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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Health Licensing Office, Board of Cosmetology 817

Agency and Division Administrative Rules Chapter Number
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To become effective Upon filing. Rulemaking Notice was published in the October 2015 Oregon Bulletin.

RULE CAPTION

Amend civil penalties by increasing fines for frequent violations and better ability to suspend/revoke authorizations.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

817-090-0025, 817-090-0035, 817-090-0080, 817-090-0090, 817-090-0100

REPEAL:

817-090-0050

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 676.612, 676.615, 676.992, 690.015, 690.165, 690.167

Other Authority:

Statutes Implemented:

ORS 676.992, 690.015, 690.025, 690.165, 690.167, 690.992

RULE SUMMARY

Amend civil penalty schedule by increasing fine amounts for individuals who are repeatedly non-compliant with laws and rules. Amend rules to provide the Board of Cosmetology the ability to suspend and revoke authorizations for individuals who continue to not comply with statutes and rules.

Increase fine amounts for certain safety and infection control penalties including failure to disinfect foot spas and discard disposable articles.

Additional amendments to streamline language and align with Health Licensing Office statutes and rules.

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**OREGON HEALTH AUTHORITY
HEALTH LICENSING OFFICE, BOARD OF COSMETOLOGY**

DIVISION 90

CIVIL PENALTIES

817-090-0025

Schedule of Penalties for Facility and Independent Contractor Registration Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of facility license and independent contractor registration laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of 331-020-0060 apply.

(1) Operating or purporting to operate a facility without a valid facility license is a violation of ORS 690.015(2)(b) or 690.015(2)(e):

(a) Never licensed **or expired**:

(A) 1st offense: ~~\$500~~; **\$750**;

(B) 2nd offense: ~~\$1000~~; **\$1500**;

(C) 3rd offense: ~~\$2500~~ **\$3000**;

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(b) Inactive ~~or expired~~ license:

(A) 1st offense: \$200;

(B) 2nd offense: \$500;

(C) 3rd offense: \$1,000.

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(c) ~~Certificate, Authorization, or Registration~~ Suspended or Revoked:

(A) 1st offense: ~~\$2,500;~~ **\$1000;**

(B) 2nd offense: ~~\$5,000;~~ **\$2500;**

(C) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(2) Operating or purporting to operate as an independent contractor without an independent contractor registration or with a dormant independent contractor registration is a violation of ORS 690.015(2)(a), 690.015(2)(d) or 690.015(2)(e):

(a) 1st offense: ~~\$200~~ **\$300;**

(b) 2nd offense: ~~\$500~~ **\$750;**

(c) 3rd offense: ~~\$1,000~~ **\$1500;**

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(3) Allowing an uncertified employee or uncertified individual under a person's supervision and control to practice in a field of practice is a violation of ORS 690.015(2)(g) and OAR 817-020-0007 (1)(f).

(a) Employee or individual who has never been certified:

(A) 1st offense: ~~\$500;~~ **\$1000;**

(B) 2nd offense: ~~\$1,000;~~ **\$2000;**

(C) 3rd offense: ~~\$2,500~~ **\$3500;**

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(b) Employee or individual with inactive, suspended, revoked, or expired certification:

(A) 1st offense: \$200

(B) 2nd offense: \$500

(C) 3rd offense: \$1000

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(4) Failing to meet the specifications and standards required under OAR 817-010-0007 in a facility is a violation of 817-020-0006 (1)(e) and may result in an emergency suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165 & 690.167

Stats. Implemented: ORS 676.992, 690.015, 690.165 & 690.167

Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0020; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2011, f. & cert. ef. 5-5-11; BOC 4-2011(Temp), f. & cert. ef. 9-13-11 thru 3-11-12; BOC 1-2012(Temp), f. 3-1-12, cert. ef. 3-12-12 thru 9-1-12; BOC 2-2012, f. 8-31-12, cert. ef. 9-1-12; BOC 1-2014, f. 2-27-14, cert. ef. 3-1-14

817-090-0035

Schedule of Penalties for Practitioner Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of practitioner licensing laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Performing, attempting to perform, or purporting to perform services in a field of practice without proper certification, **freelance** authorization, **temporary practitioner** registration or **demonstration** permit is a violation of ORS 690.015(2)(a) or 690.015(2)(e).

