writing, the better.

Questions and Answers

Mr. Jones: Whoever makes a purchase in a salon is responsible but an employer could pay for the purchase on behalf of the employee?

Mr. Miller: Correct. The person that makes the purchase and consumes the property is the responsible person for the use tax.

Delane Sims: What if a person decided to use a product for their business that they had earlier purchased for sale? Would they pay both a sales and use tax?

Mr. Miller: There are different ways that this could happen. An individual typically buys products for resale. A resale certificate will be issued to the supplier and the individual does not pay sales tax when the product is acquired. The individual collects tax on the items sold and reports that on their return. The individual will pay a use tax on products taken out of inventory for personal use. Tax is only paid once.

On the other hand, products that were purchased tax-paid can be taken out of inventory tax-free because the individual already paid tax on that product. If the individual sells any of that product, they can claim a credit for the tax already paid on those items. This is called a tax-paid purchases resale reduction. That line is not available on the Sales and Use Tax Return form. Individuals can request a different return form for filing a claim for that credit.

Professional Beauty Association

Mike Belote, PBA CA Lobbyist, Professional Beauty Association (PBA), spoke about the legislative context of the Dynamex case to help the Advisory Committee understand what is likely to happen or not happen. He stated the court rejected a motion to amend the opinion to say the three-pronged test is only prospective. This means the Dynamex decision has a potential legal risk going back four years.

Questions and Answers

Mr. Jones: Does the PBA have a position on booth rental?

Mr. Belote: No. The PBA was concerned about the way that commissions were paid or the piece-rate issue. They sponsored a bill to try to bring clarity to how piece-rate should be paid.

Ms. Schaumleffel: What are the differences in the interpretations of the Dynamex decision between the DIR and the EDD?

Mr. Belote: They have always had different jurisdictions. The problem of being considered an employee by one and an independent contractor by the other has always been possible.

Daniel Muller, PBA CA Labor Law Attorney, stated it has always been theoretically possible because the DIR was given its marching orders by a different set of laws and the EDD exists on its own island with its own set of laws and the Unemployment Insurance Code. The balance between the different sets of laws is not the big issue. It is more about companies that understand the basics and make choices as to how they will slot themselves and how much risk they are willing to take. The safest course would be to make an individual an employee and follow all employment laws.

Mr. Jones: If the DIR makes a finding that the PBA misclassified, does the EDD jump on or does the PBA usually just deal with one agency?

Mr. Muller: One agency because the clients represented are dealing with a specific issue such as an employee or a former worker.

Mr. Jones: The Board is not a labor-related Board but the Legislature has extended the role of this Advisory Committee to discuss labor law issues. The Board is in the position where salon owners and workers are looking for clarity in the post-Dynamex world. If

the Board cannot get a consistent message from the departments that do labor law, what is their message going to be to individuals seeking clarity?

Mr. Muller: They fall into different scenarios. The first scenario would be the salon owner where everyone in their business is classified as an employee. The counsel would be not to change anything and to ensure the salon is following the rules. They do not have to wade into Dynamex at all.

The second scenario would be the salon owner who has some employees and some independent contractors. The independent contractors get a 1099 at the end of the year. In this scenario, Dynamex could not be clearer – this is against the law. The counsel would be no individual working in the salon owner's establishment where the salon owner collects the money should be getting a 1099 – that person is an employee.

The third scenario would be either the salon is completely booth rental or partially booth rental and partially employee. The message coming from Dynamex and the EDD is that individuals who are in an arrangement where they are renting space from the salon owner need to be independent businesses. The counsel would be not to use the vocabulary "independent contractor" because the definition varies.

The issue is if there would be space for an independent business within another business or renting space from another business. Within Dynamex and the EDD, this is possible. If the "landlord" (the preferred language) is willing to give the "tenant" full control over their space and run their own business, then there is a strong argument that that person is not an employee but is instead running an independent business, and therefore would not be subject to the rulings in Dynamex.

The counsel for salon owners who would rather have a landlord/tenant relationship would be to do everything possible to comply with everything in the EDD guidance sheet because it is a comprehensive roadmap for establishing that renters are independent businesses and that the landlord is renting space to those independent businesses.

Mr. Jones: If I am a landlord and the only business I own is that business – maybe I have a few locations but all I do is hair – how does that pass the B test?

Mr. Muller: The B test assumes that you have workers in your business that you are paying. The counsel is not to pay those individuals anything. They do not work for you, they do not work with your clients, and they do not work in your business. They have their own clients and their own equipment, they pay their own expenses and taxes, and they are no different from any other independent business. The argument is that these are independent businesses. They would never get into the Dynamex analysis because they are not your workers. They run their own business and they rent space from you.

If you run a business where you have employees and you provide hair services but then you also rent space, there is tension there because you clearly are in the business of providing hair services. It is different clientele, but they all intermix and move in the same space. There is more risk there for a business that does both. A salon owner should be able to have employees on the one hand and have tenants

on the other hand and keep a distinction. There is a good argument that that should not matter but there is no guidance on that yet.

Amanda Burkhart: A situation where the owner is also an esthetics operator who is renting out additional rooms is highly at risk with Dynamex because the primary business is esthetics, even though they are acting as a landlord for the additional rooms that are being rented.

Mr. Muller: Yes, but as long as the individuals to whom the owner is renting rooms in that business are not under the owner's control, they have their own clientele, collect their own money, make their own reservations, run their own business in every way, and all they do is send the owner a rent check every month and a 1099 at the end of the year for the amount they pay the owner for rent, the argument can be made that those individuals are independent businesses from start to finish, even though the owner may have employees in a different part of the business that are treated as employees.

A simplified application of Dynamex would say anyone who works in the owner's building is either a contractor or an employee. And, if they work doing esthetician services the same as the owner, then they have to be an employee because Dynamex says it is so, then, yes, there is risk. The Supreme Court's decision does not require a simple application like that but that is a matter of argument.

Mr. Jones: The pre-Dynamex world looks at all criteria but does not require them all. The post-Dynamex world requires all criteria to be followed. Is that an appropriate way to phrase it?

Mr. Muller: That is a fair way to say it. There is more clarity now that, if there are individuals working in your business, they are more likely than not going to be classified as employees. You have to do everything you can to show that they are not working in your business. The EDD guideline is a great resource for that, especially number nine that the relationship between the principal and the licensed professional is that of a landlord and a tenant. That is how it should be laid out.

6. Agenda Item #6, DISCUSSION ON THE IMPACT OF THE DYNAMEX OPERATIONS WEST, INC., V. SUPERIOR COURT OF LOS ANGELES COUNTY DECISION AND RECOMMENDATIONS ON HOW TO BRING AWARENESS OF THIS DECISION TO BOARD LICENSEES

Dr. Williams asked Advisory Committee Members for recommendations to give to staff on how to notify licensees and ensure that licensees are compliant with the new laws.

Statements, Questions, and Answers

Mr. Jones: Since the Board is not labor-law related, how much can the Board do, even if it had clarity to offer?

Ms. Underwood: It is not within the Board's authority to answer questions. The Board will only provide guidance on where individuals can go to find answers to their questions.

Mr. Jones: What is the possibility of the Board's bringing awareness to the industry about the post-Dynamex world other than what the Board has already done? What else can be done?

Ms. Underwood: Further promoting what is learned as it travels through all the different steps.

Mr. Jones: How? What is the mechanism of offering this evolving clarity? There does not seem to be links to this kind of information on the website. Is this of serious magnitude that it deserves extra awareness? How can the Board provide that extra accessible awareness?

