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Final Regulation Agency Background Document

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| Agency name | Board for Barbers and Cosmetology |
| Virginia Administrative Code (VAC) citation | 18VAC41-20 18VAC41-40 |
| Regulation title | Barbering and Cosmetology Regulations Wax Technician Regulations |
| Action title | General Review |
| Date this document prepared | April 29, 2016 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulations are the result of a periodic review of the regulations conducted by the Board. The last non-fee related regulatory change was made in 2013.

The proposed changes in the regulations will make clarifying changes, incorporate wax technician regulations into 18VAC41-20 and repeal their current chapter, 18VAC41-40, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“Department” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Barbers and Cosmetology.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting of February 9, 2016, the Board for Barbers and Cosmetology adopted as final these regulations that amend the Barbering and Cosmetology Regulations (18 VAC 41-20) and Wax Technician Regulations (18 VAC 41-40).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Code of Virginia § 54.1-201.5 gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment with unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, to ensure regulations are clearly written and easily understandable, and are representative of the current advancements and standards of the industries. Furthermore, the Board seeks to strengthen some of its reporting requirements and prohibited acts to address areas of vulnerabilities for the perpetration of fraud by applicants and regulants.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Throughout the regulations, all pertinent sections have been updated to incorporate the Board's Wax Technician Regulations, 18 VAC 41-40, into the Board's regulations. As such, all sections of 18 VAC 41-40 are being repealed.

18 VAC 41-20-10. Definitions. New definitions of business entity, firm, responsible management, sole proprietor, and post-secondary education level have been added to further clarify terms used in subsequent regulations.

18 VAC 41-20-20. General requirements for a barber, cosmetologist, or nail technician license. The proposed amendments update this section to further clarify and standardize entry requirements. The proposed amendments require applicants disclose all felony convictions within 20 years of the date of application and certain misdemeanors within the last two years. The proposed amendments also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession.

Section 18 VAC 41-20-30. License by Endorsement. The proposed amendments make typographical corrections and add a reference to instructor application requirements.

Section 18 VAC 41-20-60. Examination requirements and fees. The proposed amendments add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply, and that the Board will only retain examination records for 'non-applicants' for a maximum of five years.

Section 18 VAC 41-20-90. Barber, cosmetology, and nail technician temporary permits. The proposed amendments also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession.

Section 18 VAC 41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, or nail technician instructor certificate. The proposed amendments update this section to further clarify and standardize the requirements. The proposed amendments require applicants to hold a current license in the field in which they wish to become an instructor and to disclose all felony convictions within 20 years of the date of application and certain misdemeanors within the last two years. The proposed amendments also require reporting any prior discipline by a licensing entity and allows for application denial where the Board deems the applicant unfit or unsuited to engage in the profession.

Section 18 VAC 41-20-110. Student instructor temporary permit. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments also provide that student instructor temporary permits shall only be issued once, and shall not be issued where grounds may exist to deny due to prior criminal convictions or disciplinary action.

Section 18 VAC 41-20-120. Shop or salon license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments add the requirement that the applicant's license be in good standing and requires applicants and all members of responsible

management to disclose all felony convictions within 20 years of the date of application and certain misdemeanors within the last two years, and any prior discipline by a licensing entity. The proposed also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession. The proposed amendments require disclosure of the applicants' physical address, the firms' responsible management, and certify that the applicant has read applicable laws and regulations. The proposed amendments add the requirement that voided licenses be returned to the Board within 30 days and sets forth what events void a license. The proposed amendments also require any change in responsible management be reported to the Board within 30 days of the change. The proposed amendments allow the Board to inspect a shop or salon during reasonable hours, and define reasonable hours.

Section 18 VAC 41-20-130. School license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments add the requirement that the applicant's license be in good standing and requires applicants and all members of responsible management to disclose all felony convictions within 20 years of the date of application and certain misdemeanors within the last two years, and any prior discipline by a licensing entity. The proposed amendments also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession. The proposed amendments also require disclosure of the applicant's physical address, the firm's responsible management, and certify that the applicant has read applicable laws and regulations. The proposed amendments add the requirement that voided licenses be returned to the Board within 30 days and sets forth what events void a license. The proposed amendments also require any change in responsible management be reported to the Board within 30 days of the change. The proposed amendments exempt schools under the Virginia Department of Education. The proposed amendments allow the Board to inspect a school during reasonable hours, and define reasonable hours.

Section 18 VAC 41-20-160. License renewal required. The proposed amendments update this section to further clarify and simplify the requirement that all licenses shall expire two years from the last day of the month in which issued.

