

ภาคผนวก
กฎหมายต่างประเทศ

Guidelines on drafting standard form consumer contracts for beauty industry

1. INTRODUCTION

1.1 This set of guidelines has been drafted by the Consumer Council in consultation with the beauty industry (the “Industry”) for its use when drafting standard form consumer contracts.

1.2 The Industry includes companies and individuals providing beauty treatment and body shaping services, including slimming, skin treatment, manicures, pedicures and hair removal (the “Suppliers”).

1.3 It is understood that some suppliers are used to providing their services that enables parties to contract without having to resort to expensive legal services to create a contract for each transaction. However, it is not uncommon to find terms in these contracts that are unfair to consumers. The Council sees a need to provide a practical guidance for drafting standard form contracts in observance of the principle of and products based on oral agreement, even for those contracts involving prepayment or performance over a period of time. However, without a written agreement to refer to, it would be difficult to determine at a later date what have been exactly agreed upon. The uncertainty may induce disputes over performance of contracts. To avoid potential disputes, suppliers are encouraged to reduce, where appropriate, their agreement with clients to writing.

1.4 When contracts are put in writing, standard form contracts are commonly used in the Industry. They are an economical and convenient means good faith and fairness to help build and maintain consumer confidence in the Industry.

2. OBJECTIVES OF THE GUIDELINES

2.1 The aim of the Guidelines is to help ensure that the standard form contracts used in the Industry are fair and clear and that members of the Industry deal openly, honestly and fairly with consumers.

2.2 Members of the Industry are encouraged to devise their standard form contracts along the Guidelines to ensure fairness and transparency in conducting business.

2.3 Application of the Guidelines across the Industry would improve the quality of service and trade ethics of the Industry. This would in turn enhance the consumers’ confidence and the development of the Industry.

2.4 The Guidelines are not intended to be exhaustive. They cover key areas of concern in the use of unfair terms in standard form contracts. Suppliers should draft the contracts along the principle of good faith and fairness with the aid of the Guidelines in light of peculiarity of the services and products they provide under the contracts.

3. PRINCIPLES

3.1 The Guidelines seek to manifest the following consumer rights: -

to be informed;

to choose;

to be protected from contractual terms that are to the consumers' disadvantage, but are not reasonably necessary for the protection of the legitimate interests of the traders.

4. WHAT IS UNFAIR TERM

4.1 A term is unfair when it is disadvantageous to a party while not reasonably necessary for the protection of the legitimate interest of the other party. Put it in a consumer scenario, it is a term contrary to the requirement of good faith, causing a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

5. AVOIDANCE OF UNFAIRNESS

5.1 Broad and vague terms

5.1.1 A term should not be drafted so broadly or vaguely to the detriment of consumers. It is exemplified by the terms stating that the supplier's liability shall be excluded "so far as the law permits". Consumers without legal knowledge would be unclear as to what liability could or could not be excluded in a particular circumstance, and thus whether their right to sue under that circumstance would be limited.

5.2 Exclusion and limitation clauses

5.2.1 Some terms or statements seeking to exclude or limit the liability of supplier that would arise by implication of law are actually void and unenforceable in law. Examples are disclaimers of liability (i) for death or personal injury caused by negligence¹; and (ii) for breach of terms implied into the contract by virtue of the Supply of Services (Implied Terms) Ordinance (Cap 457) (e.g. carrying out the service with reasonable care and skill)²

5.2.2 While it is pointless to include such terms or statements in the contract, it could not be said that they would not do any harm to consumer since they are void and not enforceable. Consumer may be misled into believing that the liability of the supplier is so limited or excluded and mistakenly give up the chance to seek redress.

5.3 Exclusion of rights to make claims

5.3.1 Terms that exclude the consumer's basic rights to make claims for breach of contract on the part of the supplier will generally be considered as unfair and should be avoided.

5.4 'No refund' clauses

5.4.1 Clauses seeking to deny the right of consumer to a refund under any circumstance are unfair and should be avoided. The consumer may be misled into believing that he/she is in any event 1 The disclaimer is void under s.7(1) of the Control of Exemption Clauses Ordinance (Cap 71). 2 S.8(1) of the Supply of Services (Implied Terms) Ordinance (Cap 457) provides to the effect that a party contracts with consumer cannot exclude or restrict his liability arising from the implied terms provided under the said Ordinance. bound by the contract. The provisions may deter or discourage the consumer from pursuing legal remedies even where the supplier is in serious default; or the contract does not go ahead or is terminated due to no fault of the consumer before he/she has enjoyed significant benefit. In such a case, the supplier may be induced to pay less heed to the consequences and risks of breaching the contract.

5.4.2 In some circumstances, the consumer may be in breach. However, it is unfair to forfeit the unused balance of the consumer's prepayment, regardless of the amount of costs or losses caused to the supplier. A "no refund" clause that requires a consumer in breach to pay more than a genuine pre-estimate of loss is void under the common law as it is regarded as punitive rather than compensatory. Therefore, such a clause is not only unfair but also ineffective. It should be noted that the supplier is also under a duty to mitigate its losses caused by the breach.

5.5 Other penalty clauses

5.5.1 It follows that any other clauses requiring a consumer in breach to pay more than a genuine pre-estimate of loss caused to the supplier would normally be void as penalty.

5.5.2 Such clauses should be avoided in that they are misleading as to the extent of liability of the consumer.

5.6 Clauses ruling out all possibility of cancellation

5.6.1 A clause that expressly or impliedly provides that consumer cannot cancel the contract in any circumstances is misleading and unfair. It excludes the consumer's basic right under the law of contract.

5.6.2 It should be expressly provided in the contract that the consumer is entitled to terminate the contract in circumstances justifying the termination of the same, such as the death or incapacitating illness or physical disability of the consumer rendering performance of the contract impossible or impracticable; and the Supplier's repeated and persistent failure to perform its obligations under the contract.

5.7 Unrestricted unilateral variation clause

5.7.1 A clause empowering the supplier to vary the terms unilaterally or to supply something different from what was agreed without legitimate reason is unfair and should be avoided.

5.7.2 Genuine consent should be sought from consumer regarding any significant change to the contract. If the contract provides for the right of the supplier to vary the terms unilaterally, the consumer should be given the right to cancel the contract upon variation not agreeable to him/her with a refund of the unused balance of the prepayment, if any, without having to pay anything.

5.8 Supplier's right of final decision

5.8.1 A clause giving the supplier exclusive right to determine any dispute over the contract or to interpret the contract is unfair as it seeks to deprive the consumer of the right to refer the matters to the court for adjudication.

5.8.2 Under such a clause, impartiality is not ensured as the supplier is both the adjudicator and the party to the dispute.

5.8.3 Suppliers should refrain from using such a clause.

5.9 Entire agreement clauses

5.9.1 Standard form contracts often contain terms that they constitute the complete and final agreement and supersede all prior oral representations, statements or promises regarding the subject of the contract. The core value of good faith is that the parties to the contract will honour their promises. Such terms which exclude or limit the supplier's obligation to respect commitment in undertaken by its agent are clearly against the principle of good faith.

5.9.2 An entire agreement clause would mislead consumers into believing that they are barred from suing for misrepresentation. If it is intended to exclude the liability of supplier for making false representations inducing consumer into the contract, they may be struck out by the court on the grounds that they are unreasonable. Therefore, if suppliers are minded to include an “entire agreement” clause in the contract, they should

i) specifically draw the attention of the consumers to the term;

ii) ensure that all promises or assurances made during negotiations be duly included in the agreement; and

iii) if there is any change of promise or assurance, make it known to the consumer and allow them a reasonable time to reconsider whether to conclude the agreement or not.

5.10 Declaration

5.10.1 It is quite often that standard form contracts contain a declaration to be signed by consumers confirming that they have read and understood the contract and associated documents.

When signing the declaration, consumers may not have read the documents and may not bother themselves to go back and read over. Even if they have read them thoroughly, they may not understand correctly the documents. Nor are they likely to realize that the declaration may be used subsequently to support the argument that they are bound by the terms set out in the contract, even though they are different from what they have been promised.

5.10.2 Such a declaration is likely to be unfair and should be replaced by a clear and prominent warning that consumer should read and understand the terms before signing the contracts. The warning should be placed before the terms and conditions so that consumer is reminded of reading the terms and where necessary asking for further information or clarification before signing the contract.

5.11 Warranty

5.11.1 To avoid dispute in future, if the supplier has made any warranty about the efficacy or otherwise of the service and/or goods to be provided, such warranty should be expressly and accurately stated in the contract.

6. MINORS

6.1 A minor - person under the age of 18, is protected by law against his/her inexperience, as an adult may take unfair advantage of it and induce him/her to enter into a contract which is improvident. It is arguable that contracts for beauty service made by minors are voidable. Therefore the supplier should not supply any service or goods to minors before coming to an agreement with their parents or guardians.

7. TRANSPARENCY

Plain and intelligible language

7.1 It is important to consider what the consumer is likely to understand by the wording of a term. A term which is likely to be misleading or unintelligible to consumer is potentially unfair and short of transparency. Consumer entering into a contract for beauty services normally would not seek legal advice. A contract drafted in plain and intelligible language would help consumer make informed choice.

7.2 The contracts should be in writing with print in at least 10 pt font size, adequately contrast with the background, stating rights and obligations of the parties in plain and legible Chinese and/or English as the consumers elect, and both language versions carry equal legal effect.

7.3 Before the contract is signed,

(i) the supplier should explain clearly the salient terms of the contract ensuring that the consumer fully understand the respective rights and obligations of the parties; and

(ii) the supplier should give consumer opportunity to read the contract and relevant documents thoroughly and raise questions about the terms. Content of Contract

7.4 The contract must in clear and intelligible terms identify the following: -

(i) the parties to the contract;

(ii) the services and/or products to be provided with descriptions in reasonable details, such as

a) the items included and the number of treatments for each item (in the case of treatments/ therapies sold in packages);

b) the methods and /or equipment to be used for the treatments.

(iii) the cost of the services and products (if any), including itemised fees paid and/or payable under the contract; should there be a discount, stating the original and discount prices;

(iv) the amount of each instalment and the frequency of the payments to be made under the contract (if paid by instalments);

(v) the number, frequency and time of the treatment/therapy and duration of the contract (if applicable).

7.5 As regards a contract for supply of service over a period of time, it should be provided that the consumer shall have access to information about his account such as the number of unused treatment/therapy.

7.6 The contract and invoice should be stated in two separate documents so that consumers will have a clear idea about the respective purposes of the documents.

8. COOLING-OFF PERIOD

8.1 Where the contract is made for the supply of prepaid service or goods, or for supply of service or goods within a fixed duration, a cooling-off period of 7 working days (inclusive of the day the consumer enters into the contract) should be provided for. The consumer may cancel the contract during the cooling-off period and the supplier may charge the consumer, respectively in accordance with paragraph 8.3 and 8.5, for the administrative expenses incurring from the cancellation of the contract and the use of any service and/or goods provided during the cooling-off period. After deducting the said fees, as the case may be, from the prepayment, the supplier must return the balance to the consumer.

8.2 The right of charging for the administrative expenses and the service or product consumed as mentioned in paragraph 8.1 should be provided expressly with respective schedules of fees concerned in the contract.

8.3 In case an administrative fee is to be charged for cancellation of contract during the cooling-off period, it should be charged either at the percentage of the contract price or a fixed sum as set out in the following schedule, whichever is the less:

Schedule of Administration Fees to be charged for Termination of Contract during the Cooling-Off Period

Time of Termination	% of Contract Price*	Fixed Sum*
1-5 days	5%	\$500
6-7 days	7%	\$1,000

* whichever is the less should be applicable

8.4 The supplier may provide any service and/or product to the consumer for trial or otherwise during the cooling off period. The supplier must expressly and clearly state in the contract what such service and/or product is with description in reasonable details and whether they are or it is free.