Dr. Williams: The Board should look at how establishment owners and licensees are fined because it is no longer in alignment with the labor laws.

Ms. Underwood: The Board is already addressing that with the new statute, SB 1099, and it will be made clear with the new regulations based on who committed those violations.

Dr. Williams: It still might create confusion, even when separating who is responsible. This is one area the Board can help licensees stay compliant or at least inform them. Information can be prepared to help inform and educate Board members, appellants, and others at Disciplinary Review Committee (DRC) hearings.

Leslie Roste: Is this important enough to make an asserted awareness? A problem may be that individuals will not view this as a problem until they are cited for it. Rather than citations, maybe take this as a learning opportunity the first time around. The Board putting it out as general information might cause more questions, problems, and issues at the Board level.

Ms. Gonella: The purpose of the Dynamex case is to protect the individuals who are being misclassified and this Committee is getting bogged down in the details. Instead of seeing it as a hindrance, see it as a way to bring business owners into compliance. Licensees need to be aware of their rights.

Ms. Underwood: There are many salon owners that want this information. The nail industry will be hit hard because they all believe they are independent contractors.

Ms. Schaumleffel: Mr. Muller provided possible solutions, especially for salons that have separate businesses operating in the same space. He suggested making them as distinct as possible. He spoke at the break about issuing the establishment license to one address so that, if there are multiple businesses, each would have its own establishment license. Separate establishment licenses would help to distinguish these businesses from each other.

Carrie Harris, Board Enforcement Manager: It is easier to delineate who is responsible for each section of an esthetician facility. Nail salons have foot spas that everyone uses. How can those salons be delineated?

Ms. Burkhart: Based on reading the material, commission payment should not have existed in California. In Oregon, they have a separate independent contractor license or independence license that goes under the facility license.

Mr. Jones: The Board can clarify what it considers is a booth renter for purposes of citations and inspections, but clarify that this in no way is a legal finding of separation in terms of labor law but, for purposes of inspections, this is what the Board is looking for. Until the labor-specific agencies get their act together, the Board should not have any business in it insofar as the labor side of it. Where the Board does have business is for purposes of inspection and who the Board will hold responsible for violations of Board laws and regulations. On that point, at least, the Board should be able to offer some clarity, but it would have to come with some sort of disclosure that this in no way determines whether in labor law there are true independent contractors or employees.

Dr. Williams: The Board does not have jurisdiction over the information on the website. Currently, when the Board sends out establishment licenses, is there a notice that this information is provided or a statement provided to establishment owners about the mechanism of conveying information?

Ms. Underwood: They have to acknowledge that they understand basic worker's rights labor laws. Establishment owners and licensees are given the link to worker's rights information on the Board website.

Mr. Jones: Has Dynamex risen to the level where the Board needs to send a message or some information out? If the Board decides it needs to do something special, it needs to clarify the limited function and role of the Board vis-à-vis booth renters and establishment owners.

Ms. Underwood: You want the Board to promote what high-level agencies cannot explain?

Dr. Washington: In the absence of clarity, the Board should let enforcement do their job. The DRC can educate licensees and do the best they can with what they have. That is all the Board can do because they cannot dip into other agencies' responsibilities.

Dr. Williams: This information is already on the Board website. The Board can promote it and direct licensees to the information provided on the website without deciphering it for them. That is the best that the Board can do.

Ms. Thong: It may not be necessary to reference the Dynamex case, but nothing prevents the Board from pointing individuals to the correct entities for them to ask their questions. Referencing the Dynamex case may create anxiety and unnecessary questioning. Directing individuals to the EDD's self-evaluation form is helpful.

Ms. Underwood read a list of publications provided on the Board's Workers' Rights page.

Ms. Burkhart: Regarding the establishment license question, would it be helpful to look at establishment licenses where there are separate rooms? One way to make it clear that these businesses are separate entities is through the establishment license.

Ms. Underwood: It would take a change in statute because common areas are not defined at this point. It has not been successful to bring this up at prior Sunset Review Hearings.

Ms. Thong: Since the EDD has the two employer/employee forms, does the DIR do the same thing?

Holly Tinloy: It does not.

Ms. Thong: Would it be helpful for the Board to get an official opinion from the EDD and the DIR on some form of independent contractor license subcategory?

Ms. Underwood: The concern is that the EDD and DIR opinions are not concrete but are based on whatever handwritten information is mailed in.

Janet Blaschke: That's why the Advisory Committee is having some trouble here – it is trying to provide absolutes in a non-absolute world. The impact is really upon enforcement. That might be worth bearing in mind for doing some reorganization of the website.

Ms. Underwood: The Board addresses it in the DRC. Many individuals come to the DRC who are establishment owners. Has the Board ever had that issue with formal discipline as far as anyone deciding if someone was not responsible as an owner?

Ms. Harris: No. It has never happened where a judge determined that an owner was not responsible for something that happened in their shop. It does not matter how individuals are classified - services performed in the building are the responsibility of the establishment owner.

Public Comment

Wendy Cochran, Founder, California Aesthetic Alliance (CAA), stated she regularly gets questions from her participants about the commission that they should be paid for their new position. Assembly Bill (AB) 1315 is considered a new law and Senate Bill (SB) 490 is being weaponized by uninformed employees who threaten employers who are trying to do the right thing by bringing individuals into W-2 status by quoting the law that states employers are to pay double minimum wage and commission and threatening to turn the employer in to the DIR. She stated that is happening within her group. The state of the industry is misunderstandings and repeated cycles of abuse.

Jaime Schrabek, Precision Nails, stated she survived a random audit by the EDD two years ago. She stated she contacted Director Henning and encouraged him to attend the major trade shows and leverage relationships. Trade shows and magazines want to have the correct information, but they get their information from experts or salon owners. The correct information must come from the agencies. Director Henning was at the Long Beach show last year teaching a class, but his class was sparsely attended. She stated Ms. Cochran had the opportunity to guide him around the show, pointing out procedures and products being sold to individuals as legal. There is a lot that could be done to raise awareness using the existing mechanisms that are in place, not just the website, such as magazine and trade shows. Anything that supports and makes money from the industry can do more to

support the professionalism of the industry by including representatives from different agencies to attend and offer classes at these events.

Ms. Roste stated, going back to where the biggest problem lies, her area of expertise is infection control, which represents the highest number of citations. She once taught a class at a show, but attendees generally do not choose to attend those types of classes except for members of the Board. She stated change must start with reaching people who do not pay attention but instead only pay fines and keep doing the wrong thing.

Ms. Schrabek asked if the DRC hearings can be webcasted. Ms. Underwood responded that it is a public meeting, but the facility does not have the capability. The Board could look at webcasting a meeting to be kept as an information tool.

Bridgett Sharp, Professional Beauty Association (PBA), stated the PBA runs the Las Vegas and Long Beach shows. She stated Mr. Muller put together a brief for the PBA specific to Dynamex. The PBA has not taken a position on the brief yet. She offered to share the brief as an educational tool.

Ms. Underwood stated that schools are required to teach the Board's Health and Safety Course, so individuals should receive this information before becoming licensed, but unfortunately, many schools are not teaching the course.

Larry Cromwell, Owner, Maribou Salons, Folsom, stated he has three locations with approximately 100 individuals – approximately 45 booth renters and 55 employees. He stated he is happy that the Advisory Committee is looking at these issues in the biggest context. It is complicated to run a salon based on all the reasons heard today. He explained how he runs his program. He stated he would rather that his workers remain as employees, but they tend to choose to become booth renters. He stated his concern about booth renters who put in for unemployment or disability, booth renters who need to be dismissed and they put in for unemployment, and worker's compensation when they decide that he was misclassifying his 45 booth renters for the past four years. He asked the Advisory Committee and presenting agencies to do everything they can to bring clarity to this issue and get the information out.