Section 18 VAC 41-20-180. Failure to renew. The proposed amendments update this section to further clarify and simplify the regulations and add salons/shops to reinstatement. Previously shops/salons were left out. Additionally, removes reference to "penalty fee."

Section 18 VAC 41-20-190. Applicants for state approval. The proposed amendments repeal this regulation, moving its requirements to 18 VAC 41-20-130.

Section 18 VAC 41-20-200. General requirements. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments also add the requirement that schools either own or possess the necessary equipment and implements to teach the respective curriculum and require proof of access to equipment when the schools do not own the equipment. Also makes explicit the requirement that schools must submit curriculum changes to the Board.

Section 18 VAC 41-20-210. Curriculum requirements. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments also add curriculum requirements for nail schools and waxing schools.

Section 18 VAC 41-20-230. School identification. The proposed amendments repeal this regulation, which is already contained within 18 VAC 41-20-130.

Section 18 VAC 41-20-240. Records. The proposed amendments update this section to further clarify the regulations and add specific requirements for record keeping. The proposed amendments also add a requirement that schools provide certain documentation to the Board within specified time periods.

Section 18 VAC 41-20-250. Reporting. The proposed amendments update this section to further clarify the requirements and add the requirement that schools provide student rosters to the Board twice a year at specified intervals.

Section 18 VAC 41-20-260. Display of License. The proposed amendments update this section to further clarify the requirements.

Section 18 VAC 41-20-270. Sanitation and safety standards for shops, salons, and schools. The proposed amendments update this section to further clarify the requirements. The proposed amendments also clarify the disinfection process and add that scissors must be disinfected between clients. The proposed amendments also add language about disinfecting tubs and bowls used for nail care, upkeep of the immediate area around wax pots, and requiring client bathrooms. The proposed amendments also add regulations regarding sanitary storage of soiled and clean linens, sanitary containers, labeling, and disinfectant for nail care, and specified what should be included in the blood spill cleanup kit.

Section 18 VAC 41-20-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty. The proposed amendments update this section to further clarify and simplify the requirements. The proposed amendments also provide grounds for discipline for failing to teach the approved curriculum, bribery, failing to respond or providing false or misleading information to the Board or its agents and refusing to allow inspection of any shop, salon, or school. They also clarify and refined grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period. The proposed amendments provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease and failing to comply with all procedures with regard to conduct at the examination.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1) The primary advantage of the proposed amendments to the public is the Board will continue to approve applicants and license professionals for which it has safeguards to ensure proper competency and standards of conduct. The addition of prohibited acts will reduce fraud and better ensure the regulant population is minimally competent. The clarification of requirements regarding sanitation and health safety will ensure that the health, safety, and welfare of the public are better served. Further, regulants and applicants within these professions will be able to read the Board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate quicker and more efficient processes for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of the Board's requirements, which will allow them to conduct their business with greater efficiency. No disadvantage has been identified.

2) The primary advantage to the Commonwealth will be the continued successful regulation of barbers, cosmetologists, nail technicians and wax technicians who meet the minimum entry standards. The proposed amendments strengthen the Department’s ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

3) The incorporation of the previously adopted wax technician regulations will further simplify and enhance the regulated community’s efforts to locate pertinent regulations. The clarification of the proposed language will facilitate greater understanding of the Board’s requirements for all involved.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

1) The proposed regulations will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.

2) The proposed regulations should encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents through a simplified and clarified regulatory environment. The proposed amendments should make entering and engaging in the regulated professions more easily understood for individuals and businesses.

- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations should have minimal impact on disposable family income.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

| Section number | Requirement at proposed stage | What has changed | Rationale for change |
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| 18 VAC 41-20-20 | New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant’s criminal history. | New subsection A.4 specifies that the only felony convictions requiring disclosure are convictions within 20 years of the date of application. | When the Governor approved the proposed regulations, he requested the Board consider whether more specific disclosure requirements can be used and still protect the public. The Board believes that it can exempt felony convictions more than 20 years prior to the date of application without increasing the risk to public safety. |
| 18 VAC 41-20-30 | This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board’s regulations. | Typographical correction: “cosmetology” is changed to “cosmetologist.” Additional detail provided to regulatory citation to accurately reflect the applicable sections: “18 VAC 41-20-20.A and 18 VAC 41-20-100.” | The regulation incorrectly used the word “cosmetology” when referring to a practitioner. The regulation cited too much of 18 VAC 41-20-20, incorporating parts that could not be applicable to licensure by endorsement. Additionally, there was no citation to the instructor requirements regulation. |
| 18 VAC 41-20-100 | New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each | New subsection A.4 specifies that the only felony convictions requiring disclosure are convictions within 20 years of the date of application. | When the Governor approved the proposed regulations, he requested the Board consider whether more specific disclosure requirements can be used and still protect the public. The Board believes that it can exempt felony convictions more than 20 |