8.5 If such a service and/or product is not free, the supplier must obtain the express consent of the consumer to the provision of the same prior to the contract. Moreover, the supplier must expressly and clearly set out the price of such a service and/or product with a schedule in the contract. The price must be set in a fair and reasonable manner.

8.6 If the supplier warrants that the consumer shall not be charged or charged less for the chargeable service and/or product consumed during the cooling-off period on condition that he/she does not cancel the contract during that period, such a warranty must be stated expressly and clearly in the contract.

8.7 If any products (with the exception of free gift) are provided within the cooling-off period, the supplier may require the consumer who has cancelled the contract during that period to return in person these products unused with the packaging, if any, intact, or pay for the price of the products so supplied. If these products are not returned intact, the supplier may require the consumer to pay at the scheduled price.

8.8 Cancellation of a contract during the cooling off period may be effected by notice in writing (the "Cancellation Notice"), with copy(ies) of document(s) necessary for administrative purposes, served in one of the following ways:

(i) delivering personally the notice and the copy(ies) of document(s) to the relevant supplier's place of business;

(ii) sending the notice and the copy(ies) of document(s) to the supplier's place of business by post;

(iii) sending the notice and the copy(ies) of document(s) by fax or by email to the supplier's designated fax number or email address respectively.

8.9 The Cancellation Notice shall be effective upon physical receipt, the date of postmarking or the day when the email or fax is sent as the case may be.

8.10 Attention of consumer must be adequately drawn to the cooling-off period and the relevant contractual rights and obligations prior to their entry into the contract. Notice of the cooling-off period must be given to consumer in bold type, not less than 10 point in size, and prominently displayed in the body of the contract, which must include the following:

(i) advice to the consumer that he or she may cancel the contract at any time within the cooling-off period;

(ii) the ways in which the notice of cancellation may be served (as described in paragraph 8.8); and

(iii) the other right and obligations of the consumer regarding cooling-off period, such as the right to be refunded and the obligation to pay an administration fee.

9. CIRCUMSTANCES RENDERING IT UNFAIR TO HOLD CONSUMER TO THE CONTRACT

9.1 It is quite common in the industry that prepayment is made by consumer for service to be provided over a long or indefinite period of time. During the period, mishaps happened to a consumer, such as death, incapacitating illness or physical disability may render performance of the contract impossible or impracticable.

9.2 There may also emerge some circumstances that a consumer could not reasonably anticipate when entering into the contract, such as relocation of the premises where the contract is performed, closure of the premises for a long period of time and transfer of the contractual rights or obligations of the supplier to another party. Such change of circumstances may result in the consumer accepting to his/her detriment what he/she has not bargained for.

9.3 A contract may become worthless to consumer if the supplier repeatedly and persistently fails to perform its obligations under the contract (e.g. repeated failure in providing a slot for service reasonably requested by the consumer).

9.4 It would be unfair to hold the consumer to the contract under such circumstances. Consumer should be allowed to terminate the contract when any of the said circumstances occur, and be refunded the unused balance of the prepayment.

9.5 In the event of termination by reason of death, incapacitating illness or physical disability of the consumer, the supplier may require the consumer to compensate it for the administrative costs reasonably incurred as a result of the termination.

9.6 The termination may be effected by a reasonable notice in the manner described in paragraph 8.8 and 8.9.

10. REFUND

10.1 For cancellation within the cooling off period, if prepayment has been made, the supplier should, subject to paragraph 8, return it to the consumer within 30 days after the service of the notice of cancellation. For other refunds consumer entitled to under the contract, they should be made within 30 days following the date of written request of the consumer.

11. CONFIDENTIALITY AND PRIVACY

11.1 The supplier must keep information about current, former and prospective clients confidential unless the disclosure of which is required by law or permitted by them.

11.2 The supplier must comply with all laws and regulations in relation to the protection of the consumer's privacy, personal data, sensitive information and health information.

12. ASSIGNABILITY

12.1 The supplier must not assign or transfer the contract to a third part

13. PROVISION OF A COPY OF THE CONTRACT

13.1 The supplier should deliver a fully completed copy of contract to the consumer after the contract is signed.

Sample Beauty Service Contract

Annexure 2

INSTRUCTION FOR USE

1. This Sample Contract is intended to demonstrate how the Guidelines on Drafting Standard Form Consumer Contract for Beauty Industry (the “Guidelines”) should be complied with. The user is advised to adapt this Sample Contract to particular circumstances of the transaction, of course, in line with the requirements set out in the Guidelines.

2. It is intended that the Sample Contract applies to prepaid contracts under which services and products (if any) shall be supplied over a period of time.

3. Before you use this Sample Contract, you should read carefully the Guidelines so as to ensure that your contract is consistent with the Guidelines.

DISCLAIMER

1. The Council does not recommend or endorse any company or individual who use this Sample Contract.

2. If you use this Sample Contract as the basis for your contract with consumers, you should modify it to suit your particular circumstances while ensuring that you comply with all applicable laws and the Guidelines. You are recommended to seek legal advice in the drafting of your own contracts.

Beauty Service Contract

Important Notice

A cooling-off period applies to this Contract.

You, the client, may cancel this contract during the cooling-off period provided for under Clause 2 of this Contract. If you choose to cancel this Contract, you must notify us, the supplier, about your intention to do so pursuant to that Clause. Please also note that your other rights and obligations in relation to your cancellation of this Contract within the cooling-off period are set out in the provisions under that Clause. You have to read them carefully.

Date:

Parties: [Name] of [Address] [Contact Number] [Membership Number {if appropriate}]
(the “Client”)

[Name] of [Address] (the “Supplier”)

1. Service(s)/ Product(s) to be provided

1.1 The Supplier shall provide the Service(s) and the Product(s) (if any) to the Client at the location and price(s) as described in Clause 1.3 below.

1.2 For the avoidance of doubt, the Service(s) shall include but not limited to the performance of the Treatment, the use of material and device/equipment incidental to the performance of the Treatment, and the provision of consultation services in connection with the Treatment, where applicable.

1.3 Schedule of Service(s)/ Product(s) and Price(s)

Code	Location	Service (Treatment)	Unit Price	Quantity	Total (HK\$)

a) If the supplier agrees to provide any free item in addition to the service(s) and/or product(s) to be charged, such items should be stated expressly and clearly in the Schedule.

b) If discount is given, the supplier should state expressly and clearly in the column of “Unit Price” both the discounted price and the original price.

Total sum payable	HK\$
Deposit paid	HK\$ Date: Invoice No
Balance	HK\$ Due Date:
Payment method	() Cash () EPS () Credit Card

Description of the Treatment/Product (including the free item)
(Details of the Treatment such as the method and equipment to be used and the frequency of the Treatment.)

1. To avoid confusion the title of the treatment or product should be the same as that advertised and/or used by the supplier during negotiation for the contract.

2. Client’s Right to Cancellation during Cooling-off Period

2.1 Subject to Clauses 2.4 to 2.6, the Client may cancel this contract by giving a notice in writing (the “Notice of Cancellation”) to the Supplier within 7 working days from the date hereof (the “Cooling-Off Period”) without incurring any payment liability or other obligation.

2.2 The notice of cancellation may be served in person, by mail, e-mail or fax with copy(ies) of (insert name(s) of document(s) necessary for administrative purposes) and shall be effective upon physical receipt, the date of postmarking or the day when the email or fax is sent, as the case may be.

2.3 The Supplier shall refund all the monies paid by the Client under this Contract, minus any of the fees set out in Clauses 2.4 to 2.6, within 30 days after the service of the Notice of Cancellation.

2.4 If the Client cancel the contract during the cooling-off period, the Supplier may charge an amount in accordance with Schedule I below to cover the Supplier’s administrative expenses.

Schedule I

Administrative Fees to be charged for Cancellation of Contract during the Cooling-off Period

Time of Termination	Fees (% of contract price)*	Fixed Sum*
1-5 days	5%	\$500
6-7 days	7%	\$1,000

*whichever is the less should be applicable

[Clauses 2.5 to 2.7 are applicable only where service and/or product is to be provided within the cooling-off period.]

2.5 The Supplier shall provide the Product(s) stated in Schedule II below to the Client within the Cooling-Off Period. If the Client cancels this Contract within the period, the Client shall be required to return in person the Product(s) so provided (except the free gift), unused with the packaging, if any, intact, to the Supplier. Otherwise, the Client shall pay the Product(s) at the price set out in Schedule II below.

Schedule II

Product(s) provided during the Cooling-off Period

Product	Quantity	Free/ Unit Price	Total

2.6 The Supplier shall provide the Service(s) stated in Schedule III below to the Client within the cooling-off period. If the Client cancels this Contract within the period, the Client shall be required to pay for the Service(s) so provided (except any Service(s) agreed to be provided for free) in accordance with the Schedule.

Schedule III

Service(s) provided during the Cooling-off period

Service (Treatment)	Quantity	Free/ Unit Price	Total

2.7 If the Client continues this Contract after the cooling-off period, the Supplier shall waive/reduce charging for the Service(s) and/or Product(s) respectively provided under Clauses 2.5 and 2.6 in accordance with Schedule IV below.

Schedule IV

Free/Discounted Service(s) and/or Product(s) provided during the Cooling-off Period

Service (Treatment) / Product	Quantity	Free/Discounted Unit Price (% of Discount)	Total

3. Client's Right to Termination

3.1 The Client or his/her administrator(s) or executor(s), as the case may be, may terminate this Contract by a twenty one (21) day notice in writing in the event of: -

i) death or incapacitating illness or physical disability of the Client rendering performance of this Contract impossible or impracticable;

ii) the Supplier's repeated and persistent failure to perform its obligations under this Contract;

iii) a transfer of any right or obligation of the Supplier under this Contract to another person without the Client's consent in writing;

iv) relocation of the premises where the contract is performed; or

v) closure of the premises for a period of more than four (4) weeks.

3.2 In the event of termination by reason of Clause 3.1(i), the Client shall pay a cancellation fee in the sum of (insert an amount representing the administrative costs reasonably incurred as a result of the termination) to the supplier.

3.3 Upon receipt of the notice, the Supplier shall refund any unused balance to the Client or his/her administrator(s) or executor(s), as the case may be, within thirty (30) days.

3.4 Refund of the unused balance shall not in any event prejudice or affect any claim of the Client or his/her administrator(s) or executor(s), as the case may be, against the Supplier for death or injuries caused by the negligence or any other faults of the Supplier, its servants or agents.

4. Record card

4.1 The Supplier shall note accurately and legibly in a record card the number of treatments in a course, and the date of each treatment and other details such as the machine settings, the products used during the treatment and/or advised for home use, and the names of the handling beauticians.

4.2 The Client shall have access to the information contained in the record card.

5. Appointment

5.1 The Client may make, cancel or change appointments at least ___ hours in advance at the booking desk during the office hours, by calling the Supplier at (telephone number: _____ or _____) from ___ am to ___ pm or by e-mailing (e-mail address) at any time.

5.2 The Supplier shall confirm with the Client the making, cancelling or changing of appointment as soon as practicable.

6. Standard of Performance

6.1 The Supplier shall perform its Service(s) with care, skill and diligence to such standard of quality as it is reasonable for the Client to expect in all the circumstances.

7. Warranty

7.1 The Supplier warrants that the Service(s) and Product(s) (if any) are safe and fit for the Client's intended purpose which has been made known to it, or which it would reasonably be expected to know.

7.2 The Supplier further warrants that all information, representations or statements provided by it to the Client in connection with the Services and Product(s) (if any) are accurate. The Supplier acknowledges that the Client enters into this Contract in reliance upon such information, representations and statements.

8. Personal data and Privacy

8.1 The Supplier shall comply with all the laws and regulations in relation to the protection of personal data and shall use its best endeavours to keep confidential all the personal, sensitive and health information obtained from the Client.