7. Agenda Item #7, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING WORKER'S RIGHTS CONCERNS WITHIN THE INDUSTRY

Dr. Williams asked for recommendations regarding worker's rights concerns.

No recommendations were given.

8. Agenda Item #8, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING POTENTIAL HEALTH AND SAFETY CONCERNS WITHIN THE INDUSTRY

- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safely Using Chemicals* booklet draft.
- Review, Discussion, and Recommendations to Staff Regarding the *CASafeSalon – Safety Data Sheets* booklet draft.

Dr. Williams asked for recommendations on the *CASafeSalon – Safely Using Chemicals and Safety Data Sheets* (SDS) booklet drafts, which were provided in the meeting packet. Ms. Guess asked Committee Members to send their changes by November 1, 2018.

Ms. Sims stated both booklets would benefit from having the California Poison Control number on them.

Safely Using Chemicals Booklet

- Add esthetics and electrology products.

Page 9, Chemicals in the Establishment

- Rather than listing the products and what they might contain, put the chemicals in alphabetical order with a column of what they might be found in.
- Put the product list as a chart. Have a product category and check the boxes of the chemicals they may contain.

Ms. Schaumleffel stated individuals should not be making their own products. It should be stated plainly that customization of products is not something licensees should be doing in the industry. Ms. Underwood responded that the Board does not have authority over that. This may be better addressed in another booklet in the five-booklet series, *Protection from Hazardous Chemicals*, and is also addressed in liability insurance.

Public Comment

Ms. Schrabec stated she had an OSHA consultation at her salon 3 years ago and stated OSHA should have ventilation standards in salons.

Laura Embleton, Associated Skin Care Professionals and Associated Hair Professionals, stated there is no mention of estheticians in the booklet.

SDS Booklet

- Leslie Roste suggested that “readily accessible” means that every employee or contractor has to be able to access the SDS Booklet at all times. An Internet version will no longer be accessible during power outages or during a fire where a fire fighter would need the SDS to be readily accessible. The best practice is to have the booklet printed in a binder that is readily accessible in a location that everyone has access to.
- Ms. Sims suggested adding the shelf life date to the SDS.

Page 1, How to Obtain an SDS

- Mr. Hart stated the first sentence should read, “Cal/OSHA requires employers to maintain SDS and ensure they are readily accessible to employees for all hazardous chemicals used in the establishment.”

Page 12, Resource Groups, Agencies, Databases, and Publications

- The description of Cal/OSHA should read, “Cal/OSHA is a division within the Department of Industrial Relations that protects and improves the health and safety of working men and women in California by setting and enforcing

standards, and providing outreach, education, and assistance. There are many Cal/OSHA offices throughout the state.”

Page 12, Regional Offices

- (Contact to File a Complaint) should read, “District Offices (Contact to File a Complaint).”
- The description under Regional Offices should read, “Contact the District Office closest to the establishment to file a confidential complaint regarding a potential safety and health hazard or a Cal/OSHA regulatory violation.”
- Do not list the District Managers’ names due to turnaround.
- The San Francisco District Office email address should be for the District Office. The Committee Member will send the correct address to staff.

Page 14, Cal/OSHA Consultation Offices (Establishment Owners)

- The description should read, “Provides confidential consultative services to establishment owners on correcting health and safety hazards.”

Page 14, OSHA Occupational Chemical Database

- Add the word “Federal” so the title would read, “Federal OSHA Occupational Chemical Database.”

9. Agenda Item #9, DISCUSSION AND RECOMMENDATIONS TO STAFF REGARDING PHYSICAL AND SEXUAL ABUSE WITHIN THE INDUSTRY

Dr. Williams asked for recommendations regarding physical and sexual abuse within the industry.

Dr. Washington reached out to one of the state agencies since the last meeting to provide information to his students on sexual and child abuse. He recommended state agencies as a good informational resource.

Public Comment

Ms. Embleton stated licensees do not want to be mandatory reporters.

Dr. Washington suggested including a list of mandatory reporters that licensees can refer clients to.

10. Agenda Item #10, AGENDA ITEMS FOR THE NEXT MEETING

Dr. Williams asked for suggestions for future agenda items.

Public Comment

Ms. Schrabek stated tool are being stored and presented to clients in autoclave sterilization pouches as if they have undergone that process. She suggested that enforcement cite that as an improperly-labeled container – to use the law as it is currently written to apply to those situations where tools are being labeled as something they are not. She noted that these tools may be properly cleaned but are still being misrepresented as being sterilized.

Ms. Underwood asked Committee Members to email Ms. Guess if they are interested in serving on the Advisory Committee for 2019.

11. Agenda Item #11, ADJOURNMENT

There being no further business, the meeting was adjourned.



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DRAFT
**CALIFORNIA STATE BOARD OF
BARBERING AND COSMETOLOGY**

HEALTH AND SAFETY ADVISORY COMMITTEE MEETING

MINUTES OF JULY 29, 2019

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

BOARD MEMBERS PRESENT

Lisa Thong, President

BOARD MEMBERS ABSENT

Jacque Crabtree

COMMITTEE MEMBERS PRESENT

Paul Bryson, Ph.D.
Larry Cromwell
Jennifer Cruz-Jimenez
Joanie Gonella
Brandon Hart
Fred Jones
Zenith Khwaja
Kathy Te Nelson
Leslie Roste
Jaime Schragebeck, Ph.D.
Kellie Swallow

COMMITTEE MEMBERS ABSENT

Samia Tahir

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Officer
Michael Santiago, Board Legal Representative
Marcene Melliza, Board Analyst
Allison Lee, Board Project Manager

1. Agenda Item #1, CALL TO ORDER / ROLL CALL

Kristy Underwood, Executive Officer, called the meeting to order at approximately 10:00 a.m., welcomed everyone to the California State Board of Barbering and Cosmetology (Board) Health and Safety Advisory Committee, and asked everyone to introduce themselves.

Ms. Underwood reviewed the meeting protocols and provided an overview of the purpose, goals, activities, and accomplishments of the Committee. She stated the focus of future Committee discussions will be on making recommendations to the Board on health and safety issues.

2. Agenda Item #2, EXECUTIVE OFFICER'S OPENING REMARKS

Ms. Underwood stated the Board's sunset review has been delayed one year due to the Senate's determination to have informational discussions on the future of the industry. Updates will be posted on the website.

3. Agenda Item #3, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Wendy Cochran, Founder, California Estheticians – Esthetician Advocacy; Founder, California Aesthetic Alliance (CAA), stated the esthetician scope of practice has not been revised since 1978. She stated it is important to her organizations that the Board's licensees in good standing should be something that is used and incorporated in language when approaching law makers. She suggested a tiered license structure for waxing only, hair stylist only, and lash only licenses. A revision in the law is required to advance the industry. The Legislature's current interest in discussing the future of the industry and how it impacts consumer health and safety should not be about the category of work done but to what the Board regulates – licensees in good standing.

4. Agenda Item #4, APPROVAL OF AUGUST 28, 2018, COMMITTEE MEETING MINUTES

Ms. Underwood tabled this agenda item to the next Committee meeting.

