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**HEALTH DEPARTMENT**

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Dear Members of the Board of Registration of Cosmetologists (BOC):

The Massachusetts Healthy Cosmetology Committee (MHCC) would like to thank the BOC for providing a substantial overhaul of draft regulations 240 CMR 3.00 for salons. We appreciate your addition of the recommendations cited in our April 8, 2009 letter to the BOC. A copy of said letter is attached for your perusal and review.

MHCC is a statewide committee of individuals concerned with public, community, environmental and worker health in salons. Members include city and town health officials, university faculty, individuals and businesses, as well as representatives of the Occupational Health Surveillance Program of the Massachusetts Department of Public Health and Massachusetts Division of Occupational Safety. MHCC has been engaged in educational and advocacy work to improve salon conditions for licensees and customers for more than a decade.

MHCC has completed our review of the draft regulations 240 CMR 3.00 and have the following comments and suggestions for your consideration.

**3.01 Definitions:**

We recommend adding the following definitions:

1. Autoclave means an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.
2. Chemical means a product used in the salon for the provision of salon service and/or cleaning or disinfection. This includes, but is not limited to, polishes, glues, liquid monomers, acrylic powders, cleaners, sanitizers, alcohol, acetone, lacquer, nail polish remover, acrylic primer, nail hardener, cosmetics, and lotions.
3. Clean means to wash with water and liquid soap, detergent, antiseptic, or other adequate means to remove all visible debris or residue.
4. Disinfectant means a chemical or physical agent used in the disinfection process. The following categories of chemicals and/or processes qualify as disinfectants under this definition:
  - a. a properly functioning and verified autoclave or FDA listed dry heat sterilizer used according to manufacturer instructions;

- b. an EPA-registered bactericidal, fungicidal, and virucidal disinfectant (with the exception of formalin) used in accordance with manufacturer instructions;
- c. a 10% solution of chlorine bleach mixed with water (and no other chemicals);
- d. isopropyl alcohol used at 70% or greater concentration (for wiping surfaces) or immersion of tools for a minimum of 10 minutes;
- e. Ultraviolet light boxes are not an effective means of disinfection and may not be present in any salon.

5. Disinfection means a process that prevents infection by killing microorganisms on metal implements and non-porous surfaces using one or more of the defined disinfectants. Porous materials (pumice stones, sponges, wooden tools, etc.) may not be disinfected for reuse because they cannot be effectively cleaned and disinfected using chemical agents.

6. Double Dipping refers to when an applicator is used to apply a substance, that is kept in a container for multiple uses, to some part of the client and then is re-dipped back in the container. This is commonly seen in waxing. Measures must be taken to ensure that any substance or implement that comes in contact with a client is not contaminated between customers. Any such substance must either be poured into a container that is used only for one individual client and is replaced or sterilized between clients, or, alternatively, if using a common container that is used for more than one client, a single use tool must be used and discarded after each contact with a client's skin.

7. Dry Heat Sterilizer means an apparatus for sterilization utilizing dry heat listed with the United States Food and Drug Administration. This method should be used only for materials that might be damaged by moist heat. The advantages for dry heat include the following: it is nontoxic and does not harm the environment; a dry heat cabinet is easy to install and has relatively low operating costs; it penetrates materials; and it is noncorrosive for metal and sharp instruments. The slow rate of heat penetration and microbial killing makes this a time-consuming method and the high temperatures may not be suitable for some materials. The most common time-temperature relationships for sterilization with hot air sterilizers are 170°C (340°F) for 60 minutes, 160°C (320°F) for 120 minutes, and 150°C (300°F) for 150 minutes.

8. Foot Bath means any basin (self-contained unit or connected to the nail salon's plumbing) that holds water, circulating or not, for the purposes of soaking the client's foot.

9. Implement means an instrument or tool, either disposable or reusable, used to provide nail salon services.

10. License means a license issued by the Massachusetts Board of Cosmetology to operate a salon.

11. Manicuring Station means the workstation where a manicurist performs salon services on individual clients, including such devices, chairs, tables, counters and other equipment as may be necessary to provide such services.

12. Manicurist or Nail Technician means any person providing salon services upon the person of another, with or without monetary compensation.

13. Safety Data Sheet (SDS) means a document that is supplied by the product manufacturer which explains the risks, precautions, and response actions related to exposure to a particular product or chemical used as an ingredient in a product. The Hazard Communication Standard (HCS) requires chemical manufacturers, distributors, or importers to provide Safety Data Sheets (SDSs)

(formerly known as Material Safety Data Sheets or MSDSs) to communicate the hazards of hazardous chemical products. As of June 1, 2015, the HCS will require new SDSs to be in a uniform format.