9. Force Majeure (events beyond the Party's control)

9.1 A party shall not be liable or responsible for any failure to perform, or delay in performance of any of the Party's obligations under this Contract that is caused by events beyond the Party's reasonable control ("Force Majeure Event"). A Force Majeure Event includes (a) strike, lock-out or other industrial action; (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; (d) impossibility of the use of public or private transport; and (e) impossibility of the use of public or private telecommunication networks.

9.2 The Party's performance under this Contract is deemed to be suspended for the period that the Force Majeure Event continues. Nonetheless, the Party shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Contract may be performed despite the Force Majeure Event.

10. Assignability

10.1 This Contract is not assignable or transferrable unless otherwise agreed expressly by the parties in writing.

11. Variation

11.1 Any terms and conditions of this Contract can only be varied by consent in writing from the Client.

12. Governing Law and Jurisdiction

12.1 This Contract is governed by, and shall be construed in accordance with, the Laws of Hong Kong. The parties submit to the non-exclusive law and jurisdiction of the courts of Hong Kong.

Signatures

[If the Client is under the age of 18, his/her parent or guardian must execute the following, for and on behalf of the minor.]

Parent/ Guardian

I, the undersigned _____ (parent/guardian’s name) the parent/legal guardian of the Client, _____ (the Client’s name) hereby execute this Contract for and on behalf of the Client. As the natural or legal guardian of the Client, I hereby agree to bind myself and the Client to the terms this Contract. I represent that I have the legal capacity and authority to act for and on behalf of the Client.

Signature : _____

Name : _____

Relationship with the Client : _____

Contact No. : _____

Address : _____

Date : _____

Client’s signature : _____ Supplier’s signature : _____

Australian Bill of Rights Bill 2017

Article 2

Effect of Bill of Rights on existing rights and freedoms

A right or freedom existing under, or recognised by, any other law may not be taken to have been diminished or derogated from by reason only that the right or freedom is not set out in this Bill of Rights.

Private health facilities

In NSW private hospitals and day procedure centres are licensed under the Private Health Facilities Act 2007 and Regulation. Private health facilities are defined in that Act as being premises at which patients are admitted, provided with medical, surgical or other prescribed treatment and then discharged, or premises at which patients are provided with prescribed services or treatments. Institutions conducted by or on behalf of the State, including public hospitals, and nursing homes are not included in the definition of private health facilities under the Act.

Private Health Facilities Amendment (Cosmetic Surgery) Regulation 2016

Private Health Facilities Act 2007

Published LW 3 June 2016 (2016 No 288)

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the Private Health Facilities Act 2007.

JILLIAN SKINNER, MP Minister for Health Explanatory note

The objects of this Regulation are:

(a) to prescribe cosmetic surgery for the purpose of the definition of private health facility in the Private Health Facilities Act 2007 to ensure private health facilities that perform cosmetic surgery are licensed under and subject to that Act, and

(b) to prescribe licensing standards for such facilities.

This Regulation is made under the Private Health Facilities Act 2007, including sections 4 (1) (definition of private health facility), 5, 10 (1) and 65 (the general regulation-making power) and clause 1 (1) of Schedule 4.

Private Health Facilities Amendment (Cosmetic Surgery) Regulation 2016 [NSW]

Published LW 3 June 2016 (2016 No 288)

1. Name of Regulation

This Regulation is the Private Health Facilities Amendment (Cosmetic Surgery) Regulation 2016.

2. Commencement

This Regulation commences on the day on which it is published on the NSWlegislation website.

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Private Health Facilities Amendment (Cosmetic Surgery) Regulation 2016 [NSW]

Published LW 3 June 2016 (2016 No 288)

[1]Clause 3 Definitions

Insert in clause 3 (1) in alphabetical order:

cosmetic surgery means:

- (a) any cosmetic surgical procedure that is intended to alter or modify a person's appearance or body and that involves anaesthesia (including a Biers Block), or
- (b) any of the following surgical procedures (however described):
 - (i) abdominoplasty (tummy tuck),
 - (ii) belt lipectomy,
 - (iii) brachioplasty (armlift),
 - (iv) breast augmentation or reduction,
 - (v) buttock augmentation, reduction or lift,
 - (vi) calf implants,
 - (vii) facial implants that involve inserting an implant on the bone or surgical exposure to deep tissue,
 - (viii) fat transfer that involves the transfer of more than 2.5 litres of lipoaspirate,
 - (ix) liposuction that involves the removal of more than 2.5 litres of lipoaspirate,
 - (x) mastopexy or mastopexy augmentation,
 - (xi) necklift,
 - (xii) pectoral implants,
 - (xiii) penis augmentation,
 - (xiv) rhinoplasty,
 - (xv) superficial musculoaponeurotic system facelift (SMAS facelift),

(xvi) vaginoplasty or labiaplasty, but does not include any dental procedure.

[2] Clause 3 A Definition of “private health facility”: prescribed services or treatments Insert after clause 3 A (c): (c1) cosmetic surgery, [3] Clause 5 Classes of private health facilities Insert after clause 5 (d): (d1) cosmetic surgery (being a facility licensed for cosmetic surgery), [4] Clause 25 Insert after clause 24: 25 Transitional provision for cosmetic surgery class facilities

A private health facility providing cosmetic surgery is not required to be licensed under the Act as a cosmetic surgery class private health facility until the day that is 9 months after the commencement of this clause.

Private Health Facilities Amendment (Cosmetic Surgery) Regulation 2016 [NSW]

Published LW 3 June 2016 (2016 No 288)

[5] Schedule 2 Licensing standards

Insert after Part 18:

Part 19 Cosmetic surgery class private health facility 81 Application of certain standards

(1) A cosmetic surgery class private health facility must comply with the anaesthesia standards listed in Part 1 of this Schedule.

(2) Clauses 76–80 of this Schedule apply to a cosmetic surgery class private health facility in the same way as they apply to a surgical class private health facility. For that purpose, references in those clauses to a surgical procedure or surgical class procedure are to be construed as references to cosmetic surgery.

(3) A cosmetic surgery class private health facility is not required to comply with subclause (1) to the extent that it carries out either of the following surgical procedures without anaesthesia but is, however, required to comply with the Guidelines on Sedation and/or Analgesia for Diagnostic and Interventional Medical, Dental or Surgical Procedures published by the Australian and New Zealand College of Anaesthetists:

- (a) fat transfer that involves the transfer of more than 2.5 litres of lipoaspirate,
- (b) liposuction that involves the removal of more than 2.5 litres of lipoaspirate.

Competition and consumer act 2010

Competition and consumer act 2010

Act no.51 of 1974 as amended

This competition was prepared on 1 January 2011 taking into account amendment up to act no.148 of 2010

Volume 3 includes: Table of

Content schedules 1 and 2

Note 1

Table of act note

Table of amendment note 2 and 3 table A

The text of any of those amendment not in force on that date is appended in the notes section

The operation of amendment that have been incorporated may be affected by application provisions that are set out in the notes section

(2) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that the supplier will comply with any express warranty or made by the supplier in relation to the goods.

Subdivision B-Guarantees relating to the supply of services

60. Guarantees as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

61. Guarantees as to fitness for a particular purpose etc.

(1) If:

(a) a person (the supplier) supplies, in trade or commerce, service to a consumer; and

(b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the service is being acquired by the consumer; There is a guarantee that the service, and any product resulting from the service, will be reasonably fit for the purpose.

(2) If:

(a) a person (the supplier) supplies, in trade or commerce, service to a consumer; and

(b) the consumer makes known, expressly or by implication, to

(i) the supplier; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the service were conducted or made;

The result that the consumer wishes the service to achieve; there is a guarantee that the service, and any product resulting from the service, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.

(4) This section does not apply to a supply of service of a professional nature by a qualified architect or engineer.

62. Guarantees as to reasonable time for supply

If:

(a) a person (the supplier) supplier, in trade or commerce, service to a consumer; and

(b) the time within which the service are to be supplied:

(i) is not fixed by the contract for the supply of the service; or

(ii) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within reasonable time.

63. Service to which this Subdivision does not apply

This Subdivision does not apply to services that are, or are to be, supplied under:

(a) a contract for or in relation to the transportation or storage of goods for the purpose of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or

(b) a contract of insurance Subdivision C-Guarantees not to be excluded etc. by contract

64. Guarantees not to be excluded etc. by contract

(1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Division; or

(b) the exercise of a right conferred by such a provision; or

(c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.

(2) A term of a contract is not taken, for the purpose of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

64A Limitation of liability for failures to comply with guarantees

(1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 54 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53) to one or more of the following:

- (a) The replacement of the goods or the supply of equivalent goods;
- (b) The repair of the goods;
- (c) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) The payment of the cost of having the goods repaired.

(2) A term of a contract for the supply by a person of service other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to:

(3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.

In determining for the purpose of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters

266 Rights of gift recipients

If a consumer acquires goods from a supplier and gives them to another person as a gift, the other person may, subject to any defence which would be available to the supplier against the consumer:

(a) Exercise any rights or remedies under this Subdivision which would be available to the other person if he or she had acquired the goods from the supplier; and

(b) Any reference in this Subdivision to a consumer includes a reference to the other person accordingly.

Subdivision B-Action against suppliers of service

267 Action against suppliers of services

(1) A consumer may take action under this section if:

(a) A person (the supplier) supplies, in trade or commerce, services to the consumer; and

(b) A guarantee that applies to the supply under Subdivision B of Division 1 of part 3-2 is not complied with; and

(c) Unless the guarantee is the guarantee under section 60-the failure to comply with the guarantee did not occur only because of:

(i) An act, default or omission of, or a representation made by, any person other than the supplier, or an agent or employee of the supplier; or

(ii) A cause independent of human control that occurred after the services were supplied

(1) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) The consumer may require the supplier to remedy the failure within a reasonable time; or

(b) If such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time-the consumer may:

(i) Otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) Terminate the contract for the supply of the services.

(1) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:

(a) Terminate the contract for the supply of the services; or

(b) By action against the supplier. Recover compensation for any reduction in the value of the service below the price paid or payable by the consumer for the services.

(1) The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee if it was

reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.

(2) To avoid doubt, subsection (4) applies in addition to subsections (2) and (3). 268
When a failure to comply with a guarantee is a major failure. A failure to comply with a guarantee referred to in Section 267(1)(b) that applies to a supply of services is a major failure;

(a) The services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or

(b) The services are substantially unfit for purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(c) Both of the following apply:

(i) The services, and any product resulting from the services, are unfit for a particular purpose for which the services were acquired by the consumer that was made known to the supplier of the services;

(ii) The services, and any of those products, cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(a) Both of the following apply

(i) The services, and any product resulting from the services, are not of such nature, or quality, state or condition, that they might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier;

(ii) The services, and any of those products, cannot, easily and within a reasonable time, be remedied to achieve such a result; or

(a) The supply of the services creates an unsafe situation. 269 Termination of contracts for the supply of services

(1) This section applies if, under section 267, a consumer terminates a contract for the supply of services.

(2) The termination takes effect:

(a) At the time the termination is made known to the supplier of the services (whether by words or by conduct indicating the consumer's intention to terminate the contract); or

(b) If it is not reasonably practicable to communicate with the supplier of the services at the time the consumer indicates, by means which are reasonable in the circumstances, his or her intention to terminate the contract.

(1) The consumer is entitled to recover, by action against the supplier of the services, a refund of:

(a) Any money paid by the consumer for the services; and

(b) An amount that is equal to the value of any other consideration provided by the consumer for the services; to the extent that the consumer has not already consumed the services at the time the termination takes effect.

270 Termination of contracts for the supply of goods that are connected with terminated services

(1) If:

(a) Under section 267, a consumer terminates a contract for the supply of services; and

(b) A person (the supplier) has supplied, in trade or commerce, goods to the consumer that are connected with the services; the

(c) The consumer is taken to have rejected the goods at the time the termination of the contract takes effect; and

(d) The consumer must return the goods to the supplier of the goods unless:

(i) The goods have already been returned to, or retrieved by, the supplier; or

(ii) The goods cannot be returned, removed or transported without significant cost to the consumer because of the nature of the goods, the failure to comply with the guarantee to which the rejection relates, or because of the size or height, or method of attachment, of the goods; and

(e) The supplier must refund:

(i) Any money paid by the consumer for the goods; and

(ii) An amount that is equal to the value of any other consideration provided by the consumer for the goods.