5. Agenda Item #5, DISCUSSION AND RECOMMENDATIONS TO THE BOARD REGARDING WORKERS' RIGHTS CONCERNS WITHIN THE INDUSTRY

Ms. Underwood stated Assembly Bill (AB) 5, worker status – employees and independent contractors, has changed dramatically in the past month. She asked Fred Jones, Industry Association Professional, Professional Beauty Federation of California (PBFC), Committee member, to provide a summary and current status of AB 5.

Mr. Jones stated the Dynamex ruling occurred in April of 2018. The intent of AB 5 is to codify the Dynamex ruling and outline its implementation. He provided an overview of the background, amendments, and exceptions to the current iteration of AB 5.

Mr. Jones stated, because of the request for exemption from AB 5 by the beauty industry, the author has included a limited exemption under certain circumstances in which booth rental would be allowed in license categories except nail salons where each booth renter will get their own separate business license through their local municipality. The bill notably will not exempt nail salons because of the belief that nail workers do not have the bargaining power to successfully create a fair independent contracting relationship and that the labor code should protect those workers by not offering a booth rental option for nail workers. Board staff is in communication with the author's office; discussions are ongoing. AB 5 is currently in the Senate Appropriations Committee.

Ms. Underwood asked Committee members for their feedback on AB 5. Committee members responded as follows.

- Jaime Schrageck, licensed manicurist and establishment owner, stated that referring to licensed professionals as “workers” is offensive and does not recognize the investment made to obtain and maintain licensure. All reference to the Board has been stripped out of the language. Where will members of the industry go for information? Not exempting licensed manicurists is a huge disservice because it limits the options of individuals who are considered the most exploited. The bill will impact owners of nail salons. Salon owners will incur substantial fines. Enforce the laws that are already in the books. Enforcement will deal with exploitation issues.
- Mr. Jones stated twice minimum wage is a concern; it is unenforceable. Individuals can still cheat the system.
- Kellie Swallow, licensed esthetician, stated every salon sells retail and usually a receptionist books appointments. Is it possible for independent contractors or booth renters to provide their schedule for the receptionist to book appointments?
 - Mr. Jones answered that the bill currently states that booth renters must own their own book of business and schedule their own appointments.
- Mr. Jones believes Business and Professions Code (BPC) sections should be referenced.
- Ms. Schrageck stated she is concerned about the inclusion of natural hair braiding as it is not regulated by the Board. It muddies the water about the services that the Board determines should be regulated. She also asked if the bill is trying to capture unlicensed activity and how individuals will be penalized for activity they should not be doing.
- Lisa Thong, Board President, asked if appointments were brought up because it was related to the fact that Dynamex had to do with an app-based service. Many app-based companies claim they are not part of the industry but are positioning themselves as appointment platforms for the industry.
 - Mr. Jones answered no, the Uber/Lyft industry is the single largest industry affected by AB 5. When the bill came out of the Assembly, it only referenced that independent contractors must have their own clients. The Senate added the requirement for appointment scheduling. It is a big issue that has yet to be resolved.
- Ms. Underwood believes the scheduling issue is open to interpretation. For example, if a stylist gives an appointment list to a receptionist, hasn't she “scheduled” her own appointments?
- Ms. Schrageck stated even separate from mobile services, many clients book their own appointments online.
- Larry Cromwell, licensed establishment owner, stated booking appointments for booth renters is something that booth renters want because they make more

money. It is not exploitation on the business owners' part to do it as a service for them.

- Mr. Jones stated part of the booth rental payment could be for the establishment owner to book appointments for them. This should be stipulated in the contract and part of the booth rental payment to the establishment owner.
- Jennifer Cruz-Jimenez, licensed barber and cosmetologist, stated that a stylist who works full-time is incapable of booking their own appointments. Booth renters will be more successful when someone else books their appointments while they continue to work.
- Brandon Hart, Department of Industrial Relations – Division of Occupational Safety and Health (Cal/OSHA) Representative, stated that the determining factor is whether the booth renter has the discretion on whether they want to accept that appointment or not. It is important that the establishment owner is not scheduling booth renters against their will. A receptionist can make tentative appointments with the booth renter having final say.
- Mr. Jones stated the other side is who is liable. The employer is liable for everything an employee does because they have the right to control. But the license that gives them the right to perform those services for remuneration is the Board license. That license trumps the right of an employer to tell them what clients they can and cannot service.

Ms. Underwood asked for a motion of recommendations to present to the Board.

Mr. Jones moved that the Board approach state policy makers for a request for a booth rental permit, engage AB 5 and any other subsequent cleanup legislation next year to appropriately call out Business and Professions Code license references, and recommend that all scope-of-practice license categories currently under the purview of the Board should be included in the limited exemption from AB 5 requirements.

Ms. Schragebeck seconded the motion.

Mr. Hart asked for clarification on the motion.

Mr. Jones referred to page 6, subsection 6 of the proposed bill and stated his motion proposes to change the language from “a worker providing hairstyling or barbering services” to “a State Board of Barbering and Cosmetology licensee providing services according to the Business and Professions Code, Section __, Cosmetology, and Section __, Barbering.” This specifies that individuals must be licensed to qualify for the exemption.

Mr. Hart referred to page 7, subsection 6(E), and suggested adding “and professional certification” so it would read “maintains their own business license and professional certification in connection with the services offered to clients.”

Mr. Jones suggested changing subsection 6(E) to read “maintains their own business license in connection with the services offered to clients and appropriate State Board of Barbering and Cosmetology professional license.” Mr. Hart agreed.

Mr. Jones amended his motion to include the friendly amendment. Ms. Schragebeck seconded the friendly amendment.

Public Comment

Ms. Cochran stated one fourth of licensed estheticians are also licensed as manicurists. The requirements put forth in AB 5 are impractical, which will cause individuals to ignore it. Also, booth rental contracts in salons for the most part are ludicrous due to the lack of enforcement. She encouraged the Committee to scrutinize the language being put into the motion.

MOTION: Mr. Jones made a motion, seconded by Ms. Schragebeck, that the Health and Safety Advisory Committee recommends that the Board:

- Approach state policy makers for a request for a booth rental permit.
- Engage AB 5 and any other subsequent cleanup legislation next year to appropriately call out Business and Professions Code license references.
- Recommend that all scope-of-practice license categories currently under the purview of the Board should be included in the limited exemption from AB 5 requirements.
- Recommend that Labor Code Section 2750.3(b)(6) be changed to “a State Board of Barbering and Cosmetology licensee providing services according to the Business and Professions Code, Section __, Cosmetology, and Section __, Barbering.”
- Recommend that Labor Code Section 2750.3(b)(6)(E) be changed to “maintains their own business license in connection with the services offered to clients and appropriate State Board of Barbering and Cosmetology professional license.”

Motion carried 9 yes, 0 no, and 3 abstain per roll call vote as follows:

The following Board members voted “Yes”: Bryson, Cromwell, Gonella, Hart, Jones, Khwaja, Roste, Schragebeck, and Swallow.

The following Board members abstained: Cruz-Jimenez, Nelson, and Thong.

6. Agenda Item #6, DISCUSSION AND RECOMMENDATIONS TO THE BOARD REGARDING UPDATING HEALTH AND SAFETY REGULATIONS

Ms. Underwood distributed the 2019 Health and Safety Regulations and other handouts for Committee review. She stated this extensive review of the regulations will take more than one meeting. She stated there are regulations that are unrealistic and do not necessarily protect the consumer, which have led to discussions of deregulation. She stated the need to be thoughtful of what can potentially harm the consumer while updating the regulations to be more effective. She stated individuals are providing services outside their scopes of practice because they think if something is not in

regulations it must not be regulated. Ms. Underwood asked for suggestions on how to begin updating the Health and Safety Regulations.