14. Multi-Use Tool means an item constructed of hard materials with smooth nonporous surfaces such as metal, glass, or plastic that can be effectively cleaned and disinfected for used on more than one client. The term includes but is not limited to such items as clippers, scissors, combs, nippers, manicure bowls, and some nail files.

15. Salon Service means any practice carried out in a salon that includes, but is not limited to, cutting, shaping, polishing, or otherwise enhancing the appearance of the nails of the hands or feet, manicuring, pedicuring, callus removal and other skin treatment, waxing, and eyebrow threading.

16. Single Use Tool means a non-metal and/or porous item that is made or constructed of cloth, wood, sponge, pumice stone, or other absorbent materials having rough or porous surfaces which cannot be effectively cleaned and disinfected. Single use items include, but are not limited to, gloves, flip flops, toe separators, pumice stones, non-metal nail files, non-metal emery boards, buffers, buffing discs on electric files, wood and/or non-metal cuticle pushers, wooden wax applicator sticks, cotton balls, and tissues.

Under your definition for "cleaning", remove alcohol since alcohol is more a disinfectant than a cleaner.

We also suggestion that you combine "Disinfection and Sanitizing" to avoid confusion. An expanded definition for Disinfection and under Sanitizing has "see Disinfection".

### **3.02 Licensure of Salons:**

For these reasons, the Healthy Cosmetology Committee strongly encourages you to remove Section 3.02(8) in its entirety.

The draft regulations circulated after the March 11, 2014 meeting includes the following field preemption language:

"Consistent with the laws governing the licensure of cosmetology professionals in Massachusetts, these regulations shall be deemed to occupy the whole field of licensing and regulation of cosmetology, manicuring, and aesthetic services in Massachusetts. Notwithstanding this authority, no provision of 240 CMR should be deemed to prevent a municipality from enforcing validly enacted health and business rules generally applicable to all businesses in that municipality so long as the rules do not conflict with the provisions of 240 CMR."

As we interpret it, this language would seek to nullify local health regulations pertaining to nail salons that have been validly enacted in several Massachusetts communities, including Boston, Holyoke, North Attleboro and Marblehead. Since enacted, these local health regulations have been implemented collaboratively with salon owners and employees, and have allowed Massachusetts communities to respond to local concerns about health and safety that are not fully addressed in state regulations. This approach is well-established in several other areas of law where state and local entities share jurisdiction, including tobacco control, environmental health and medical marijuana. This preemption language would also eliminate the valuable oversight mechanism that local nail salon regulations, inspections and enforcement provide.

Further, local boards of health have broad power, and indeed the responsibility, to regulate to protect the public health. We believe that a measure to preempt local regulations validly enacted under G.L.

c. 111 s. 31 through a revision to a state regulation would violate longstanding principles of public health law and undermine the spirit of collaborative oversight for protecting the public health and safety.

### **3.03 Operation of Salons:**

**Premises D.** Ventilation is an important issue to address and we ask that you expand your requirements to include the following:

Applicants for a salon license should be required to provide the BOC with a form signed by a Massachusetts Registered Design Professional certifying compliance with the current edition of the Massachusetts State Building Code, and that the salon has mechanical ventilation capable of providing 25 cfm of fresh air per person with a minimum assumption of two persons per cosmetology chair, manicure and/or pedicure station. This will meet the current State Building Code and the national recommended standard for beauty salons. Additionally, the certification should assure that salon ventilation systems are separated from other air handling systems in the building, exhaust to the outside and are a minimum of 10 feet from air intakes.

**Premises (E).** This section states: "These regulations apply to flammables storage, labeling of products with their ingredients, training of employees about hazardous chemicals, and storage and disposal of hazardous wastes." Please specify which regulations apply here. We recommend that this section expands to encompass Safety Data Sheets, required flammable storage cabinets and containers and expectations of staff training requirements on these issues.

**Premises (H).** The last sentence "All equipment installed must meet with the requirements of public safety regulations" needs clarification. We are interested in what the intent of the sentence is, and are happy to offer our expertise in safety regulations.