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| | applicant's criminal history. | | years prior to the date of application without increasing the risk to public safety. |
| 18 VAC 41-20-120.A.1 | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>New subsection A.1 adds the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances.</p> | All references to "applicant" changed to "applicant and responsible management". | The proposed regulatory change was to ensure the Board is licensing spas which are minimally competent to engage in the profession. The proposed stage document inconsistently referred to "applicant" and "applicant and responsible management." This change adds consistency within the section and reflects the original intention of the change. |
| 18 VAC 41-20-120.A.4 | New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history. | New subsection A.4 specifies that the only felony convictions requiring disclosure are convictions within 20 years of the date of application. | When the Governor approved the proposed regulations, he requested the Board consider whether more specific disclosure requirements can be used and still protect the public. The Board believes that it can exempt felony convictions more than 20 years prior to the date of application without increasing the risk to public safety. |
| 18 VAC 41-20-130.A.1 | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>New subsection A.1 adds the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant</p> | All references to "applicant" changed to "applicant and responsible management". | Implements the same change listed above, for 18 VAC 41-20-120.A.1, for the same reasons. |

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| | disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. | | |
| 18 VAC 41-20-130.A.4 | New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history. | New subsection A.4 specifies that the only felony convictions requiring disclosure are convictions within 20 years of the date of application. | When the Governor approved the proposed regulations, he requested the Board consider whether more specific disclosure requirements can be used and still protect the public. The Board believes that it can exempt felony convictions more than 20 years prior to the date of application without increasing the risk to public safety. |
| 18 VAC 41-20-200.3 | No Changes | Adds requirement that training is conducted by licensed and certified instructor and allows cosmetology instructors to teach nail and waxing programs. | The requirement that training be conducted by a licensed instructor is being removed from 18VAC41-20-130 and was meant to be moved to this section during the proposed stage as a clarifying edit; however, it was inadvertently left out at that stage. The addition that cosmetology instructors can teach nail and waxing program reflects current practice and also incorporates the provision in 18VAC41-40-180.3. |
| 18 VAC 41-20-200.5 | No Changes. | Adds "All changes to curricula must be resubmitted and approved by the Board." | This requirement is already implicit in the regulation and 18 VAC 41-20-280 allows for discipline of schools for teaching items outside their Board approved curriculum. This clarifying change is meant to make the |

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| | | | requirement explicit in the requirements section, and reduce the need for schools to contact the Board to determine if resubmission is required. |
| 18 VAC 41-20-260.A & B | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>This section is amended to read with greater clarity.</p> | References to shop, salon, and school "owner[s]" are removed. | A significant part of the proposed regulations is a change in the definitions to use the term "responsible management" rather than owner. This reference was overlooked in the proposed stage, and will add consistency to the regulations. |
| 18 VAC 41-20-270.B.8.c | New subsection B.8 is added incorporating parts of old subsection D.1 and specifying the manner in which sinks, bowls, tubs and other surfaces are to be cleaned. | Reference to "appropriate disinfectant" is changed to "EPA-registered hospital (grade) and tuberculocidal disinfectant." | The use of "appropriate" was vague, and the new language is consistent with type of disinfectant required in other subsections of the section. |
| 18 VAC 41-20-270.C.4 | Subsection C.4 is amended with the added requirements that a bathroom be maintained for exclusive client use, have hot and cold water, and allows for a hand air-drying device. | Subsection C is reworded to allow for an exemption for shops and salons that located to the non-compliant facility prior to January 1, 2017. | When the Governor approved the proposed regulations, he requested the Board utilize more flexibility in creating this requirement, such as a an extended period for compliance. A grandfathering provision such as the one proposed will have the smallest economic impact. |
| 18 VAC 41-20-270.D.4 | No Changes | Current language requires lotions, ointments, creams, and powders "be kept in closed containers". Adds "label and" before kept in closed containers. | These products come from the manufacture/retailer with labels. There is danger of confusion and misuse by removing the label. This change should not require any action on the part of the licensee, beyond maintaining pre-existing labels. |
| 18 VAC 41-20-270.E.1 | No Changes | Replace "Material Safety Data Sheets (MSDS)" with "Safety Data Sheets (SDS)". | MSDS has been replaced by the international standard SDS. Industry was required under federal law to complete the switch by December |