(2) If subsection (1)(d)(ii) applies, the supplier must collect the goods. At the supplier's expense.

Consumer Guide to barbering and Cosmetology Services

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Introduction

The board of barbering and cosmetology is part of the department of consumer affairs. The Board regulates the professions of barbering , cosmetology (including skin and nail care), and

electrology in the state of California, as well as the establishment (salons, shops, studios, spas, etc.) where these services are performed.

Anyone who provides the following services to consumer for ad fee must be licensed by the board: Hairdressing and styling, haircutting, shaving, manicuring, removing unwanted hair, skin care, and the application of cosmetics. In order to be licensed, individuals must complete an approved number of hours of coursework and practical training, and pass a written apractical (hands-on) test.

The board licenses the salons and barershops where these service are provided, and also regulates health and safety coursework issueses in approved barber, cosmetology, and schools. The board handles the following consumer complaints: Gross negligence and/ or incompetence, unsanitary conditions in salons, barershops,and and schools of barbering, cosmetology, and electrology; the unlicensed practice of barbering, cosmetology, and electrology; the operation of unlicensed salons or barershops; and misrepresentation or false advertising of services.

This booklet is being provided to you, the consumer, so that you can make informed decisions when seeking barbering, cosmetology, or electrology; service in California.

Health and safety guidelines

The board of barbering and cosmetology's health and safety guidelines are listed below in this document. The law and regulations from which these guidelines are taken are printed health and safety posters that must be displayed in the reception area of all licenses salon, barershops, and and schools. Every licensess must follow the health and safety law in order to ensure consumer protection. When these laws are not followed, consumers may face risks, such as contracting various infections, fungus, etc.

On your next visit to a salon or barershops to receive cosmetology, or electrology, or barbering service (a haircut, manicure, waxing, electrologysis, etc), look around to see if the salon or barershopsis complying with the following health and safety guidelines;

Is the overall appearance of the shop clean? Are the sinks dirty? Are the trash cans overflowing?

Are the establishment license and health and safety poster displayed in clear view in the reception aeea? Is the establihment license curent?

Are current operator licenses posted in plain view at individual work stations?
(Photocopies are not acceptable.)

Are the operators performing only those services for which they are licensed? For example, manicurists and estheticians cannot provide hair services, and barbering and cosmetology licensees are not allowed to perform certain procedures, such as laser hair removal, which is considered a medical procedure.

Are the operators properly disinfecting their instruments between clients? Did you see the operator disinfect the instruments after they were used on the client before you? Instruments must be cleaned with soap and water and then totally immersed in an EPA-registered disinfectant that has demonstrated bactericidal, fungicidal, and virucidal activity. The disinfectant container must be covered, and the disinfectant must be used according to manufacturer's instructions.

Does the basin of the footspa look clean? Don't be afraid to ask the operator if he or she has removed the jets and screen during cleaning. Is the electrology equipment sterilized by a steam or dry heat sterilizer that is registered with the FDA? Are disposable needles/probes available? Ask the operator.

Are items that cannot be disinfected, such as emery boards, cotton pads, nail files, nail buffers, etc., immediately thrown away after use on clients? Note; Some nail files can be disinfected and don't have to be thrown away.

Are clean items stored separately from soiled ones at the operator's work station? Are they labeled to identify them as clean or dirty? Are combs and brushes clean? Are manicuring instruments stored in a clean place and not hanging on the side of a cup or jar? Make a note as to where they place tools that were just used on you.

Before making an appointment

Before you accept barbering, cosmetology, or electrology service, be sure that the salon or barbershop and the operator are in compliance with the following guidelines;

The establishment and all operators must have licenses issued by the board of barbering and cosmetology. All operators must have their licenses in plain view at their work station. The salon license and the health and safety poster must be displayed in the reception area.

The establishment must have clean, working equipment and a clean work area. Regulations require licensees to wash and disinfect all tools and instruments, including whirlpool foot spas, before they can be used on customers. An operator should never use the same tools on you that were just used on someone else without first disinfecting them. If an item cannot be disinfected (such as a nail buffer or an emery board), it must be thrown away immediately after use. If a clean set of tools is not available for use on you, do not allow the operator to perform the service. Improper disinfection of tools and implements can spread disease and bacteria from one person to another, for example, the spread of nail fungus during a manicure or pedicure.

NOTE; You have every right to ask the operator to explain the disinfection procedures before a service begins. Many viruses can be transmitted through the use of dirty instruments, including HIV and hepatitis B. Don't risk health. If the disinfection procedure doesn't sound right to you, you should refuse the service.

Whirlpool foot spas are required to be cleaned and disinfected after each use by a client, at the end of each day, and every other week. In addition, a log must be kept that records the date and time of each cleaning and disinfecting, and whether the cleaning was daily or bi-weekly. This record shall be made available to clients and board representatives upon request. There have been reported cases of clients contracting bacterial infection from foot spa. Individuals have been left with permanent scars covering their legs as a result of these infections.

Electrologists are required to sterilize their reusable needles/probes and tweezers with either a steam sterilizer or a dry heat sterilizer approved by the federal food and drug administration. (FDA) Some electrologists use disposable needles/probes and throw them away after each client. Some cosmetologists and manicurists may also use steam sterilizers or dry heat sterilizers to disinfect their metal instruments. Ultraviolet light sterilizers are not adequate for disinfectant purposes.

In addition to disinfecting tools and instruments, operators are required to wash their hands between clients. Before beginning nail care service, operators should also ask their client to wash their hands.

Talk with your operator before the service begins so that you both have an understanding of the desired results. Be honest. If you already have color or other chemicals on your hair, tell the operator. If you have had problems in the past with artificial nails, tell the

manicurist. Tell the operator if you are taking any medication, since this could affect the outcome of the service. When you pay for the service, be sure to insist on a receipt. If something goes wrong and you must file a complaint, the receipt will help you prove that the service actually took place and may help identify the operator who performed it. (If the operator accepts payment by check or credit card, also keep your cancelled check or credit card slip.)

Barbering and cosmetology service should not be painful. You should report any side effects or unpleasant experiences associated with a service to your operator and to the board immediately.

Deciding on a service/ selecting a salon or barbershop

You'd like a change but aren't exactly sure what you're looking for. Maybe you'd like a permanent wave to add body to your straight hair, or a chemical relaxer to aid in styling your overly curly hair. You might be thinking about getting a completely different hair color for your next job interview. Or, maybe you're thinking of getting artificial fingernails or having a relaxing pedicure. If you're not sure what you want, the best thing to do is be observant. Look through magazines and cut out photos of styles and colors you find pleasing. Be a people watcher. If you see a style or color you like, notice the wearer's face shape or eye and skin coloring. Is it close to your own? Take notes so that when you decide to take that big step, you'll have an idea of what you want and can discuss your options with your operator.

The simplest and best way to find a reputable salon or barbershop is to ask friends, family, or coworkers. Ask them if they are satisfied with the service they receive. Whether you select an operator through word of mouth or by advertising, or just take a chance on a new salon or barbershop, take the time to ask about the operator's experience with all the service that interest you. Seek the operator's professional opinion, but don't let that be the final word. If you don't feel comfortable with what the operator suggests, don't feel pressured to get the service at that time. A second opinion can be just as important here as in other areas of your life.

All beauty and barber service must be provided in licensed salon or barbershops by licensed individuals who have received state-required training and have passed a state test in their specialty. Barbers can provide hair and limited skin care service. Cosmetologists can provide hair, skin, and nail care service. Manicurists can only provide nail care service, and estheticians can only

provide skin care service. Electrologists can remove unwanted body/ facial hair using electric needles or probes.

All licensees are required to display their license at their primary work stations. You have every right to ask to see the license if it is not visible.

If the salon or barbershops won't show you an establishment license, you don't know whether the shop is complying with the board's health and safety guidelines. If the individual operator doesn't show you a license, you can't tell if he or she has had the required training to provide the service without harm to you.

For your protection, check out the licenses. If you don't see them and they aren't show to you when you ask, walk out and find another salon or barbershop operator.

To verify a license, call the department of consumer affairs at 800/952-5210 or visit the web site. The board can tell you if a license is current and when it was issued.

Scopes of practice/ types of service

The various licensed barbering and cosmetology services are described below, along with special requirements and consumer precautions

Barbering

Barbering is the practice of shaving or trimming the beard or cutting the hair and giving facial and scalp massages with oils, creams, lotions, or other preparations, either by hand or with the use of mechanical appliances. Barbers are also trained in styling, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics. Barbers also apply cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, or neck. In addition, barbers are trained in the styling of all textures of hair. In California, barbering services may be legally performed only by state-licensed barbers in state licensed salons or barbershops.

State-licensed cosmetology and barbers may perform some common services; however, some services such as shaving can only be performed by barbers. Barbershops are most easily identified by the traditional symbol known as the barber pole. It is an unfair business practice for barbershops or salons to display the barber pole if a barber is not employed at that location.

A common tool that you will see in most barbershops is electric. Like all other tools or equipment used on a client, these must be disinfected prior to each use with an environment

protection agency (Epa) –registered disinfectant that has demonstrated bactericidal, fungicidal, and virucidal activity. The disinfectant container must be covered, and the disinfectant must be used according to manufacturer’s instruction. Many clippers have a detachable blade. It is not uncommon to see a barber disinfect electric clippers by removing the blade, cleaning away any foreign matter, then spraying the blade with an approved disinfectant. Make sure your barber uses only clean, disinfected equipment on you during any service.

Cosmetology

The practice of cosmetology is all or any combination of the following: Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleaning, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, applying hair tonics, beautifying, or otherwise treating by any means the hair of any person in California, cosmetology services may be legally performed only by state-licensed cosmetologists in state-licensed salons or barbershops. Licensed cosmetologists may also perform manicuring and esthetics as described in the following sections.

Manicuring

Manicuring the practice of cutting, trimming, polishing, coloring, tinting, or cleansing the nails, or massaging, cleansing, treating, or beautifying the hands or feet of any person in California, manicuring and pedicuring services may be legally performed only by state-licensed manicurists and cosmetologists in state-licensed salons or barbershops.

Are Artificial Nails for You?

Whether you will be happy with artificial nails depends on several factors, including your lifestyle and the type and length of nails you choose. In addition, you may discover that you have an allergic reaction to the chemicals in artificial nail products. Different types of artificial nails may be applied to natural nails to enhance their length and make them stronger. The most common types are acrylic and fiberglass applications. Some people are hard on their nails and hands because of their jobs or lifestyles, and are not good candidates for artificial nails. Speak to your manicurist or cosmetologist. Discuss what your hands go through in a normal day and ask for suggestions. You may decide that a plain manicure is the best service for you.

Nail Lifting, Fungus

Sometimes, the artificial nail begins to lift around the edges, allowing moisture to get trapped under it. Left untreated, mold or fungus (causing a green or brown discoloration) may begin to grow. If this occurs, your manicurist or cosmetologists should remove the artificial nails immediately and refer you to your doctor. Do not have the nails reapplied until your natural nails are completely healthy. Without proper treatment, these conditions could result in a permanent deformity of the nail. It should not be painful to have artificial nails removed. If the process causes you any pain or discomfort, tell your operator.

Electric Nail Drills

Electric nail drills are often used to file artificial nails. A licensed manicurist or cosmetologist may sometimes use a drill on natural nails, but only if the drill is designed for use on natural nails and the operator follows the manufacturer's directions. The drill bits on these devices must be disinfected before use. If your operator uses a drill bit (or any other implement) that has not been properly disinfected, you run the risk of contracting an infection. Sandpaper-type drill bit coverings, if used, must be thrown away after use on each client.