Leslie Roste, RN, BSN, King Research representative, suggested to strike regulations that are only there because that is the way they have always been done but do not make sense today, such as the regulation to wash linens at 160 degrees for 25 minutes. For that example, it is better to require that linens be washed on hot. Removing inapplicable language makes room for other areas that appear not to be addressed in the regulations. She suggested to simplify the wording, so licensees know exactly what they are required to do. Make the regulations specific, concise, and consistent. Also, be conscious of environmental impacts when crafting regulations to ensure that they lead into the future of what California should be considering. Ensure consumer safety, but also protect the environment. Ms. Roste has already gone through the regulations and made the above changes based on what has been successful in other states.

Mr. Jones suggested the committee tread lightly on the issue of foot spas because of its high profile. Ms. Underwood agreed, but stated current regulations on foot spas do not reflect what is happening in salons. One of the things that was not addressed for the use of foot spa liners is the removeable jets.

Paul Bryson, OPI Scientist, stated that regulations must be practical, or else licensees will not follow it unless the inspector is present.

Mr. Jones stated the key regulations are 979 and 980. The more applicable they can be made across the board and the more consistent they are, the better. This committee should create modules similar to the barber and cosmetologist curriculum to make it easier for inspectors and licensees.

Ms. Schrabec asked for a balance between protecting consumers and the environment.

Ms. Roste suggested to make generic definitions to use throughout the regulations and make regulations generic enough so they will encompass future techniques/technology. For example, a regulation that applies for chemicals used around the face. She suggested to provide the regulations to licensees in more digestible, concise language. She is currently helping Nevada do a risk assessment for every service to provide a simplified logic for the regulations.

Ms. Underwood stated the Board has come a long way. Inspectors no longer issue fines on the spot, their reports are now reviewed in the Sacramento office.

Ms. Roste identified Minnesota and Colorado as states that can be used as a model to bring back to the next Committee meeting for review. Minnesota went too strict and are now trying to scale back.

Mr. Cromwell called for more consistency in inspections. Less letter of the law and more about the intent. Licensees want to know why they shouldn't do something or what risk is attached.

Ms. Cochran stated fibroblast and hyaluron pen services need more regulation.

Ms. Schrabec stated there must be a priority given to what will have the most impact on protecting consumers.

Ms. Roste stated the Board should educate consumers on what to expect with services so they are more accountable.

Mr. Jones reiterated that the regulations must be enforceable.

Public Comment

Doug Schoon, President, Schoon Scientific and Regulatory Consulting Services, stated the need for more industry bulletins to educate consumers and licensees.

- Ms. Roste suggested to include pictures in industry bulletins – a picture is worth a million words in this industry.
- Mr. Hart suggested creating publications to distill the regulations down and develop two-page fact sheets to make licensees aware of current hazards or emerging trends with pictures.
- Ms. Schrage suggested to use social media to disseminate information.
- Ms. Thong suggested the board attend not only industry conferences but consumer conferences such as BeautyCon.
- Ms. Cochran stated there are currently no regulations on lash extensions.
- Mr. Bryson stated regulations need to be revised in baby steps. There are four pages on the topic of pedicures and foot spas. These pages can be cut down and simplified by making the regulations more concise.

Ms. Underwood stated staff will get good samples from other states and work with Ms. Roste to get a markup of the regulations prior to the next Committee meeting.

Mr. Jones suggested the following guiding principles for the regulation update:

- A necessary regulation is defined as protecting the consumer or licensee.
- If a regulation is not enforceable, it will be discarded.
- If a regulation is unclear, it needs to be reworded or discarded.

7. Agenda Item #7, AGENDA ITEMS FOR THE NEXT MEETING

Ms. Underwood stated the next Committee meeting will be held in San Diego on Monday, December 2, 2019.

8. Agenda Item #8, ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 1:00 p.m.

Article 12. Health and Safety DRAFT

977. Health and Safety Definitions

The following words and terms, when used in this article, shall have the following meanings:

Autoclave—A device used to sterilize tools, equipment and supplies by subjecting them to high-pressure saturated steam. Autoclaves must be registered and listed with the United States FDA and used as instructed by the manufacturer.

Over-the-Counter—Cosmetology, barbering or electrology products that are made available for purchase by the general public without a physician's prescription.

Cosmetics—Substances used to enhance the appearance of the human body.

Contaminated—The presence of blood or other potentially infectious materials on an item's surface or visible debris such as dust, hair and skin.

Dermis—The layer of skin just below the epidermis; the living layer of the skin.

Disinfect or Disinfection—The use of chemicals to destroy harmful bacteria, viruses fungi and pathogens on implements or tools to render them safe for use.

Disinfectant—A product registered by the U.S. Environmental Protection Agency (EPA) that has demonstrated bactericidal, fungicidal and virucidal activity. The products used must include a label from the manufacturer that indicates the EPA registration. ~~and must be in liquid form to disinfect non-electrical tools and spray or wipe form to disinfect electrical tools and shears.~~ Concentrate for immersion, wipes and sprays may be used unless otherwise specified in these regulations.

Dry Heat Sterilizer—A device used to sterilize equipment and supplies by use of hot air that is nearly or completely free of water vapor.

Epidermis—The outermost layer of the skin; the non-living layer of the skin.

Electrical Tools—All tools used for barbering, cosmetology and electrology that require electricity to operate by means of an electrical cord, wireless charger, or battery. These include, but are not limited to, clippers, blow dryers, curling irons and flat irons.

Foot Basin—On a foot spa chair or stand-alone, the open vessel that is filled with water and in which the client's feet are placed during a pedicure.

Hot Styling Tools—Tools that utilize heat to style hair.

Multi-Use—tools and implements made of non-porous materials such as metal, plastic or glass that may be cleaned and disinfected.

Non-Electrical Tools—All tools used for barbering, cosmetology and electrology that do not use any form of electricity to operate. These include, but are not limited to, shears, razors, cuticle nippers, cuticle pushers, nail clippers, metal files, metal smoothers, combs and hair clips.

Non-porous—Material with no pores (impervious, not penetrable).

Poisonous—A substance that can cause sickness or death by entering or touching the body.

Porous—Having minute spaces or holes through which liquid may pass (permeable).

Sanitary—A clean, healthy condition.

Single use—All porous items including, but not limited to, cotton, nail files, pumice stones, buffing blocks, toe separators, neck strips, wax applicators and disposable mascara wands.

Soiled—dirty; not clean.

Sterilize or Sterilization—The process which makes something free from living cells, organisms and pathogens (including spores), removes or kills all forms of microbial life, including transmissible agents (such as fungi, bacteria, viruses and spore forms) by use of an autoclave or dry heat sterilizer.

Tub—A standalone, open vessel that is filled with water and in which the client's feet are placed during a pedicure.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

978. Minimum Equipment and Supplies

(a) Establishments, and schools and licensees operating as independent contractors shall have and maintain the following minimum equipment and supplies:

(1) Clean equipment, labeled as such, that is ready to be used on the next client. Establishments, schools and independent contractors shall not have all equipment in the establishment or school labeled as soiled.

(2) If hair services are performed, at least one covered waste container per establishment for the disposal of hair. Hair must be disposed of in a covered waste container.

(3) Closed, vented containers to hold all soiled towels, gowns, smocks, linens and sheets in any enclosed area frequented by the public. Containers shall be disinfected on a weekly basis with an EPA-registered disinfectant spray or wipe that has demonstrated bactericide, fungicide and virucidal activity.

(4) Closed, clean cabinets, drawers, or containers to hold all clean non-electrical tools, towels, gowns, smocks, linens and sheets.