(a) ~~Certificate, authorization, registration, permit never held:~~ **Never held or expired:**

(A) 1st offense: \$1,000;

(B) 2nd offense: \$2,500;

(C) 3rd offense \$5,000.

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

~~(b) Certificate, authorization, registration, or permit inactive or expired:~~ **Inactive or dormant**

(A) 1st offense: \$200;

(B) 2nd offense: \$500;

(C) 3rd offense: \$1000

(D) 4th offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

~~(c) Certificate, authorization, or registration suspended or revoked:~~ **Suspended or revoked:**

(A) 1st offense: \$2,500;

(B) 2nd offense: \$5,000;

(C) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

~~(2) Performing, attempting to perform, or purporting to perform services in a field of practice in an unlicensed facility is a violation of ORS 690.015(2)(c):~~

~~(a) 1st offense: \$200;~~

~~(b) 2nd offense: \$500;~~

~~(c) 3rd offense: \$1,000~~

(2) Failing to display the practitioner certificate number and freelance authorization number when advertising or soliciting business; or, failing to provide required information under a Freelance Authorization is a violation of OAR 817-035-0052(1)(a) or (b):

(a) 1st offense: \$100;

(b) 2nd offense: \$200;

(c) 3rd offense: \$500.

(3) Practicing outside a licensed facility without a valid Freelance Authorization is a violation of ORS 690.015(2)(c):

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

~~(3)~~ **(4) Performing in a field of practice by a student when not on the premises of an educational institution, or while not pursuing the prescribed curriculum in which he or she is enrolled as provided in OAR 817-100-0005, is a violation of ORS 690.015(a):**

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(5) Failing to comply with notification requirements listed in OAR 331-010-0040, is a violation of OAR 331-010-0040:

(a) For 1st offense: \$100;

(b) For 2nd offense: \$200;

(c) For 3rd offense: \$500.

Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165 & 690.167

Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167

Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2011, f. & cert. ef. 5-5-11; BOC 4-2011(Temp), f. & cert. ef. 9-13-11 thru 3-11-12; BOC 1-2012(Temp), f. 3-1-12, cert. ef. 3-12-12 thru 9-1-12; BOC 2-2012, f. 8-31-12, cert. ef. 9-1-12

817-090-0050

Schedule of Penalties for Freelance Authorization Violations

~~The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Freelance Authorization laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of 331-020-0060 apply.~~

~~(1) Working with a dormant Freelance Authorization:~~

~~(a) 1st offense: \$200;~~

~~(b) 2nd offense: \$500;~~

~~(c) 3rd offense: \$1000~~

~~(2) Failing to display the practitioner certificate number and freelance authorization number when advertising or soliciting business; or, failing to provide required information under a Freelance Authorization is a violation of OAR 817-035-0052(1)(a) or (b):~~

~~(a) 1st offense: \$100;~~

~~(b) 2nd offense: \$200;~~

~~(c) 3rd offense: \$500.~~

~~(3) Practicing outside a licensed facility without a valid Freelance Authorization is a violation of ORS 690.123:~~

~~(a) 1st offense: \$500;~~

~~(b) 2nd offense: \$1,000;~~

~~(c) 3rd offense: \$2,500.~~

~~Stat. Auth: ORS 676.605, 676.615, 676.992, 690.165 & 690.167~~

~~Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165 & 690.167~~

~~Hist.: BH 3-1984(Temp), f. & ef. 6-27-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96, Renumbered from 817-090-0020; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2011, f. & cert. ef. 5-5-11; BOC 1-2014, f. 2-27-14, cert. ef. 3-1-14~~

817-090-0080

Schedule of Fines for Dispensing of Cosmetic Preparations Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to properly dispense powders, liquids, wave solutions, creams, semi-solid substances or other materials which come in contact with a client is a violation of OAR 817-010-0055:

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1,000.

