

**Readopt with amendments Bar 302.05, effective 4-2-15 (Document #10808), to read as follows:**

Bar 302.05 School and Shop Additional Requirements.

- (a) As used in this section, “whirlpool, foot spa, or spa” means any basin using circulating water.
- (b) Upon change of ownership or relocation of a shop or school, the owner shall notify the board, in writing at least 21 days prior to new ownership or relocation. The new owner or an owner relocating his or her shop shall submit a “Shop Application” in accordance with Bar 301.09 and an inspection shall be required in accordance with Bar 404.01.
- (c) The entrance to the shop or school shall be either from the outside or from a common hallway. Access to the shop or school shall not be through any living quarters.
- (d) Lavatory facilities shall be publicly accessible to all students, patrons, and employees.
- (e) Mechanical ventilation shall be provided by a method of supply air and return or exhaust air in all schools and shops, with a minimum exchange rate of 35 cubic feet per minute.
- (f) All schools and shops shall have at least one covered container for disinfected implements.
- (g) A school or shop shall have a disinfecting container.
- (h) All schools and shops shall keep their floors, walls, woodwork, ceilings, furniture, furnishing, and fixtures clean.
- (i) Each shop or school shall have hot and cold running water.
- (j) If a school or shop ceases to do business, the licensee shall notify the board immediately.
- (k) If a school or shop chooses to have an animal present in the school or shop, a sign indicating the type of animal, such as dog, cat, or bird, shall be clearly displayed and readable at the entrance to the school or shop.
- (l) The entrance to the shop or school shall be clearly marked.
- (m) The shop or school shall have safety data sheets (SDS) required by the Occupational Safety Health Administration (OSHA) under 29 CFR 1910.1200 (g) for products being used.
- (n) If a licensee chooses to advertise, the licensee shall not advertise or solicit clients in any form of communication in a manner that is false or misleading.
- (o) A licensee shall not defraud another person.
- (p) After each patron, each whirlpool, foot spa, or spa shall be cleaned and disinfected as follows:
  - (1) All water shall be drained and all debris removed from the spa basin;
  - (2) The spa basin shall be disinfected by filling spa basin with water and by circulating:
    - a. Two tablespoons of automatic dishwashing powder and ¼ cup of 5.25% chlorine bleach to one gallon of water through the unit for 10 minutes; or

- b. Surfactant or enzymatic soap with an EPA-registered disinfectant with bactericidal, fungicidal, and viricidal activity which is used according to manufacturer's instructions through the unit for 10 minutes;
- (3) The spa basin shall be drained and rinsed with clean water; and
- (4) The spa basin shall be wiped dry with a clean towel.
- (q) At the end of each day, each whirlpool, foot spa, or spa shall be cleaned and disinfected as follows:
- (1) The screen shall be removed and all debris trapped behind the screen removed;
- (2) The screen and the inlet shall be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
- (3) Before replacing the screen, one of the following procedures shall be performed:
- a. The screen shall be totally immersed in a chlorine bleach solution of  $\frac{1}{4}$  cup of 5.25% chlorine bleach to one gallon of water for 10 minutes; or
- b. The screen shall be totally immersed in an EPA-registered disinfectant with bactericidal, fungicidal, and virucidal activity, and used in accordance to the manufacturer's instructions for 10 minutes;
- (4) The inlet and area behind the screen shall be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and
- (5) The spa system shall be flushed with low-sudsing surfactant or enzymatic soap and warm water for at least 10 minutes, and then rinsed and drained.
- (r) Every week, after cleaning and disinfecting pursuant to (q) and (r) above each whirlpool, foot spa, or spa shall be cleaned and disinfected in the following manner:
- (1) The whirlpool, foot spa, or spa basin shall be filled completely with water and  $\frac{1}{4}$  cup of 5.25% bleach for each one gallon of water;
- (2) The whirlpool, foot spa, or spa system shall be flushed with the bleach and water solution pursuant to (r) (3), above, for 10 minutes and allowed to sit for 6 to 10 hours; and
- (3) Whirlpool, foot spa, or spa system shall be drained and flushed with water before use by a patron.
- (s) Pipeless pedicure units shall be sanitized and disinfected after each use with an EPA-registered disinfectant according to manufacturers' instructions.
- (t) A record shall be made of the date and time of each cleaning and disinfecting as required by (q) and (r) above, including whether the cleaning was a daily or weekly cleaning.
- (u) The record pursuant to ~~(t)~~ ~~(u)~~ above shall be made available upon request by either a patron or inspector.
- (v) The water in a vaporizer machine shall be emptied daily and the unit disinfected.
- (w) Each shop or school shall comply with applicable local and state plumbing, electrical, and building codes.