(5) Containers for disinfectant solution for tools and equipment to be disinfected. Containers must be labeled "Disinfectant" Solution."

(6) Each container specified in (4) shall contain sufficient disinfectant solution to allow for the total immersion of tools.

(7) If electrolysis is performed, an autoclave or dry heat sterilizer that meets the requirements of Section 982.

(b) Establishments and schools shall have disinfectant solution, mixed according to manufacturer's directions, available for use at all times.

(c) A manufacturer-labeled container for the disinfectant used must be available at all times in the establishment or school. In the event that the last remaining disinfectant has been used, the empty manufacturer-labeled container must be present.

(d) Any individual licensee working within an establishment as an independent contractor shall ensure that the items listed in this section are available for their own use.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

979. Disinfecting Non-Electrical Tools

(a) Before use upon a client, all non-electrical tools that can be disinfected, ~~excluding shears,~~ shall be disinfected in the following sequential manner:

(1) Remove all visible debris.

(2) Clean with soap or detergent and water or by use of a wipe.

(3) Completely dry tools with a new, clean paper towel.

(4) ~~Then totally immerse in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's instructions.~~ Use an approved disinfectant to totally immerse, wipe or spray tool for entire contact time listed on the manufacturer label. Nail clippers, make-up pencil sharpeners and nail brushes must be immersed.

(5) Let air dry or dry with a disposable paper towel or clean towel.

(6) Licensees or students shall wear protective gloves or use tongs when removing tools from the disinfectant.

(b) The liquid disinfectant solutions specified in subdivision (a) shall:

(1) Remain covered at all times.

(2) Be changed according to the manufacturer's instructions or when it is cloudy or contains debris.

(c) All tools used on a client or soiled in any manner, shall be placed in a container labeled "Dirty," ~~"Soiled," or "Contaminated."~~

(d) All disinfected tools shall be stored in a clean, covered place that is labeled "Clean" ~~or "Disinfected."~~

(e) Disinfected tools shall not be placed in a container, pouch or holder that cannot be disinfected. This includes any pockets, belts, holsters made of leather or cloth and includes hairclips being placed on any leather or cloth item of personal clothing.

~~(f) Shears shall be disinfected according to the following sequential procedures:~~

~~(1) Remove all visible debris.~~

~~(2) Clean with soap or detergent and water.~~

~~(3) Spray or wipe the shear with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's instructions.~~

~~(g) Disinfected shears shall not be placed in a container, pouch or holder that cannot be disinfected.~~

(h) If tools specified in this section are sterilized in accordance with the requirements outlined in Section 982, the requirements of this section will be deemed to have been met.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980. Disinfecting Electrical Tools

(a) Clippers and other electrical tools shall be disinfected prior to each use in the following sequential manner:

(1) First removing all visible debris.

(2) Disinfect with an EPA-registered disinfectant spray or wipe with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions.

(b) All disinfected electrical tools shall be stored in a clean **covered** place **that is labeled "Clean"**.

(c) All soiled electrical tools used on a client, or soiled in any manner, shall be ~~placed in a container~~ labeled **"Soiled," "Dirty," or "Contaminated"** (excluding hot styling tools).

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980.1. Procedures for Cleaning and Disinfecting Whirlpool Footspas, and Air Jet Basins **Foot Basins**

(a) As used in this section, **foot basin** ~~"whirlpool foot spa" or "spa"~~ is defined as any basin using circulating water **is defined as the open vessel that is filled with water and in which the clients feet are placed during a pedicure.**

~~(b) An air jet basin is defined as any basin using an air jet stream system to move water.~~

(b) After use upon each client, each **foot basin** ~~whirlpool foot spa or air jet basin~~ shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the basin.

(2) All removeable parts, such as, screens, jets, footplates, magnetic jets, shall be removed.

(3) All removeable parts shall be scrubbed and cleaned individually with a clean brush, liquid soap (labeled as such on soap product), and water.

(4) The inside walls of the basin shall be scrubbed and cleaned ~~of all visible debris~~ with a clean brush, liquid soap (labeled as such on soap product), and water.

(5) Reinsert the clean removeable parts.

~~(6)-(3)~~ The ~~spa~~ basin shall be rinsed with water.

(7) The spa basin shall be refilled with clean water **and** ~~(5) The water in the basin~~ shall be circulated with the correct amount (read manufacturer label for mixing instructions) of the EPA-registered ~~hospital-~~liquid disinfectant that is labeled as a bactericide, fungicide, and virucide through the basin for at least 10 minutes. ~~(6) The spa basin must be drained, rinsed, and wiped dry with a new, clean paper towel.~~ **This step shall not apply to foot basins in which a liner was used for the client or on a stand-alone basin that has no plumbing or piping.**

~~(7)~~ (8) Record this procedure in the pedicure equipment-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(9) Pedicure equipment cleaning-log shall be made available upon request by either a client or a board representative and shall be retained within the establishment for the previous 60 days.

~~(d) At the end of each day and after the last client, each whirlpool foot spa or air jet basin shall be cleaned and disinfected in the following sequential manner:~~

~~(1) The screen and any other removable parts shall be removed.~~

~~(2) Scrub all visible debris from the screen, inside walls of the basin, any other removable parts, and the area behind them with a clean brush, liquid soap (labeled as such on soap product), and water.~~

~~(3) Reinsert the clean screen and any other removable parts.~~

~~(4) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow the spa manufacturer's instructions).~~

(5) Drain the detergent solution and rinse the basin.

(6) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital liquid disinfectant that the label claims is a bactericide, fungicide, and virucide through the basin for at least 10 minutes.

(7) Drain, rinse, and wipe the basin dry with a new, clean paper towel and allow basin to dry completely.

(8) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(e) At least once each week, after completing the procedures provided in subsection (d) (1 through 6), each whirlpool foot spa and air jet basin shall not be drained and the following sequential procedures shall be followed:

(1) Do not drain the disinfectant solution. The unit shall be turned off and the disinfecting solution shall be left undisturbed in the unit for at least 6 hours.

(2) After the disinfectant solution has been sitting at least 6 hours, drain and rinse the basin with clean water.

(3) Refill the basin with clean water and flush the system.

(4) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(f) The pedicure equipment cleaning log shall be made available upon request by either a client or a board representative.

(g) A whirlpool foot spa "Not in Service" must have a notation on the pedicure equipment cleaning log that the foot spa is not in service. The foot spa must have a "Not in Service" sign displayed on the chair and be kept in a sanitary condition.

(h) A violation of this section may result in an administrative fine and/or disciplinary action. Each whirlpool foot spa or air jet basin not in compliance with this section may result in a separate violation.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980.2. Procedures for Cleaning and Disinfecting Pipeless Foot spas

(a) As used in this section, "pipeless" foot spa is defined as any unit with footplates, impellers, impeller assemblies, and propellers.

(b) After use upon each client, each pipeless foot spa shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the spa basin.

(2) Remove footplate and any other removable components according to the manufacturer's instructions.

(3) Scrub all visible debris from the impeller, footplate, inside walls of the basin, and other components, and the areas behind or under each with a clean brush, liquid soap (labeled as such on soap product), and water. Rinse with clean water.

(4) Reinsert the properly cleaned footplate and other components.

(5) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital liquid disinfectant that the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.

(6) Drain, rinse, and wipe the basin dry with a new, clean paper towel.

(7) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(c) At the end of every day and after performing the procedures provided in subsection (b)(1 through 7) and after the last client, each pipeless foot spa shall be cleaned and disinfected in the following sequential manner:

(1) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow manufacturer's instructions).