Pedicuring

Pedicuring can be a great source of pleasure for consumers, and a welcome relief to those who have trouble tending to their own feet. However, it is important to be aware of what a manicurist may and may not legally do. Pedicuring falls under the practice of manicuring (nail care) and includes cutting, trimming, polishing, coloring, tinting, or cleansing the toenails. It also includes massaging, cleansing, treating, or beautifying the feet. A licensed manicurist cannot perform any type of waxing. Waxing can only be performed by a cosmetologist or esthetician.

The Board of Barbering and Cosmetologist's laws and regulations prohibit licensed operators and students from working on a person with an infection or communicable disease and from massaging any person's skin if it is inflamed or infected, or where an eruption is present. Thus, if a client has athlete's foot, eczema, or other similar conditions, the manicurist must, by law, refuse the service in order to protect other customers. (it is illegal for licensees to use certain instruments and techniques during pedicures. See "illegal Instrument and Techniques".)

Before receiving any nail care service, you should inform the licensee if you are diabetic, have a peripheral vascular disease (such as arteriosclerosis), or are taking any blood-thinning medication, including daily doses of aspirin. This will alert your manicurist to take special precautions.

In October 2000, health officials received complaints about a large outbreak of skin boils from consumers who has received pedicures. It was determined that the boils were caused by contaminated whirlpool footspas that were not being properly cleaned and disinfected after each client. A footspa is a single piece of equipment that a consumer sits in, then places her or this feet in a built-in yub. These footspas often come with vibrating and heating pads built in to the chair. The skin boils usually start out looking like a spider bite that gradually grows in size and eventually produces pus. These infections are caused by *Mycobacterium fortuitum* and other related mycobacteria. We come into contract with this type of bacteria every day, because it is normally found in water and soil. Such infections are relatively rare. If a salon's whirlpool footspas are cleaned and disinfected properly and in accordance with the new regulations adopted by the Board, the risk of these infections is very small. These types of infections can be treated with antibiotics.

If you do notice a skin infection, go to your doctor immediately and tell him/her that you have had your legs in a whirlpool footspa. The doctor can take a small biopsy of a boil to test for mycobacterial culture. Also, you may call the Board of Barbering and Cosmetology at 800/952-5210 to file a complaint, or you may file a complaint online.

You should never recive a pedicure if you have shaved your legs within 24 hours of receiving yhe service, or if you have open sores or cuts on your feet or legs. This will heip prevent the contraction of any bacteria. Always ask the licensee if the footspa has been disinfected after each client. The mycobacterium fortuitum leaves permanent sccars and can be very painful.

Esthetics

Esthetics is the practice of performing facials, applying makeup, giving skin care, or beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams. It also includes applying eyelashes or removing hair by tweezing, depilatories, or waxing. (it is illegal for estheticians to pierce the skin during any service or to administer any medications for pain control. See "Illegal instruments and Techniques".)

NOTE: People who only demonstrate, recommend, or sell cosmetics are not required to be licensed by the Board of Barbering and Cosmetology and may not receive (or expect) any compensation from clients for product application. In California, esthetics services may be legally performed only by state-licensed cosmetologists and estheticians (known as cosmeticians prior to July 1992) in state-licensed salons or barber shops.

Electrology

Electrology is the removal of unwanted facial and/or body hair by use of a tiny needle or probe that conducts electric current. In California, electrology service may be legally performed only by state-licensed electrologists in state-licensed salons or barber shops. Cosmetologists and estheticians may not remove unwanted body/facial hair by electrology, but they may remove superfluous hair from clients by several other means. (This does not include laser hair removal devices or any other device labeled by the federal FDA as a "medical device")

It is common for the skin to be slightly red and irritated for up to several hours after electrology. If you have more severe symptoms, like large scabs or blistering, or if symptoms last for several weeks, check with your doctor. Be sure that the service you're paying for is actually electrology and not simply electronic tweezing, which may not permanently remove the hair. Licensed electrologists may not administer any type of medication for pain control.

Chemical

Chemical services such as permanent waving, and hair lighting or coloring all cause permanent changes to the hair. When done correctly, these services can make us look terrific. When done incorrectly, these same services can make us look and feel terrible. In California, chemical hair care services may be legally performed only by state-licensed cosmetologists and barbers in state-licensed salons or barber shops.

If you are going to have chemical services done, and your hair is in questionable condition, ask the operator to do the proper test before performing the service. For permanent wave service, a preliminary test curl may be done. This type of test will help determine how the hair will react to a permanent. It is usually done on tinted, bleached, or overporous hair, or on hair that shows signs of damage; A test curl also indicates actual processing time and curl results based on size and the product used.

For color services, the operator may perform a strand test. This pretest is given before the treatment to determine development time, color-result, and the ability of the hair to withstand the effects of chemicals. If hair is color-treated, or if you are visiting a new operator, ask for a strand test to ensure the quality of service and the desired result. If the product is an aniline derivative (also known as “patch test”). A predisposition test involves applying a small amount of the product to your skin to determine if you may be sensitive to the chemicals. Nearly all manufacturers of chemical products recommend that a predisposition test be performed 24 hours before the desired chemical service to determine whether or not the client could be allergic to the product. There may be a charge for a consultation or pretest, so be sure to ask in advance.

For all chemical service, a towel and/ or other sanitary neck strip must be used to keep the full-length protective covering (i.e., shampoo cape, drape, snock, etc.) from coming in direct contact with a client’s skin. The towel will also protect the client from solution that may drip during the service. (The operator may also spread petroleum jelly on the skin to help protect it.) The towel must be changed frequently. If it is too wet, it cannot absorb more liquids. If it has absorbed chemical drips, prolonged exposure to it can burn your skin. The chemical solution must be removed from the skin immediately on contact. If you feel chemicals dripping onto your skin or any burning sensation, inform the operator.

Although some chemicals may have strong odors, they should not cause you discomfort, and salons and barbershops should have adequate ventilation to keep the odors from lingering. If the chemical odor causes you any discomfort, immediately inform the operator. Because the chemical application causes a change to your hair, it is imperative that the hair be allowed to adjust before it is shampooed. Heed your cosmetologist’s or barber’s advice to wait so many days (or hours) before you shampoo or use any hot implements on your hair. Otherwise, you could severely damage it.

Chemical Exfoliation

Chemical exfoliation (also known as “skin peels”) is a process by which layers of facial skin are removed with commercially available products. Various acids are applied to the face for a few minutes a day over several days. The skin reddens as if sunburned, then darkens and peels away, revealing a layer of sensitive, new skin. Recovery time varies from days to weeks or even longer, depending upon the depth of the peel. Chemical exfoliation is done to smooth wrinkles, reduce scars and blotchy areas, and improve the overall appearance of normal skin.

In California, chemical exfoliation services may be legally performed only by state-licensed cosmetologists and estheticians in state-licensed salons and barbershops, or by plastic surgeons and dermatologists in medical offices.

NOTE: The chemicals used by physicians are usually stronger than those used in salons and penetrate deeper layers of the skin. Any skin peel product with a strength greater than 40% by volume should be used only by medical professionals.

Chemical exfoliation is not the same as “deep cleaning” facials, also known as masks or facial packs. Deep cleaning facials simply clean the pores and slough off dead surface cells, leaving the skin in a softer condition. Board of barbering and cosmetology licensees are restricted by law to the use of commercially available (prepackaged) products designed for removing only the uppermost (dead) layers of the skin. Any service requiring greater skin penetration must be done by a medical practitioner. Cosmetologists and estheticians are prohibited by law from mixing or combining skin removal products, unless specifically required by the manufacturer’s directions on the commercially available (prepackaged) product.

When performed properly by a well-trained practitioner, chemical exfoliation is usually safe; however, a significant potential for harm does exist. The chemicals used for the exfoliation procedure usually consist of one or more active ingredients, such as resorcinol, phenol, alpha and beta hydroxy acids, lactic acid, and salicylic acid. These acids act by destroying skin tissue. Even a fairly mild acid left in contact with the skin for a prolonged period may do considerable.

Because of potential for skin damage, especially if exfoliation is done improperly, it is essential to be absolutely sure that your skin care practitioner is well-trained and licensed before you schedule this procedure, follow these tips:

Ask for names of satisfied customer who have received this procedure. Call them (or have them call you) and ask if they were satisfied with the service and if there were any complications.

Ask what changes will occur in your skin during each phase of the procedure and how it will feel, Ask to be shown actual photographs (not just advertising brochures) of the licensee’s clients during the various phases of the exfoliation service.

Thoroughly discuss all aspects of the procedure with your practitioner, especially safety issues, hazards, skin types, and any conditions that may increase risks. If you have any doubts about the procedure or about your skin care practitioner's abilities, do not have the service performed.

Advise the operator of all medications you are taking, particularly accutane(r), Retin any other acne medications.

Ask to see the product to be used, and find out if it is a commercially prepared product. Ask if the licensee will be mixing any chemicals before they are applied to the skin. If in doubt, ask to see a copy of the product manufacturer's instructions.

Call your doctor immediately after the procedure if you experience any symptoms that are more severe than those explained to you by the licensee. If you have to seek medical attention, take photos of the affected area as proof in case it turns out you have been harmed.

Electronic muscle stimulators

Electronic muscle stimulator (EMS) devices supply electrical energy to the body surface through plates, pads, or other attachments and cause contraction of the muscles. In California, muscle estheticians, and barber may use electrical equipment to give facials or to help creams or lotions penetrate into the skin, but they must be set so that they promote muscle stimulation, not muscle contraction. Only licensed medical practitioners may use EMS devices to stimulate and contract the muscle to relax a muscle spasm, prevent tissue atrophy, increase local blood circulation, or for other purposes. Use of these devices by cosmetologists, estheticians, or other nonmedical persons for body toning, muscle firming or tightening, passive exercise, reducing or eliminating "cellulite", girth reduction, and similar application is considered unsafe and fraudulent by the FDA. EMS devices have a great potential for if used improperly.

Excessive electrical stimulation can aggravate existing medical conditions such as cancer, heart and circulatory diseases, and epilepsy and may produce adverse reactions requiring immediate medical assistance. If a cosmetologist or esthetician uses electrical devices while performing a service on you, make sure he or she uses all safety precautions necessary for your protection. Do not allow a licensee of the Board to apply any electric equipment to your skin if you have a cardiac condition or metal implants unless you have the consent of your physician.

NOTE TO LICENSEES: To find out if a device is intended to contract the muscles, ask the manufacturer or representative and check the manufacturer's brochure. Beware of device that

advertise “passive exercise”, “slimming”, “cellulite removal”, etc. These are service, by their very nature and title, that would require muscle contraction to produce the advertised result. Ask the representative to demonstrate the device for you. A muscle contraction can be seen with the naked eye the muscle “jumps” when the current causes it to visibly shorten and thicken.

In-home service

California law requires all barbering, cosmetology (including skin care and nail care), and electrolysis service administered for compensation to be performed by a California-licensed operator in a licensed salon or barbershop, or by a student in an approved school. However, the law allows licensees from licensed salon to provide in-home service in cases where illness or other physical or mental incapacitation prevents the customer from visiting the licensed salon or barbershop.

If you need in-home service, call your operator at the shop. Explain that you are ill or incapacitated and ask if your operator or any other licensee at the salon would be available to provide in-home service. The time and date of your in-home service will then be logged into the salon or barbershop’s official appointment book. Look providing in-home service must follow all of the board of barbering and cosmetology’s health and safety laws and regulations.

Patients in convalescent home

If you are arranging in-home barbering or cosmetology service for someone in a convalescent home or skilled nursing facility, be sure to make the appointment with a licensed individual from a licensed establishment. Do not accept service from anyone who does not follow state health and safety guidelines. It is particularly important to tell the operator what medications the client is currently taking and to inform him or her of the client’s disabilities or special needs.