(x) All needles, lancets, or other products containing potential blood borne pathogens shall be properly disposed in accordance with OSHA under 29 CFR 1910-1030.

(y) Shops required to have a manager shall notify the board immediately if the current manager leaves and assign a new manager as required by RSA 313-A:19, IV.

(z) The notification required by (y), above, shall include the manager's requirement as follows:

(1) Complete the same information as required by Bar 301.01(b)(5) and (b)(6); and

(2) Write a signed and dated letter from the new manager indicating they will accept the manager's position.

(aa) Prior to relocation of an independently operated booth, the booth renter shall notify the board, in writing. The booth renter relocating his or her booth shall submit a "Booth Rental Application" in accordance with Bar 301.09 (e). If the application is in compliance with Bar 301.09 (e) the board shall issue a new booth license.

(ab) A master barber or barber wanting a mobile barbershop shall be licensed in the same manner as a shop and follow all shop and licensee requirements.

(ac) A shop owner shall not change the name of a shop pending disciplinary action against the shop license or during any probationary period on the shop license.

(ad) Shop applicants with a shop located in a residence shall submit a floor plan. The floor plan shall include a detailed plan showing the entrance to the shop, location of restroom, treatment room, dispensary or equipment area, and reception area if any.

(ae) Floor plans for shops located within a residence shall not be altered after inspection and license issuance unless approved by the board.

(af) An individual requesting a new floor plan shall also file a new shop application with the floor plan, and shall be inspected pursuant to Bar 404.01.

(ag) All containers with chemicals shall be labeled, marked, or tagged with information specified by OSHA in 29 CFR 1910.1200(f)(6)(i) through (ii).

(ah) All product not in original containers shall be labeled, marked, or tagged with the product name.

(ai) All shops shall have an emergency eyewash station for use that is immediately accessible to everyone.

(1) All employees and booth renters, if applicable, shall be notified where the eyewash station is. The eyewash station shall be clearly marked.

(2) As used in this section, "emergency eyewash station" means either:

a. An unexpired, FDA-compliant portable eyewash kit or station; or

b. A plumbed-in eyewash station.

**Readopt with amendments Bar 302.07, effective 6-30-17 (Document #12226), to read as follows:**

Bar 302.07 Licensee.

- (a) Each licensee shall wash his or her hands immediately before attending to a patron.
- (b) Shampoo bowls shall be sanitized and disinfected after each use.
- (c) The licensee shall be responsible for compliance with the following requirements:
  - (1) All non-electrical implements shall be sanitized and disinfected after each use on a person and shall be kept in a dry container or drawer. Combs and brushes shall not be placed in the licensee's pocket at any time;
  - (2) The disinfection container(s) shall remain covered at all times;
  - (3) All implements that have been used on a patron or soiled in any manner shall be placed in a closed container;
  - (4) All electrical implements which come into direct contact with a client shall be disinfected before each use;
  - (5) All implements and supplies which come into direct contact with a patron and cannot be disinfected such as cotton pads, emery boards, sponges, and neck strips shall be disposed of after each use in a closed container;
  - (6) After a towel has been used, it shall be deposited in a container and not used until laundered;
  - (7) Creams and other semi-solid substances shall be removed from containers with a clean spatula or similar article without allowing such implements to come in contact with the patron. Containers of cream, powder and other toilet preparations shall be covered when not in use; and
  - (8) Implements which come in contact with a patron shall be sanitized and disinfected after each use. If a make-up brush or neck duster is used, it shall be disinfected after each use.
- (d) All licensees shall wear shoes and clothing.
- (e) Each patron shall be covered with a cape. The cape shall not come in direct contact with the patron's neck, unless laundered after each use.
- (f) If the skin of the licensee or patron is punctured, the licensee shall immediately do the following:
  - (1) Apply antiseptic and a sterilized bandage;
  - (2) Make available to the patron antiseptic and a sterilized bandage if still bleeding;