(2) Drain the detergent solution and rinse the basin.

(3) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital liquid disinfectant that the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.

(4) Drain, rinse, and wipe the basin dry with a new, clean paper towel.

(5) Allow the basin to dry completely.

(6) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(d) At least once each week, after completing the procedures provided in subsection (c) (1 through 3), the disinfectant solution in each pipeless foot spa shall not be drained and the following sequential procedures shall be followed:

(1) The unit shall be turned off and the disinfecting solution shall be left in the unit undisturbed for at least 6 hours.

(2) After the disinfectant solution has been sitting at least 6 hours, rinse and wipe the basin dry with a new, clean paper towel.

(3) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(e) The pedicure equipment cleaning log shall be made available upon request by either a client or a board representative.

(f) A whirlpool foot spa "Not in Service" must have a notation on the pedicure equipment cleaning log that the foot spa is not in service. The foot spa must have a "Not in Service" sign displayed on the chair and be kept in a sanitary condition.

(g) A violation of this section may result in an administrative fine and/or disciplinary action. Each pipeless foot spa not in compliance with this section may result in a separate violation.

Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980.3. Procedures for Cleaning and Disinfecting Non-Whirlpool Foot Basins or Tubs

(a) As used in this section, "non-whirlpool foot basins" or "tubs" are defined as any basin, tub, footbath, sink, bowl, and all non-electrical equipment that holds water for a client's feet during a pedicure service.

(b) After use upon each client, each non-whirlpool foot basin or tub shall be cleaned and disinfected in the following sequential manner:

~~(1) All water shall be drained from the foot basin or tub.~~

~~(2) The inside surfaces of the foot basin or tub shall be scrubbed and cleaned of all visible debris with a clean brush, liquid soap (labeled as such on soap product), and water.~~

~~(3) The foot basin or tub shall be rinsed with clean water.~~

~~(4) Refill the foot basin or tub with clean water and the correct amount (read the label for mixing instructions) of the EPA-registered hospital liquid disinfectant that the label claims is a bactericide, fungicide, and virucide. Leave the disinfecting solution in the foot basin or tub for at least 10 minutes.~~

~~(5) Drain, rinse, and wipe the basin dry with a new, clean paper towel.~~

~~(6) Record this procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.~~

~~(c) The pedicure equipment cleaning log shall be made available upon request by either a client or a board representative.~~

~~(d) A violation of this section may result in an administrative fine and/or disciplinary action. Each non-whirlpool foot basin or tub not in compliance with this section may result in a separate violation.~~

~~(e) All disinfected basins or tubs shall be stored in a clean, covered place labeled "Clean" or "Disinfected."~~

~~*Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.*~~

980.4. Disposable Foot Basin or Tub Liners

(a) Single-use, disposable, recyclable liners designed specifically and manufactured for use as a foot basin or tub liner shall be disposed of immediately after each use and may not be disinfected or reused.

~~(1) After disposal of the pedicure basin liner the basin or tub shall be scrubbed and cleaned of all visible debris with a clean brush and liquid soap (labeled as such on soap product) and water. The foot basin or tub shall be rinsed with clean water and wiped dry with a new, clean paper towel.~~

~~(2) Record the cleaning procedure in the pedicure equipment cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.~~

~~(3) The pedicure equipment cleaning log shall be made available upon request by either a client or a board representative.~~

(1) Establishments or schools that utilize the liners must maintain a supply of five liners per foot tub basin for use at all times.

(b) Liners must not be placed into the foot basin until a client is present.

(c) Removeable magnetic jets shall be cleaned after every use according to the requirements of (979(a)) and shall not be stored within the foot basin.

Note: Authority cited: Sections 7312 and 7406, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

981. Tools and Supplies

(a) All tools and supplies that come into direct contact with a client and cannot be disinfected (including, but not limited to, buffers, pumice stones, wax sticks, toe separators, gloves, cotton pads, sponges, emery boards, and neck strips) **are single-use** and shall be disposed of in a waste container immediately after use on a single client.

~~(b) New supplies and single-use, disposable tools shall be stored in a clean, covered place labeled "New."~~

~~(c) No person working or training in an establishment or school shall be permitted to carry any tools or supplies in or on a garment or uniform (including pouches and holsters) while practicing any of the acts as defined in Section 7316 of the Business and Professions Code.~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

982. Sterilizing Electrolysis Tools

(a) Before use upon a client in schools and establishments, all electrolysis tools that can be sterilized, excluding single-use, pre-sterilized, disposable needles/wire filaments, shall be sterilized by one of the following methods:

(1) Clean with soap or detergent and water (which may include the use of ultrasonic equipment) and then sterilized by one of the following methods:

(a) Autoclave, registered and listed with the U.S. Food and Drug Administration (FDA), used according to manufacturer's instructions.

(b) Dry heat sterilizer, registered and listed with the FDA, used according to manufacturer's instructions.

(c) Chemical (color change) indicators must be used on each sterilized package to indicate the sterilization process was completed.

(2) All sterilized tools shall remain in the package they were sterilized in until ready for use. This package must be undamaged and labeled "Sterilized" or "Sterilization."

(3) All tools that have been used on a client or soiled in any manner shall be placed in a container labeled "Dirty," ~~"Soiled," or "Contaminated."~~

(4) Sterilization equipment shall be checked weekly to ensure that it is reaching the temperature required by manufacturer's instructions.

(b) Single-use, pre-sterilized, disposable electrolysis needles/wire filaments must be placed in a puncture-resistant sharps container immediately after use, when contaminated before use, or when opened and found damaged. The sharps container must be changed when not more than three-quarters filled and disposed of as biohazardous waste.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

983. ~~Personal Cleanliness~~ **Hand Hygiene**

~~(a) The attire of a licensee or student serving a client shall at all times be clean.~~

(a) Every licensee or student performing services shall thoroughly wash his or her hands with soap and water or any equally effective alcohol-based hand-cleaning product immediately before serving each client.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

984. Disease and Infestation

- (a) No establishment or school shall knowingly permit a licensee or student afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients or train in the establishment or school.
- (b) No establishment or school shall knowingly require or permit a licensee or student to work on a client with an infection or parasitic infestation capable of being transmitted to the licensee or student.
- (c) Infections or parasitic infestation capable of being transmitted between licensee or student and client include, but are not limited to, the following:

Cold, influenza or other respiratory illness accompanied by a fever, until 24 hours after resolution of the fever.

Streptococcal pharyngitis ("strep throat"), until 24 hours after treatment has been initiated, and 24 hours after resolution of fever.

Purulent conjunctivitis ("pink eye"), until examined by a physician or other licensed clinician and approved for return to work.

Pertussis ("whooping cough"), until five days of antibiotic therapy has been completed.

Varicella ("chicken pox"), until the sixth day after onset of rash or sooner if all lesions have dried and crusted.

Mumps, until nine days after onset of parotid gland swelling.

Tuberculosis, until a local health department authority states that the individual is noninfectious.

Impetigo (bacterial skin infection), until 24 hours after treatment has begun.

Pediculosis (head lice), until the morning after first treatment.

Scabies ("crabs"), until after treatment has been completed.

- (d) Blood-borne diseases, such as HIV/AIDS and hepatitis B (HBV), shall not be considered infectious or communicable diseases for the purpose of this section.

- (e) No person working or training in an establishment or school shall perform services upon a surface of the skin or scalp where such skin is inflamed or broken (e.g., abraded, cut), or where a skin infection or eruption is present; nor shall a person working or training in an establishment or school perform services if the skin of his or her hands is inflamed or broken, or where a skin infection or eruption is present, without wearing gloves.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code; and Section 121365, Health and Safety Code.