If the client has difficulty communicating or is limited in other ways, you may wish to stay nearby during the service. NEVER ask the licensee to treat medical conditions such as ingrown toenails or corns. These must be treated by medical personnel only.

Unregulated Services

The following services are not regulated by the Board of Barbering and Cosmetology, even though they may be performed by a Board licensee in a salon or barbershop setting. The Board does not establish any specific sanitation, training, or minimum competency standards for these services, and licensees cannot lead consumers to believe they have been licensed by the Board to

provide them. Before you have any of these services done, find out what type of training the individual has received, and ask for references.

CAUTION: With unregulated services, you may not always get the results you want.

Permanent Cosmetics/Body Piercing/Tattooing

The Board does not regulate the application of permanent cosmetics, body piercing, and tattooing, however, effective January 1, 1998, Assembly Bill 186 (Brown, Chapter 742, Statutes of 2007, Health and Safety Code) established sterilization guidelines and requires county health departments to conduct annual inspections of establishments offering these services. This law requires that practitioners are required to register with their local county health departments.

Tanning Salons

The Board does not regulate tanning salons, although some licensed establishments do have tanning booths. All tanning salons and tanning booths in salons licensed by the Board must operate in compliance with the Filante Tanning Act, and licensees must warn consumers of the dangers associated with the use of tanning beds.

Aroma/Massage Therapists

Individuals who provide aroma or massage therapy are not regulated by the Board but must comply with applicable local regulations.

Illegal Instruments and Techniques

It is illegal for barbers, cosmetologists, and electrologists licensed in California to use certain instruments, such as “Credo” blades (tools fitted with razor blades), “cheese grater” type instruments, or scalpel type blades to remove dead skin or shave calluses during pedicures. Licensees are also prohibited from using needlelike instruments, such as lancets, to extract skin blemishes or to perform similar procedures. It is illegal for these instruments to even be in a salon or barbershop.

Some manicurists and cosmetologists who perform artificial nail service may use a product known as liquid methyl methacrylate monomer (LMM/MMA). The FDA discourages the use of this chemical in fingernail products. Although LMM/MMA is difficult to detect because it is not visually distinguishable from other regular nail acrylic products, consumers should be aware of the following warning sign; A very strong and strange odor different from regular acrylic nail products, very hard nails that may be difficult to file, and artificial nail that will not easily soak off

in solvents. You could have a severe allergic reaction to products containing this chemical, and there is the potential for dangerous nail infections resulting from breaks in the natural nail. When LMM/MMA is used, the acrylic nail adheres so strongly to your natural nail that it may cause the natural nail to be removed from the nail bed under extreme pressure. The board of barbering and cosmetology recommends that you do not allow this chemical to be used on you.

Consumers should also be aware that licensees cannot legally give injections

Or apply any topical prescription medications. If a licensee offers these services, for example for pain control during electrolysis or permanent cosmetic tattooing, you should decline.

Laser hair removal

Laser hair removal is currently being advertised as a popular technique; however, it is illegal for any board licensee to perform this service. The equipment used to perform laser hair removal is classified as a “medical device” by the FDA, and use of these machines is considered the practice of medicine. Laser hair removal may be performed only by a physician or by a registered nurse or a physician’s assistant who is working directly with a physician.

Waxing

Only licensed cosmetologists and estheticians may perform waxing. Manicurists cannot perform waxing. If you receive waxing services, always look at the wax and the container that is holding the wax— make sure that it is clean and kept in a sanitary manner. An example of unsanitary operation is if the operator is re-dipping the instrument (stick) into one big wax container and then applying that wax onto your skin. Anything that cannot be disinfected before it comes into direct contact with a person needs to be disposed of in a waste receptacle immediately after use. This includes the wax and the instrument(s) used to apply the wax.

How to File/Resolve a Complaint

If you are unhappy with the services you received, first discuss your concerns with the operator, manager, or owner of the salon or barbershop. Many complaints can be quickly resolved this way, and you may be given a refund or corrective services at no cost. However, you should be aware that many individuals in the beauty industry are independent contractors who rent booth space from the salon or barbershop owner. Because these operators are not employees, the salon or barbershop owner may not have control over the quality of the services rendered or the authority to demand that they provide a refund.

NOTE: The Board cannot recommend a business or product or resolve “buyer’s remorse”.

If you are injured by any licensee of the Board, discuss what happened with the operator and salon or barbershop owner. Take photographs of the injury and have another professional look at it to provide independent confirmation. Seek medical attention if necessary, and always file a complaint with the Board of Barbering and Cosmetology (see the following).

If you feel that a barber, cosmetologist, manicurist, or other licensee has violated state health and safety guidelines, call the Department of Consumer Affairs’ Consumer Information Center at 800/952-5210 and request a complaint form. Complaint forms are also available online on the Board’s web site. Board representatives will review your complaint and determine the appropriate course of action to resolve the issue and/or obtain salon/barbershop/operator compliance with the laws and regulations. You may also file a complaint to report unlicensed activity, false advertising, or fraud.

The Bottom Line ...

If you’re not comfortable with what you see in a salon or barbershop, the best thing you can do is leave. Find another salon or barbershop that follows the Board’s health and safety guidelines. Beauty and barbering services should not hurt or injure you, or put you at risk of infection.

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Article 3. Apprentice

Title 16, Division 9, California Code of Regulations

Board of Barbering and Cosmetology

913. Approval of Apprentice Training Program

(a) A joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer wishing to conduct apprenticeships in barbering, cosmetology, electrology, skin care, or nail care shall be known as apprenticeship program sponsors.

(b) An applicant seeking board approval as an apprenticeship program sponsor to conduct apprenticeships in barbering, cosmetology, skin care, nail care, or electrology shall:

(1) Submit a written request for board approval of its apprenticeship program and identify the subject matter of the apprenticeship. The request for apprenticeship approval shall be signed by the individual employer or, where the program sponsor is not an individual, by a responsible officer of the organization.

(2) Submit proof that the program sponsor is approved by the California Apprenticeship Council to offer the apprenticeship.

(3) Submit a detailed outline of the proposed training program which demonstrates compliance with the apprenticeship regulations contained in this article.

(4) Submit a copy of the agreement between the program sponsor and the apprentice (hereafter known as the "apprenticeship agreement"). The apprenticeship agreement shall comply with the provisions of the Shelley-Maloney Apprenticeship Labor Standards Act of 1939 (Labor Code section 3070 et seq.) and the regulations adopted pursuant thereto.

(c) An apprenticeship program sponsor shall notify the board within 10 days of any changes to the information filed with the board in accordance with subsection (b) of this section for board approval.

(d) The board shall inform every person applying for approval to act as an apprenticeship program sponsor in writing, within ten (10) days of receipt of their request for approval whether the application is complete or deficient and what specific information is required.

(1) When the information for a deficient application is returned to the board, the board shall decide within five (5) days of receipt whether the application is complete.

(2) If the application remains deficient, the board shall inform the applicant in writing, within five (5) days of receipt, of what specific information is required.

(e) The board shall notify the applicant, in writing, within thirty-five (35) days after the completed application has been received, whether the applicant meets the requirements for approval.

(f) The minimum, median and maximum times for processing a request for approval of an apprentice training program, from the time of receipt of the application until the Board of Barber Examiners decided to issue the approval based upon actual performance of the board during the two years preceding the proposal of this section, were as follows:

(1) Minimum: 1 day

(2) Median: 15 days

(3) Maximum: 48 days

NOTE: Authority cited: Section 7312, Business and Professions Code and Section 15376, Government Code. Reference: Section 7333, Business and Professions Code; Sections 3070 and 3078, Labor Code and Section 15376, Government Code.

Article 9 Licenses

Title 16, Division 9, California Code of Regulations

Board of Barbering and Cosmetology

965. Display of Licenses

(a) All operators' licenses shall be conspicuously posted at their primary work stations.

(b) All establishment licenses shall be conspicuously posted in the reception areas.

(c) No license which has expired or become invalid for any reason whatever shall be displayed by any person in connection with the practices as defined in Section 7316 of the Business and Professions Code. Any license so displayed shall be surrendered to the board upon its request.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7316, 7317, 7332, 7342, 7397, 7414, 7415, 7417, 7418, 7419, and 7420, Business and Professions Code.

965.1. Persons Exempt from Application of Chapter; Demonstration of Products

For the purposes of Section 7319 (e) of the Business and Professions Code concerning persons exempt from the Barbering and Cosmetology Act, the term "demonstrating" means to perform a one-time service on a consumer, without compensation, to show how that product is used or to prove its value or effectiveness, with the intent that the consumer may later purchase and apply

the product him- or herself, without the help of a licensee or product instructor, and the purchase price of the product charged to the consumer is no more than its average retail price.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7316 and 7319, Business and Professions Code.

980.2. Procedures for Cleaning and Disinfecting Pipe-Less Footspas.

(a) As used in this section, "Pipe-Less" "pipe-less" footspa is defined as any unit with footplates, impellers, impeller assemblies and propellers. Page 6 of 17

(b) After use upon each client patron, each Pipe-less pipe-less footspa 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 residue from the impeller, footplate, inside walls of the basin, and/or other components and the areas behind or under each with a clean brush, and liquid soap (labeled as such on soap product) and water. Rinse with clean water.

(4) Reinsert the properly cleaned footplate, and/or 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 which 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 pipe-less footspa 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 which 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), and the disinfectant solution in each pipe-less footspa 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 to 10 hours. Page 7 of 17

(2) After the disinfectant solution has been sitting between at least 6 to 10 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 patron or a board representative.

(f) A whirlpool footspa "Not in Service" must have a notation on the pedicure equipment-cleaning log that the footspa is not in service. The footspa must have a "Not in Service" sign displayed upon 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 pipe-less footspa 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. (7) Amend Section 980.3 to read as follows: § 980.3. Procedures for Cleaning and Disinfecting Non-Whirlpool Foot Basins or Tubs.

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

(b) After use upon each client patron, each Non-Whirlpool Basin or Tub 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 residues with a clean brush, and 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 which 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. Page 8 of 17

(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 patron 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.

981. Instruments Tools and Supplies.

(a) All tools instruments and supplies which come into direct contact with a client patron and cannot be disinfected (for example, including, but not limited to buffers, pumice stones, wax sticks, toe separators, gloves, cotton pads, sponges, emery boards, and neck strips) shall be disposed of in a waste receptacle container immediately after use on a single use 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 instrument 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. (10) Amend Section 982 to read as follows: § 982. Sterilizing Electrolysis Instruments Tools. (a) Before use upon a client patron in schools and establishments, all electrolysis tools that can be sterilized, excluding single-use, pre-sterilized, disposable needles/wire filaments, each electrolysis needle or tweezers shall be first cleaned with detergent and water (which may include the use of ultrasonic equipment) and then 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) Steam sterilizer Autoclave, registered and listed with the federal U.S. Food and Drug Administration (FDA), used according to manufacturer's instructions. (B) Dry heat sterilizer, registered and listed with the federal U.S. Food and Drug Administration (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. Page 10 of 17 (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." (b) (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.

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

(b) Every licensee or student performing services shall thoroughly wash his or her hands with soap and water or any equally effective alcohol-based cleansing agent hand-cleaning product immediately before serving each client patron. Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code. (12) Amend Section 984 to read as follows: § 984. Disease and Infestation. (a) No establishment or school shall knowingly permit a licensee or student person afflicted with an infection or parasitic infestation capable of being transmitted to a client patron to serve clients patrons or train in the establishment or school. Page 11 of 17 (b) No establishment or school shall knowingly require or permit a licensee or student to work upon a client person 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 patron 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 physician or 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 massage any person 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. Page 12 of 17 (13) Amend Section 985 to read as follows: § 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 patron's neck. Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code. (14) Amend Section 986 to read as follows: § 986. Neck Dusters and Brushes. (a) Before use on a client, neck or nail Neck dusters and all other manicure brushes that are used in an establishment or school on a client patron shall be maintained in a clean and sanitary condition. cleaned in the following sequential manner:

- (1) Remove all visible debris.
- (2) Clean with soap or detergent and water.
- (3) Dry dusters or brushes.
- (4) Store all clean dusters or brushes in a clean, covered place which 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 which 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". Page 13 of 17 Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e)(d), Business and Professions Code. (15) Amend Section 987 to read as follows: § 987. Towels.