- (3) Under both (1) and (2) above, sanitize and disinfect the implement and appliance in use at the time of the puncture before proceeding; and
  - (4) Under both (1) and (2), above, put on disposable gloves.
- (g) A licensee shall not:
- (1) Apply methyl methacrylate (MMA) monomer on a person, or have MMA available for use in the facility;
  - (2) Use product in any other manner than that product's intended use;
  - (3) Use a variable speed electrical nail file on the natural nail unless it has been specifically designed for use on the natural nail;
  - (4) Use a blade to remove any corns, callouses, or skin, or have blades available for use in the facility;
  - (5) Diagnose any medical condition or treat any medical condition unless referred by a physician;
  - (6) Provide any service within the scope of practice unless they have received training prior to performing the service;
  - (7) Perform services on a client if the licensee has reason to believe the client has any of the following:
    - a. A communicable disease;
    - b. A contagious condition;
    - c. An inflamed, infected, broken, raised or swollen skin or nail tissue; or
    - d. An open wound or sore in the area to be worked on that would contraindicate the efficacy of the service;
  - (8) Use any adulterated chemical exfoliating substances;
  - (9) Use carbolic acid, also known as phenol, over 2% strength;
  - (10) Alter a license issued by the board;
  - (11) Use an animal to perform any service, including, but not limited to, worms, insects, fish, amphibians, reptiles, birds, and mammals; or
  - (12) Use a dermaroller, dermapen, plasma pen, or any microneedling device or equipment which rolls or pulsates using needles or pins, or have microneedling devices available for use in the facility.

(h) The licensee shall:

(1) Notify the board in writing within 30 days of a name or address change by providing:

- a. Old name and address;
- b. Current name and address;
- c. With name changes must include a copy of official documentation, such as, a marriage license, court paper, divorce decrees; and
- d. Current license number;

(2) If he or she loses his or her license, alters his or her license, or works in one or more location, request a duplicate license by providing the following in writing:

- a. His or her name and address;
- b. The same information as required by Bar 301.01 (b) (5) and (b) (6); and
- c. A check, money order, electronic payment, or cash in the amount of \$15.00; and

(3) When transferring his or her license to another state, request a certificate of state licensure from the board by providing the following in writing:

- a. His or her name and address;
- b. Name of the state to receive the certificate of state licensure; and
- c. A money order, electronic payment, or cash in the amount of \$20.00.

(i) The board shall issue to the licensee the following:

(1) A duplicate license within 30 days of receipt of request if the licensee has provided the information pursuant to (h) (2), above; or

(2) A certificate of state licensure within 14 days of receipt of a request if the license has provided the information pursuant to (h) (3), above.

(j) All check(s) returned to the board shall be subject to a penalty in accordance with RSA 6:11-a.

(k) A licensee who chooses to use an electrical nail file shall have completed a certified program in the proper use of an electrical nail file in a school licensed by the board or a certified program.

(l) The licensee shall provide a copy of the certificate required by Bar 302.06(ab) above within 30 days of receiving it.

(m) After each service, the licensee shall ensure that the surface(s) of all equipment that come in direct contact with client's skin, including manicuring tables, pedicure basin, mats, and cushions, shall be sanitized.

(n) An esthetician shall complete additional technical, hands-on training for each of the procedures or equipment in the following:

- (1) Cosmetic chemical substances for exfoliation;
- (2) Body therapies, including manual or mechanical lymphatic drainage massage as it relates to skin beautification;
- (3) Microdermabrasion or mechanical equipment for cosmetic exfoliation;
- (4) Light therapy devices;
- (5) Ultrasonic devices;
- (6) Microcurrent devices;
- (7) FDA registered Class I and II devices; and
- (8) Radiofrequency devices.

(o) The hands-on training may be obtained anywhere but shall be specific and adequate for the type of service to be performed.

(p) An esthetician shall use cosmetic exfoliating substances and equipment described in (n), above, according to the manufacturers' directions and within the equipment's approved scope of use pursuant to its 510k filing with the FDA.