**Premises (N).** Please add "burning of candles" to avoid confusion.

We recommend adding a requirement for an eye wash station in your 'Premises' section, which is currently required by the Boston Public Health Commission. Here is their model language:

#### **Eye Wash Station**

1. The salon eye wash can be either a station connected to the building plumbing and capable of continual operation, a stand-alone system specifically designed and marketed for use as an eye wash station, or a clearly marked station containing two or more personal eye wash bottles. Stand-alone eye wash stations are typically a plastic wall-mounted unit that holds several gallons of sterile water or saline solution while a personal eye wash bottle station may have a plastic or metal shelf that mounts to the wall to hold two or more sealed bottles of sterile saline or water.
2. Manufacturer guidelines for installation and maintenance of any stand-alone systems or bottles must be followed to prevent contaminants from getting into the wash water. Eye wash bottle nozzles must remain clean and clear and the water must be replaced regularly. Adhering to the manufacturer recommended water or saline replacement schedule as well as expiration dates is required. Should the liquid in the eye wash device ever become cloudy or odorous, it must be discarded and replaced immediately regardless of the manufacturer recommendation.
3. A hand washing sink is not an acceptable eyewash station.

4. The eyewash station cannot be located in the salon bathroom. The eye wash station must be easily accessible to staff and customers within the main work area – within 10 feet of the work area or reachable within 10 seconds.

### **3.03. Operations of Salons:**

#### **3. Scope of Practice**

##### **Subsection (b) Prohibited Products:**

The MHCC has the following public health suggestions for prohibited products and practices:

**Subsection b-3.** We recommend this section be amended to the following: “A razor-edged tool or instrument, such as a credo blade, skin grater, or other device designed to remove calluses or used to invade the dermis of the skin”.

**Subsection b-8.** Please insert the phrase “municipality ” so it reads “Any product banned for use in cosmetic salons by the federal Food and Drug Administration, the federal Occupational Safety and Health Administration, the state’s Departments of Public Health, Public Safety, Environmental Protection, or the municipality in which the salon is located.

The MHCC recommends adding the following items to prohibitions:

1. “Any product containing a known ingredient deemed unsafe for use by the FDA’s Cosmetic Ingredient Review (CIR) Panel”. When investigating an ingredient, CIR Expert Panel will make one of the following declarations: (1) The ingredient is safe in the specified concentration; (2) the ingredient is unsafe and unsuitable for use in cosmetics; (3) the ingredient is safe, but only under certain conditions; or (4) there is insufficient data to draw a conclusion as to whether it is safe or unsafe.<sup>i</sup> The CIR has said that Methylene Glycol and Formaldehyde are unsuitable for hair straightening products because the required heating process releasing high levels of formaldehyde into the persona breathing zones of stylists.<sup>ii</sup> This decision was supported by the FDA, Consumer Federation of America and the Personal Care Products Council. However, the FDA has no banning or recall power, so the products are still in the market place and often unlabeled because professional beauty products are exempt from labeling laws. You should also know that formaldehyde / methylene glycol is one of only 11 ingredients that the CIR has ever found to be unsafe: <http://www.cir-safety.org/sites/default/files/U-unsafe%202-02-2012%20final.pdf>.
2. Banning of UV light boxes for storage of tools. We suggest the following language: “Ultraviolet light boxes are NOT an effective means of disinfection. UV light box simply keep tools clean IF they are properly sterilized before being placed inside. Due to the common misperception that UV light boxes actually sterilizes the tools when in fact they don’t, salons MAY NOT use them as a method of cleaning or disinfecting multi-use tools and may not be present in a salon. This prohibition does not include light boxes used solely to dry or cure nails.”

### **3.04: Equipment and Hygienic Procedures:**

The MHCC have the following comments and questions for this section:

**Section (7).** We would like clarification on this sentence: “Dipping towels in receptacles containing water and using same on a patron is prohibited.” If the intent of this sentence is to prevent double-dipping, using dirty water or dirty towels used on patrons, this needs to be stated more clearly.

**Section (10).** Creams and other solid substances must be removed from containers with a clean spatula or similar article. Measures must be taken to ensure that any substance or implement that comes in

contact with a client, including wax, is not contaminated between customers. Any such substance must either be poured into a container that is used only for one individual client and is replaced or sterilized between clients, or, alternatively, if using a common container that is used for more than one client, a single use tool must be used and discarded after each contact with a client's skin.

**Section (14).** This should be consistent with the definition of 'cleaning' and 'disinfection'. Disinfection should allow for the use of autoclaves, 10% bleach solution, 70% alcohol, or FDA Registered dry heat sterilizers.

**Section (15).** "Single-use items shall not be used on more than one client for any reason. Items that cannot be effectively sanitized must be regarded as single-use."

**Section (16).** We recommend removing this section: "Any party may apply to the Board for permission to use an alternative method of sanitizing tools, but must supply evidence of the method's effectiveness equivalent or better than use of EPA-registered disinfectants as described herein." It is unclear how the Board would be able to evaluate the effectiveness of an alternative method. However, we are happy to offer our public health expertise, should the Board ever encounter such a request.