(a) After a towel, sheet, robe, linen or smock has once been used once, it shall be deposited in a closed container receptacle 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 water at least 140 160o degrees F for not less than fifteen (15) twenty-five (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. (16) Amend Section 988 to read as follows: § 988. Liquids, Creams, Powders and Cosmetics.

(a) All liquids, creams, waxes, shampoos, gels and other cosmetic preparations shall be kept in clean, and 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 patron, 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). Page 14 of 17

(d) Pencil cosmetics shall be sharpened before each use. Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code. (17) Amend Section 989 to read as follows: § 989. Prohibited Hazardous Substances/Use of Products. No establishment or school shall: (a) have Have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is disapproved by the FDA. (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. Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code. (18)

Amend Section 990 to read as follows: § 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 patron.

(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 sanitary condition at all times.

(c) Treatment tables must be covered with either a clean sheet of examination treatment table paper, a clean towel or a clean sheet, after each use. for each patron. 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. Page 15 of 17 (19) Amend Section 991 to read as follows: § 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. perform any act which affects the structure or function of living tissue of the face or body. Any such act shall be considered an invasive procedure.

(b) Invasive procedures include, but are not limited to, the following:

(1) Application of electricity which visibly contracts the muscle.

(2) Application of topical lotions, creams, serums or other substances which affect living tissue 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 non-living, epidermal layers.

(5) Removal of skin by means of a razor-edged instrument 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. (20) Amend Section 992 to read as follows: § 992. Skin PeelingExfoliation.

(a) Only the non-living, uppermost layers of facial upper layer of the skin, known as the epidermis, may, by any method or means, be removed, and then only for the purpose of beautification improving the appearance of the skin.

(b) Skin removal techniques and practices which result in destruction of living tissue beyond the epidermal layer of the skin is prohibited. affect the living layers of facial skin, known as the dermis, are prohibited and constitute the practice of medicine.

(c) Only commercially-available over-the-counter products that are not sold for physician's use only may be used for the purpose of skin exfoliation. for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by manufacturer instructions. Page 16 of 17

(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. (21) Amend Section 993 to read as follows: § 993. Prohibited InstrumentsTools.

(a) No establishment or school shall have on the premises or use any razor-edged or other device or tool for the purpose of which is designed to remove removing calluses or other similar procedures.

(b) No establishment or school shall have on the premises or use any needlelike tool instrument which is 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. (22) Amend Section 994 to read as follows: § 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.

Note: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e) and 7352, Business and Professions Code

As used in this chapter:

(1) "Physical fitness services" means facilities or services for the development of physical fitness through exercise or weight control. The term includes the facilities and services of health or exercise centers, clubs, studios, or classes; health spas; weight control centers, clinics, or studios; figure salons; tanning centers; and athletic or sport clubs. It does not include rehabilitative therapy administered by a licensed physical therapist.

(2) "Customer" or "member" means a person who contracts for the use of physical fitness services.

(3) "Major facility" means swimming pool, whirlpool, tennis courts, racquet or handball courts, indoor or outdoor track, gymnasium with exercise equipment, calisthenic room, or similar collection of physical fitness equipment.

(4) "Major service" means locations which have offices, treatment rooms, or counseling rooms but no major facilities and other treatments, visits, or sessions to reduce and control weight.

(5) "Center" means any person or organization which, for profit, offers physical fitness services, whether at multiple outlets bearing the same name or a single outlet. Any subsidiary of a center, operating under the same name and offering such services, is a part of the center.

(6) "Outlet" means a separate location of a center which is not physically connected with another center but which uses the same name.

(7) "Administrator" means the administrator of the South Carolina Department of Consumer Affairs.

HISTORY: 1985 Act No. 165, Section 1; 1989 Act No. 69, Section 1.

As used in sections 1345.41 to 1345.50 of the Revised Code:

(A) "Prepaid entertainment contract" means a contract under which the buyer of a service pays for or becomes obligated to pay for service prior to the buyer's receipt of or enjoyment of any or all of the service and that is a contract for:

(1) Dance studio lessons, which include related services and instruction in ballroom or other types of dancing, and lessons whether given to students individually or in groups;

(2) Social referral service, which includes any service that, for a fee, provides matching of members of the opposite sex, by any means for purposes of introduction, dating, or general social contacts;

1345.42 Contract provision of prepaid entertainment contracts.

(A) All prepaid entertainment contracts between the same seller and the same buyer that are in effect at the same time, or the terms of which overlap for any period, shall be considered as one contract for the purpose of sections 1345.43 and 1345.44 of the Revised Code.

(B) Prepaid entertainment contracts shall:

(1) Be in writing and be signed by the buyer and the seller, and a copy shall be provided to the buyer at the time he signs the contract;

(2) Not be measured by the life of the buyer;

(3) Not have a duration of service other than a duration that is a precisely measured period of years or any definite part of a year and shall not have a duration of service for a period in excess of three years;

(4) Provide that all information and material of a personal or private nature that is acquired directly or indirectly from a buyer including but not limited to, answers to tests or questionnaires, photographs, or background information, shall be returned by the seller to the buyer by regular mail within thirty days after the expiration of the contract or after the expiration for any reason of the service to be rendered by the seller;

(5) Provide that if by reason of death or disability, the buyer is unable to receive benefits from the seller's services, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments only for that portion of the contract that can be attributed to the period prior to the buyer's actual death or disability, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, and the seller, within thirty

days after receiving notice of the death or disability, shall return to the buyer or his representative the amount paid in excess of the proportional amount;

(6) Provide that performance of the contract will begin no later than one hundred eighty days from the date the contract is entered into;

(7) Provide that if the buyer relocates twenty-five miles or more from the facility operated by the seller or a substantially similar facility that would accept the seller's obligation under the contract and if the buyer gives the seller written notice that he intends to relocate and requests that the contract be terminated, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments for only that portion of the contract that can be attributed to the period prior to the buyer's actual relocation, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, provided, that the seller may require and verify reasonable evidence of relocation, and the seller shall return to the buyer the amount paid in excess of the proportional amount;

(8) Provide that if the seller relocates the facility twenty-five miles or more from the buyer's residence or closes the facility and a substantially similar facility that would accept the seller's obligation under the contract is not within twenty-five miles of the buyer's residence, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments for only that portion of the contract that can be attributed to the period prior to the seller's actual relocation or closing of the facility, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, and the seller shall return to the buyer the amount paid in excess of the proportional amount;

(9) Not require the buyer to pay more than fifty dollars or ten per cent of the total contract price, whichever is the lesser amount, prior to the date on which the facility or service that is the subject of the contract is available for use by the buyer.

1345.43 Right of buyer to cancel.

In addition to any right otherwise to revoke an offer or to terminate or cancel a sale or contract, the buyer has the right to cancel a prepaid entertainment contract until midnight of the third business day after the date on which the first service under the contract is available, and if the

facility or service that is the subject of the contract is not available at the time that the buyer signs the contract, the buyer has until midnight of the seventh business day after the date on which the first service under the contract is available to cancel the contract. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address of any facility available for use by the buyer under the contract, the seller's electronic mail address, or the seller's facsimile number. The buyer shall deliver the notice by manual delivery, personal delivery, or by certified mail delivery, return receipt requested, electronic mail, or facsimile transmission. Notice of cancellation by certified mail delivery shall be effective upon the date of post marking. Electronic mail delivery is effective when the electronic mail is sent to the seller's electronic mail address. Facsimile delivery is effective when the facsimile is sent to the seller's facsimile number and the consumer has received confirmation of the facsimile transmission. Manual delivery or personal delivery is effective when delivered to the seller or to the seller's address, whichever comes first. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the contract. Notice of the buyer's right to cancel must appear on all notes or other evidence of indebtedness given pursuant to any prepaid entertainment contract.

Amended by 131st General Assembly File No. TBD, SB 227, §1, eff. 4/6/2017.

Effective Date: 07-26-1984 .

1345.421 Surety bond where facility under construction and not available for service at time buyer signs contract.

If the facility that is the subject of the contract is under construction, and is not available for service at the time the buyer signs the contract, the seller shall maintain a surety bond issued by a surety company authorized to do business in this state the principal sum of which shall be a minimum of ten thousand dollars. The seller is relieved from the obligation to maintain the bond twenty-four months after completion of the facility and commencement of service. The bond shall be in favor of the state of Ohio for the benefit of any person injured by having paid moneys for the use of a facility which fails to open within one hundred eighty days after the date upon which the buyer and seller entered into a contract, or closes within twenty-four months after completion of a facility and commencement of service. However, the aggregate liability of the surety to all persons for all breaches of the conditions of the bond provided herein shall in no event exceed the amount

of the bond. Evidence of the bond shall be available for inspection upon request by the office of the attorney general, current contract holders, or prospective buyers.

(3) Martial arts training, whether or not the training will lead to a specific degree of expertise;

(4) Health spa service, which includes contracts for instruction, training, or assistance in physical culture, body-building, exercising, reducing, figure development, or any other similar activity or for the use of the facilities of a health spa, gymnasium, or other facility used for any purpose described in this division or for membership in any group, club, association, or organization formed for any purpose described in this division.

"Prepaid entertainment contracts" do not include contracts for services rendered by any public or private nonprofit school, college, or university; by the state or any of its political subdivisions; or by any nonprofit religious, ethnic, or community organization.

(B) "Purchase price" means the total cumulative price of a prepaid entertainment service, whether under single or multiple contracts, including all interest and service charges.

(C) "Business day" means any calendar day except Sunday, or a legal holiday as defined in section 1.14 of the Revised Code.

(D) "First service" means the first service rendered to the buyer under a prepaid entertainment contract that is typical of the type of service rendered throughout the course of the contract and that is not a special or an introductory service.

29 The purpose of investigation

(1) The investigation of a complaint by the Commission is for the purpose of obtaining information concerning the matter complained of and to determine what action should be taken in respect of the complaint.

(2) (Repealed)

60 Health Secretary to be notified of proposed investigation

An investigation under this Part may not be carried out by the Commission unless:

(a) the Commission has notified the Health Secretary that it proposes to carry out the investigation and requests the Health Secretary to provide it with a report on the matter, and

(b) the Health Secretary:

(i) fails to provide the report within 30 days after receiving the Commission's request (or such longer period as the Commission may allow), or

(ii) provides a report to the Commission which, in the opinion of the Commission, is not satisfactory.

61 Application of investigative powers for the purposes of this Part

Division 5 of Part 2 applies to an investigation under this Part in the same way as it applies to the investigation of a complaint under that Division.

62 Report to Health Secretary and Minister following investigation

(1) The Commission must prepare a report of an investigation carried out under this Part and give copies of the report to the Health Secretary and the Minister.

(2) The Commission may request the Health Secretary and the Minister to notify it of any action taken or proposed as a consequence of a recommendation made by the Commission in the report.

63 Special report to Parliament

(1) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time concerning a recommendation in the report under section 62, the Commission may make a special report on the matter to the Presiding Officer of each House of Parliament.

(2) A copy of a report furnished to the Presiding Officer of a House of Parliament under this section is to be laid before that House before the end of the next sitting day of that House after it is received by the Presiding Officer.

(3) The Commission may include in a report a recommendation that the report be made public immediately.

(4) If a report includes a recommendation by the Commission that the report be made public immediately, a Presiding Officer of a House of Parliament must make it public whether or not that House is in session and whether or not the report has been laid before that House.

(5) If such a report is made public by that Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.