(q) An esthetician using cosmetic exfoliating substances and equipment described in (n), above, shall have a sufficient understanding of the Fitzpatrick Scale to determine appropriate peel protocol. The esthetician shall assess the client's skin tone and determine where the client's skin tone falls on the scale.

(r) An esthetician shall receive training in sanitation precautions, the related theory, chemistry, safety precautions, ultraviolet light protection, contraindications, and practical application prior to performing services described in (n), above.

(s) An esthetician shall obtain a written client history of conditions related to services described in (n), above, including, but not limited to, the following:

- (1) Being currently under a physicians care or treatment;
- (2) Predisposition to herpes simplex virus;
- (3) Current pregnancy;
- (4) History of cosmetic related irritants or allergic reactions;

(5) Frequency of sun exposure or tanning bed use; and

(6) The use of topical or oral medications, or both, which increase the individuals' susceptibility to adverse reactions such as photosensitivity.

(t) Any New Hampshire licensed cosmetologist or esthetician providing services described in (n) (1) – (8), above, prior to June 9, 2006, shall be allowed to continue such services provided they comply with (n) through (s) for estheticians.

(u) Licensees who wish to perform a service at a location other than a shop licensed in accordance with RSA 313-A:19 and the board's administrative rules shall submit a written request to the board, which includes:

(1) The service to be provided;

(2) The date and location the service will be provided;

(3) The name of the charitable organization or individual in need;

(4) The reason for providing service at an unlicensed location;

(5) Evidence of how the licensee will provide for the health and safety of the consumer; and

(6) The signature of the licensee.

(v) The board shall approve or deny the above request within 60 days of receipt of the request.

(w) The board shall approve a request only if:

(1) The board finds that approval would not jeopardize the health and safety of the public;

(2) The board determines that the event is to benefit a charitable organization or individual in need;

(3) The board determines this is not a regular practice; and

(4) The board determines the event does not benefit the licensee.

(x) The board shall deny a request only if:

(1) The board finds the health and safety of the public is jeopardized;

(2) The board determines that the event is to benefit the licensee; or

(3) The board determines that the event is held on a regular basis.

(y) A licensee, instructor, or shop apprentice shall attach a current passport photograph to the professional or shop apprentice license upon receipt of the license.

(z) Individuals who are granted a temporary permit shall attach a current passport photograph to the temporary permit upon receipt.

(aa) Licensees, instructors, shop apprentices, and individuals with a temporary permit shall make government-issued photo identification available to the inspector at any time while working in the shop.

**Readopt with amendments Bar 404.04 and Bar 404.05, effective 4-2-15 (Document #10808), to read as follows:**

Bar 404.04 Who May be Fined.

(a) Fines shall be imposed upon any licensee who violated the provisions of RSA 313-A. Fines pursuant to Bar 404 shall be imposed for each offense upon the licensee who violates the provision of RSA 313-A or the administrative rules of the board. Fines shall be assessed to the shop owner where the violations occur.

(b) Administrative fines shall be determined by the number of points the licensee has accumulated during that inspection. Points shall be issued as outlined in Bar 404.08, 404.09 and 404.10.

Bar 404.05 Notice.

(a) Upon completion of an inspection, the board shall notify any licensee the board is considering imposing a fine upon with an inspection report described in Bar 404.01, which states the following information:

- (1) The proposed amount of the fine according to Part Bar 404.08 and Bar 404.09; and
- (2) The person's right to a hearing before the board prior to final determination of a fine.

(b) The notice shall state that the person shall have the following options upon receipt of the notice:

- (1) To waive the right to a hearing and pay the proposed fine immediately;
- (2) To request a pre-hearing conference in accordance with Bar 404.06; or
- (3) To request in writing a hearing in accordance with Bar 404.07.

**Appendix**

<b>Rule</b>	<b>Statute</b>
Bar 302.05	RSA 313-A:7, X; RSA 313-A:8, X; RSA 313-A:17; RSA 313-A:19
Bar 302.07	RSA 313-A:8, X, XIV
Bar 404.04	RSA 313-A:19 and RSA 313-A:7, XVI
Bar 404.05	RSA 313-A:19 and RSA 313-A:7, XVI