985. Neck Strips

~~A sanitary neck strip or towel shall be used to keep the protective covering, such as client capes, from coming in direct contact with a client's neck.~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

986. Neck Dusters and Brushes

- (a) Before use on a client, **all brushes, including but not limited to, neck dusters, natural fiber, facial, tint, nail brushes,** ~~neck or nail dusters and all other manicure brushes~~ that are used in an establishment or school on a client shall be cleaned in the following sequential manner:

- (1) Remove all ~~visible~~ debris.
- (2) Clean with ~~soap or detergent and water~~ a cleansing agent such as EPA registered disinfectant spray, monomer, make-up brush liquid, spray cleaner, alcohol.
- (3) Dry ~~dusters or~~ brushes.
- (4) Store all ~~clean dusters or~~ brushes in a clean, covered place that is labeled "Clean."

(5) All ~~dusters or brushes~~ used on a client or soiled in any manner shall be placed in a container labeled "Dirty," ~~"Soiled," or "Contaminated."~~

~~(b) Before use on a client, natural fiber, facial, acrylic, gel, nail art, and makeup brushes used in an establishment or school, on a client, shall be cleaned in the following sequential manner:~~

~~(1) Remove all visible debris.~~

~~(2) Clean by using a cleansing agent(s) such as monomer, makeup brush liquid/spray cleaner, alcohol.~~

~~(3) Dry brushes.~~

~~(4) Store all clean brushes in a clean, covered place that is labeled "Clean."~~

~~(5) All brushes used on a client or soiled in any manner shall be placed in a container labeled "Dirty," "Soiled," or "Contaminated."~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e) Business and Professions Code.

987. Towels Linens

(a) After a towel, sheet, robe, linen, or smock has been used once, it shall be deposited in a closed **vented** container and not used until properly laundered and sanitized.

(b) Towels, sheets, robes, linens, and smocks shall be laundered either by regular commercial laundering or by a noncommercial laundering process which includes immersion in **hot water** ~~water at least 160 degrees F for not less than 25 minutes during the washing or rinsing operation.~~ Alternately, it is acceptable if the commercial laundry opts to use chemicals and cold water to reduce organisms on laundry, provided the laundry follows manufacturers' instructions for washing machines, dryers, detergents, rinse aids, and other additives. The laundry detergents used are not required to have stated antimicrobial claims.

(c) All clean towels, sheets, robes, linens, and smocks shall be stored in clean, closed cabinets or a clean, closed container.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

988. Liquids, Creams, Powders, and Cosmetics

(a) All liquids, creams, waxes, shampoos, gels, and other cosmetic preparations shall be kept in clean, closed containers. Powders may be kept in clean shakers.

(b) All bottles and containers shall be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances shall be additionally and distinctly marked as such. Poisonous substances that are maintained in the manufacturer-labeled container are not required to have additional labeling.

(c) When only a portion of a cosmetic preparation is to be used on a client, it shall be removed from the bottle or container in such a way as not to contaminate the remaining portion.

(1) This provision does not apply to cosmetic preparations that have been demonstrated to be unlikely to transmit pathogens (e.g., nail polish, artificial nail monomer liquids).

(d) Pencil cosmetics shall be sharpened before each use **and pencil sharpeners shall be cleaned and disinfected after each use.**

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

989. Prohibited Hazardous Substances/Use of Products, equipment, use of implements and services in establishments or schools

No establishment, school **or licensee** shall:

- (a) Have on the premises cosmetic products containing hazardous substances banned by the FDA for use in cosmetic products.
- (b) Have on the premises methyl methacrylate monomer and/or methylene chloride.
- ~~(c) Use a product in a manner that is disapproved by the FDA, Occupational Safety and Health Administration, or EPA.~~
- (c) Have on the premises credo blades, rasps or any other implement intended to mechanically cut or remove calluses.**
- (d) Ultra-violet sterilizer cabinets.**
- (e) Sterilization pouches intended to hold individual implements unless used with an autoclave.**
- (f) Needle-like tool used for the purpose of extracting skin blemishes and other similar procedures.**
- (g) Remove hair from the inside of a persons nose or ears.**
- (h) Have on the premises any wax roller applicator that cannot be disinfected.**

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

990. Headrests, Shampoo Trays and Bowls, and Treatment Tables

- (a) The headrest of chairs shall be covered with a clean towel or paper sheet for each client.
- (b) Shampoo trays and bowls must be cleansed with soap and water or other detergent after each shampoo, kept in good repair, and in a **clean sanitary** condition at all times.
- (c) Treatment tables must be covered with either clean treatment table paper, a clean towel, or a clean sheet after each use. After a towel or sheet has been used once, it shall immediately be removed from the treatment table and be deposited in a closed container and not used again until it has been properly laundered and sanitized. Treatment table paper shall be immediately disposed of after a single use.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

991. Invasive Procedures

- (a) No licensee or student may use a product, device, machine, or other technique or combination of the same, which results in the removal, destruction, incision, or piercing of a client's skin beyond the epidermis. Any such act shall be considered an invasive procedure.
- (b) Invasive procedures include, but are not limited to, the following:
 - (1) Application of electricity that visibly contracts the muscle.
 - (2) Application of topical lotions, creams, serums, or other substances that require a medical license to purchase.
 - (3) Penetration of the skin by metal needles, except electrolysis needles/wire filaments.
 - (4) Abrasion and/or exfoliation of the skin below the epidermal layers.

- (5) Removal of skin by means of a razor-edged tool or similar device.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, 7320, 7320.1, Business and Professions Code.

992. Skin Exfoliation

- (a) Only the upper layer of the skin, known as the epidermis, may by any method or means be removed, and then only for the purpose of improving the appearance of the skin.
- (b) Skin removal techniques and practices that result in destruction of living tissue beyond the epidermal layer of the skin is prohibited.
- (c) Only over-the-counter products that are not sold for physician's use only may be used for the purpose of skin exfoliation.
- (d) All skin exfoliation products must be applied using the manufacturer's instructions for consumer health and safety.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, and 7320, Business and Professions Code.

993. Prohibited Tools

- ~~(a) No establishment or school shall have on the premises or use any razor-edged tool for the purpose of removing calluses or other similar procedures.~~
- ~~(b) No establishment or school shall have on the premises or use any needle-like tool used for the purpose of extracting skin blemishes and other similar procedures.~~

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7320, and 7320.1, Business and Professions Code.

994. Cleanliness and Repair

- (a) Establishments and schools shall keep the floors, walls, woodwork, ceilings, furniture, furnishing, and fixtures clean and in good repair.
- (b) No establishment or school shall permit an accumulation of waste, hair clippings, or refuse.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

995. Building Standards

- (a) Establishments and schools shall have a system of adequate ventilation in accordance with Part 2, Section 1203, Title 24, California Code of Regulations.
- (b) A supply of hot and cold running water shall be provided in accordance with Part 5, Section 601.3.1, Title 24, California Code of Regulations.
- (c) Establishments and schools shall supply potable drinking water in accordance with Part 5, Section 601.3.3, Title 24, California Code of Regulations.
- (d) Establishments and schools shall provide hand washing facilities in accordance with Part 5, Section 601.3.2, Title 24, California Code of Regulations.
- (e) Establishments and schools shall provide public toilet rooms in accordance with Part 5, Sections 422.6, 422.7, and Table No. 422.1, Title 24, California Code of Regulations.