(6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

(7) References in this section to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the Legislative Assembly.

(8) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.

(9) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

Part 4 Parliamentary Joint Committee

64 Constitution of Joint Committee

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Health Care Comointed.

South Carolina Code of Laws

Title 44 - Health

CHAPTER 79 - PHYSICAL FITNESS SERVICES ACT

Section 44-79-20. Definitions.

Universal Citation: SC Code § 44-79-20 (2018)

As used in this chapter:

(1) "Physical fitness services" means facilities or services for the development of physical fitness through exercise or weight control. The term includes the facilities and services of health or exercise centers, clubs, studios, or classes; health spas; weight control centers, clinics, or studios; figure salons; tanning centers; and athletic or sport clubs. It does not include rehabilitative therapy administered by a licensed physical therapist.

(2) "Customer" or "member" means a person who contracts for the use of physical fitness services.

(3) "Major facility" means swimming pool, whirlpool, tennis courts, racquet or handball courts, indoor or outdoor track, gymnasium with exercise equipment, calisthenic room, or similar collection of physical fitness equipment.

(4) "Major service" means locations which have offices, treatment rooms, or counseling rooms but no major facilities and other treatments, visits, or sessions to reduce and control weight.

(5) "Center" means any person or organization which, for profit, offers physical fitness services, whether at multiple outlets bearing the same name or a single outlet. Any subsidiary of a center, operating under the same name and offering such services, is a part of the center.

(6) "Outlet" means a separate location of a center which is not physically connected with another center but which uses the same name.

(7) "Administrator" means the administrator of the South Carolina Department of Consumer Affairs.

HISTORY: 1985 Act No. 165, Section 1; 1989 Act No. 69, Section 1.

Section 44-79-30. Credit contract requirements.

Universal Citation: SC Code § 44-79-30 (2018)

(A) Every prepaid or credit contract for physical fitness services of over three months' duration or over two hundred dollars in amount must conform to the following requirements:

(1) the contract must be in writing, and a copy must be given to the customer at the time he signs it;

(2) the contract shall state clearly the street address or location of the center and outlets which the member may use at the time the contract is executed and the major facilities or major services which each offers;

(3) the contract shall reveal the finance charge, if any, which the member agrees to pay;

(4) if the customer executes a promissory note in connection with the contract, the contract shall clearly indicate whether the promissory note is assignable paper and whether it may be discounted and sold to third parties. Assignment of the promissory note does not affect the right of the member to cancel the contract or the method by which the cancellation may be made;

(5) the contract must contain a right to cancel provision in the following language:

"CUSTOMER'S RIGHT TO CANCEL

(a) You may cancel this contract by sending notice of your wish to cancel to the center before midnight of the third business day after you sign the contract. 'Business day' means Monday through Friday excluding state holidays and federal holidays. This notice must be sent certified mail to the follow.

Within thirty days of receipt of this notice, the center shall return any payments made and any note or other evidence of indebtedness. If you use the seller's facilities or services, the center may deduct a reasonable fee from the payments being returned based on the actual fee paid divided on a pro rata share by the number of days used by the customer.

(b) In addition, you or your estate may also cancel the contract at any time by written notice to the center at the above address if the following circumstances occur:

(1) the customer's death;

(2) substantial physical disability, certified by a physician, which makes it permanently impossible for the customer to use the center's services;

(3) the customer's permanent relocation to a residence over fifty miles distant from an outlet operated by the center, if the center is unable to arrange for the customer's use of another center with equivalent major facilities and services.

The center may require presentation of information to substantiate that one of these circumstances has occurred.

If the contract is cancelled because of disability, death, or permanent change of residence, the center shall return any note or other evidence of indebtedness and unearned prepayments as follows: For each month that the contract was in effect, the center is entitled to the rate a month or a treatment which it would have charged if the contract had initially been one for the number of months or the number of treatments for which the contract was actually in effect. The rate is to be determined from a fee schedule in effect on the date of the contract.

(c) The right of cancellation shall affect only the financial obligations under the contract and customer's right to use the center's physical fitness services."

(6) services such as personal training, personal fitness testing, and daily visitor fees that are not subject to being refunded must be clearly stated in the contract;

(7) Any contractual provision allowing more liberal rights of cancellation than set forth in this chapter may be substituted for the notice required in this chapter.

(B) A contract is not required for personal training, private consultations, and fitness testing rendered on an hourly basis unless they are part of a package of over three hundred dollars.

HISTORY: 1985 Act No. 165, Section 1; 1992 Act No. 380, Section 1; 1994 Act No. 312, Section 1.

Section 44-79-40. Prohibited contractual provisions.

Universal Citation: SC Code § 44-79-40 (2018)

No contract for physical fitness services may:

(1) have a duration of longer than twenty-four months, nor a duration measured by the life of the customer, the life of the center, or any similar indefinite term; provided, however, if a center demonstrates financial responsibility to the administrator of the Department of Consumer Affairs and has been in operation for five or more years in this State, it may offer contracts for physical fitness services for a duration of up to thirty-six months if approved in writing by the administrator;

(2) waive the required provisions of this chapter;

(3) provide that a right of action or defense of the customer may be cut off by assignment of the contract to a third person.

HISTORY: 1985 Act No. 165, Section 1; 1986 Act No. 467, Section 2; 2008 Act No. 298, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

Section 44-79-60. Permissible contractual provisions.

Universal Citation: SC Code § 44-79-60 (2018)

A contract for physical fitness services may contain clauses which:

(1) provide for extension of the term of the agreement for a period equal to a period of temporary disability or pregnancy of the customer, or for any other just or reasonable cause;

(2) specify that the written contract constitutes the entire agreement between the parties;

(3) provide for a renewal option, for a duration longer than one month but not more than twelve months, which to be enforceable must be exercised by the buyer in writing, or by payment by the buyer of part or all of the renewal price. A renewal option for a duration longer than one month may be exercised only near the expiration of any previous contract and for not more than twelve months;

(4) provide for an automatic renewal option, for a duration of no longer than one month, which to be enforceable must be disclosed in bold type of at least fourteen-point font on the front page of the contract and must be initialed by the customer. The customer will be given the ability to opt-in to the automatic renewal provision at the time the initial contract is executed by initialing an opt-in provision. Near the expiration of the initial contract, the facility shall notify the customer

in writing at the customer's last known address of the automatic renewal option which the customer selected at the time the initial contract was executed. Price may not increase or decrease in an automatically renewed contract without written notice to the customer of at least thirty but not more than sixty days prior to the effective date of the change in price;

(5) specify that cancellation of a contract voids automatic renewal provisions.

HISTORY: 1985 Act No. 165, Section 1; 2008 Act No. 298, Section 2, eff upon approval (became law without the Governor's signature on June 12, 2008).

Section 44-79-70. Rights against successors to contract.

Universal Citation: SC Code § 44-79-70 (2018)

Any right of action or defense which the member may raise based on the contract for physical fitness services is preserved against any assignee or successor to the contract.

HISTORY: 1985 Act No. 165, Section 1.

Section 44-79-80. Financial responsibility requirements; certificates of authority.

Universal Citation: SC Code § 44-79-80 (2018)

(1) Every center which enters into prepaid or credit contracts for physical fitness services of over three months' duration or over two hundred dollars in amount shall maintain with the administrator a surety bond in a sum to be determined by the administrator based on the estimated future costs to service contracts sold, but not to exceed fifty thousand dollars.

(2) In lieu of the bond required in this section, the center may furnish under penalty of perjury information which reasonably demonstrates financial responsibility as will enable the center to satisfy the possible claims against the bond. In the event the center is controlled by, under common control with, or controls other corporations and the other corporation agrees in writing to satisfy the claims against a bond allowed under this section, the financial responsibility of the other corporation must be considered in determining the requirement for a bond. In determining whether the center has the requisite financial responsibility, the administrator may consider the operating and business history, reputation, and management within and without the State, as well as the operating and business history and reputation of any business controlled by, under common control with, or controlling the center. The provisions of subsections (1) and (2) of this section do not apply to physical fitness service facilities that have been in operation for five years or more on the effective date of this Chapter.

(3) Each center is required to notify the administrator upon substantial change of its financial status and to submit an annual report.

(4) No person may offer physical fitness services in this State without first obtaining a certificate of authority from the administrator. A certificate of authority must be issued by the administrator upon submission of items (a) through (f) of this section. The applicant must submit:

(a) A formal application for the certificate in such form and detail as the administrator requires.

(b) A certified copy of its charter or articles of incorporation and its bylaws, if any.

(c) If a corporation, a certified copy of the certificate of authority or good standing certificate from the Secretary of State of South Carolina.

(d) A copy of its membership agreement.

(e) A copy of any contract to be issued.

(f) A list of outlets at which physical fitness services will be offered.

(g) Any other relevant information required by the administrator.

(5) No certificate of authority may be issued by the administrator until the center pays an initial certificate of authority fee of fifty dollars an outlet. Certificates of authority may be renewed upon payment of an annual renewal fee of fifty dollars an outlet on or before December thirty-first.

(6) A copy of the Certificate of Authority required by this chapter must be posted conspicuously at every location where monies or contracts are received by the center.

(7) It is unlawful for any center or person acting on behalf of a center required to obtain and maintain a Certificate of Authority under this chapter to advertise, sell, or offer to sell the use of physical fitness services when a valid certificate is not on file with the administrator.

(8) The administrator may file a request for a contested case hearing with the Administrative Law Court to obtain a cease and desist order or an order revoking, suspending, or vacating the certificate of authority of a center, if the department determines that the center has violated or failed to comply with any provision of this chapter or regulation promulgated under the authority of this chapter or if the department shows that:

(a) a document or declaration required by subsection (4), items (a) through (g) were false or misleading; or

(b) by clear and convincing evidence the center or its agents, officers, or employees have engaged in false, fraudulent, or deceptive conduct in its dealings with customers.

(9) Instead of revocation, suspension, or refusal to continue a certificate of authority of a center, the administrative law judge may assess an administrative penalty for a violation of subsection (4) or (8) of this section not to exceed five hundred dollars for each violation, not to exceed five thousand dollars for matters commenced in any calendar year. These penalties may be assessed in connection with orders to cease and desist.

HISTORY: 1985 Act No. 165, Section 1; 1991 Act No. 142, Sections 27, 28; 1994 Act No. 312, Section 2; 2005 Act No. 128, Section 16, eff July 1, 2005.

2005 Act No. 128, Section 27, provides as follows:

"This act takes effect on July 1, 2005, and applies to all licensing and administrative hearings involving the South Carolina Department of Consumer Affairs."

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Section 44-79-100. Advertising disclosure requirements; providing of other information upon request.

Universal Citation: SC Code § 44-79-100 (2018)

(1) No center shall advertise physical fitness services which are not operating or available without clearly and conspicuously disclosing in the advertisement that such are not presently operating or available.

(2) No center shall advertise physical fitness services which are not operating or available in each and every outlet unless the advertisement clearly and conspicuously discloses the facilities or services which are not operating or available at each outlet.

(3) Substantiation for physical fitness services advertising claims, and information necessary to determine the amount of the bonds required by this chapter, must be provided upon request of a circuit solicitor, the Attorney General, or the Department of Consumer Affairs.

HISTORY: 1985 Act No. 165, Section 1.

Section 44-79-110. Exemptions.

Universal Citation: SC Code § 44-79-110 (2018)

The State of South Carolina and its political subdivisions and any not-for-profit corporations are exempt from the terms of this chapter.

HISTORY: 1985 Act No. 165, Section 1.

Section 44-79-120. Violations and penalties.

Universal Citation: SC Code § 44-79-120 (2018)

Any person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction must be fined not less than five hundred dollars nor more than five thousand dollars or be imprisoned for no more than three years, or both.

A violation of any provision of this chapter is considered a violation of Section 39-5-20 of the South Carolina Unfair Trade Practices Act.

HISTORY: 1985 Act No. 165, Section 1.