**Section (17).** We recommend the following language for Further Sanitary Requirements: "Each work station should have a covered trash receptacle with a minimum of two per salon. There should be a minimum of 3 sinks per salon, one sink in the restroom, one hand washing sink in the salon, and one "dump" sink in the salon, used for rinsing and washing off items. All sinks should be supplied with hot and cold running water, soap and paper towels. Sinks used for chemicals and/or equipment rinsing should be clearly labeled and not be used to wash or rinse food or food related items.

**Section (18).** For the part that reads "No services shall be provided to a person who is afflicted with impetigo...or fungus infection of the face, scalp or nails (ringworm)...", we recommend removing ringworm from parenthesis because this sentence currently indicates that ringworm is solely a condition of the nails. Please keep ringworm in the section, but we recommend phrasing it like this, "...or fungal infection (such as ringworm) of the face, scalp or nails."

The MHCC notes that there are currently no requirements for the cleaning or disinfection of Foot Baths. We recommend adding a new section covering foot baths. Here is our recommended language.

#### Cleaning of Foot Baths:

##### Foot Baths

1. Regardless of type (portable basins, whirlpool foot baths plumbed into the building, etc.), all foot baths should be cleaned after each client in accordance with the following procedures:
  - a. Drain the water from the foot spa basin or bowl and remove any visible debris.
  - b. Clean the surfaces of the foot spa with soap or detergent. Rinse with clean water and drain.
  - c. Disinfect the surfaces with an EPA-registered hospital disinfectant according to the manufacturer's directions on the label. Surfaces should remain wet with the disinfectant for ten minutes or longer if recommended on the product label. A 10% mix of bleach and water (but no other chemical) may be used as an alternative disinfectant. For whirlpool foot spas, air-jet basins, "pipe-less" foot spas, and other circulating spas, fill the basin with water and the appropriate amount of liquid disinfectant (or 10% bleach solution) and turn the unit on to circulate the disinfectant for at least ten minutes.
  - d. Drain the footbath and rinse with clean, cold water. For circulating spas, refill with clean hot water, turn the unit on to circulate for at least one minute, and drain the unit.

2. In addition, footbaths must be cleaned nightly upon closure of the salon. For non-circulating foot baths, follow this process:
- a. Drain the basin and remove any visible debris.
  - b. Scrub the bowl with a clean brush and soap or disinfectant (following cleaning directions). Rinse with hot water and drain.
  - c. Disinfect basin surfaces with an EPA-registered hospital disinfectant according to manufacturer instructions or with 10% bleach solution. Surfaces should remain wet with the disinfectant for ten minutes or longer if recommended on the product label.
  - d. Drain the basin, rinse with clean, hot water, and let air dry. For whirlpool foot spas, air-jet basins, "pipe-less" foot spas, and other circulating spas follow this process:
    - i. Remove the filter screen, inlet jets, and all other removable parts from the basin and clean out any debris trapped behind or in them.
    - ii. Using a brush, scrub these parts with soap or disinfectant (following cleaning directions).
    - iii. Rinse the removed parts with clean water and place them back into the basin apparatus.
    - iv. Fill the basin with clean, hot water and add an EPA-registered hospital disinfectant, following label directions. Turn the unit on and circulate the system with the disinfectant for ten minutes or the length of time recommended on the label, whichever is longer. The whirlpool mechanism of the tub must be operating for the entire disinfection period so the piping and internal components that contain hidden bacteria are disinfected.
    - v. Drain, rinse with hot water, and air dry.
3. The salon must maintain a log book of each nightly cleaning of the foot baths. Records of nightly cleanings must be kept for a minimum of one year with each entry including the date/time of the cleaning, printed name and signature of person cleaning, and the number of foot baths cleaned.

**Section 3.06:**

We recommend removing part 2 of section G. Having "bad moral character" is subjective to each individual. This clause does not pertain to the general welfare of the individual and/or the public and is particularly vague. Qualified individuals may needlessly be excluded from working as a cosmetologist. Therefore we are requesting that this section be removed.

In addition to the above noted regulatory changes (where as many nail salon owners and operators are Vietnamese), we suggest that regulations be readily available in at least Vietnamese and Spanish. Furthermore, language assistance should either be provided or allowed during violation hearings.

After several months of discussions, our knowledgeable and highly committed members have provided recommendations to improve salon conditions for employees as well as customers. We welcome your feedback and the opportunity to meet in person for a more meaningful discussion of salon health and safety.

Sincerely,

**The Massachusetts Healthy Cosmetology Committee**

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