(2) Reuse of any powders, liquids, wave solutions, creams, semi-solid substances, including paraffin wax or other materials which come in contact with a client is a violation of OAR 817-010-0055:

(a) 1st offense: \$1000;

(b) 2nd offense: \$2,500;

(c) 3rd offense: \$5,000.

Stat. Auth.: ORS 690.165, 690.205 & 690.995

Stats. Implemented: ORS 690.165, 690.205 & 690.995

Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2007, f. 10-31-07, cert. ef. 11-1-07; BOC 2-2011, f. & cert. ef. 5-5-11

817-090-0090

Schedule of Penalties for Disinfecting Requirements of Tools and Implements Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of 331-020-0060 apply.

(1) Failing to cleanse and disinfect, with a high-level disinfectant, electrical or mechanical hair clipper blades before use on each client is a violation of OAR 817-010-0069(2):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1,000.

(2) Failing to store new, disinfected or cleaned tools and implements separately from all others is a violation of OAR 817-010-0075(1):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1,000.

(3) Failing to ensure that any tool or implement; or article which comes in contact with a client is disinfected, cleaned or disposed of is a violation of OAR 817-010-0065(1); or 817-010-0040(2) or 817-010-0040(3):

(a) 1st offense: ~~\$300~~ **500**;

(b) 2nd offense: ~~\$500~~ **1,000**;

(c) 3rd offense: ~~\$4000~~ **2,500**.

(4) Failing to discard or give to the client any a disposable nail files, pumice blocks, cosmetic sponges, buffer blocks, sanding bands or sleeves, orangewood sticks, or nail bits designed for single use after use on a client, is a violation of OAR 817-010-0065(7):

(a) 1st offense: ~~\$300~~ **500**;

(b) 2nd offense: ~~\$500~~ **1,000**;

(c) 3rd offense: ~~\$4000~~ **2,500**.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205

Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167 690.205

Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 2-

2001, f. 2-16-01, cert. ef. 3-1-01; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2011, f. & cert. ef. 5-5-11; BOC 1-2014, f. 2-27-14, cert. ef. 3-1-14

817-090-0100

Schedule of Penalties for Clean Conditions Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of safety and infection control laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Failing to keep a restroom located on the premises of a facility clean and sanitary is a violation of OAR 817-010-0021(2):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(2) Failing to keep a facility shampoo bowl or sink clean is a violation of OAR 817-010-0101(2):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(3) Failing to keep roller-storage receptacles and their contents clean and free of foreign material is a violation of OAR 817-010-0075(2):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000

(4) Failing to keep storage drawers for clean tools and implements clean and to use such drawers only for clean tools and implements is a violation of OAR 817-010-0075(3):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(5) Failing to keep storage cabinets, work stations, vanities and backbars or other such equipment clean is a violation of OAR 817-010-0075(4):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(6) Allowing hair clippings to accumulate on a facility floor or failing to dispose of hair clippings in a covered container is a violation of OAR 817-010-0106(3):

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(7) Failing to keep facility walls and ceiling clean and free of excessive spots, mildew, condensation or peeling paint is a violation of OAR 817-010-0110:

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(8) Failing to properly clean and disinfect foot spa equipment as required is a violation of OAR 817-010-0101(5):

(a) 1st offense: ~~\$300~~ **500**;

(b) 2nd offense: ~~\$500~~ **1,000**;

(c) 3rd offense: ~~\$1000~~**2,500**.

Stat. Auth.: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205

Stats. Implemented: ORS 676.605, 676.615, 676.992, 690.165, 690.167 & 690.205

Hist.: BH 1-1985, f. & ef. 3-28-85; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-090-0030; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2011, f. & cert. ef. 5-5-11