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| | | | 1, 2015 and MSDS are no longer provided by manufacturers or distributors. |
| 18 VAC 41-20-270.E.3 | No Changes | Adds "label and" before "stored in nonflammable storage cabinet..." | These products come from the manufacture/retailer with labels. There is danger of confusion and misuse by removing the label. This change should not require any action on the part of the licensee, beyond maintaining pre-existing labels. |
| 18 VAC 41-20-270.E.4 | No Changes | Adds "label and" before "separated in storage." | These products come from the manufacture/retailer with labels. There is danger of confusion and misuse by removing the label. This change should not require any action on the part of the licensee, beyond maintaining pre-existing labels. |
| 18 VAC 41-20-280.A.1 | This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations. This section is reworded to read with greater clarity and specify the applicability to business entities as well as individual licensees. | Replace "barbershop, cosmetology salon, nail salon, or waxing salon" with "shop, salon, or school." | This change simplifies the wording of the requirement and adds schools, which were inadvertently omitted during the proposed stage. |
| 18 VAC 41-20-280.A.11 | This section is reworded to read with greater clarity. | Remove two uses of "other", so that section applies to "any jurisdiction", rather than "any other jurisdiction." | This wording was creating a situation where the Board was able to discipline individuals for disciplinary action outside of the state, but not for disciplinary action within the state by another board. This change will enable the Board to properly address all disciplinary action taken against licensees. |
| 18 VAC 41-20-280.A.14 | New subsection 14 adds the grounds for discipline for any shop, salon, or | Replaces "owner or operator" with "responsible management." | A significant part of the proposed regulations is a change in the definitions |

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| <p>& 15</p> | <p>school owner or operator who allows an unlicensed person to practice, unless that person is a registered apprentice.</p> <p>New subsection 15 adds the grounds for discipline for an owner or operator of a school who allows the practice of an unlicensed instructor.</p> | | <p>to use the term “responsible management” rather than owner. This reference was overlooked in the proposed stage, and will add consistency to the regulations.</p> |
| <p>18 VAC 41-20-280.A.17</p> | <p>New subsection 17 adds the grounds for discipline of failing to comply with procedures established by the Board and testing service with regard to conduct during examination.</p> | <p>Replace “conduct at the examination” with “conduct at any Board examination.”</p> | <p>This change allows the Board to better address fraudulent activities occurring during examinations. Specifically, this allows the Board to address conduct of a licensee at any board exam, rather than only the exam by which they were licensed.</p> |

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No public comment was received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| <p>18 VAC 41-20-10</p> | | <p>Establishes definitions of terms used throughout the Chapter.</p> | <p>Definitions in this section are amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> |

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| | | | <p>“Business Entity” is added to provide a comprehensive list of the forms of legal organization permitted under law. Adding this definition precludes the need to consistently repeat each type of legal organization.</p> <p>“Firm” is added to provide a short hand explanation of business entities recognized under the laws of the Commonwealth. Adding this definition precludes the need to consistently repeat this language.</p> <p>“Licensee” is amended to reflect all business entities allowed under the laws of the Commonwealth.</p> <p>“Post-Secondary educational level” is added to distinguish educational levels and recognize accredited colleges or universities.</p> <p>“Responsible Management” is added to identify those who are responsible for the business and regulatory activity of a firm. Adding this definition precludes the need to consistently repeat this language.</p> <p>“Sole Proprietorship” is added to distinguish an individual, not a corporation, trading under his own or an assumed name.</p> |
| <p>18 VAC 41-20- 20</p> | | <p>Establishes the general requirements for a barber, cosmetology, or nail technician license.</p> | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board’s regulations.</p> <p>Subsection A.1 is reworded for greater clarity. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing individuals who are minimally competent to engage in the profession.</p> <p>Old subsection A.4. is removed and reworded in subsections A.1 and new subsection A.4.</p> <p>New subsection A.4 includes a new requirement that certain misdemeanors in the last two years and all felonies within the last 20 years must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each</p> |

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| | | | <p>applicant's criminal history.</p> <p>Subsection B.2.C is added to allow wax technicians who complete training outside the Commonwealth, which is substantially similar to Virginia's training, submit to the Board documentation verifying at least 115 hours of training or, if less than 115 hours, proof of completion of a substantially similar training program and 6 months of wax technician work experience. This provision incorporates previously adopted language from the wax technician regulations.</p> |
| 18 VAC 41-20-30 | | Establishes licensure by endorsement for certain individuals. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>Typographical correction: "cosmetology" is changed to "cosmetologist." The regulation incorrectly used the word "cosmetology" when referring to a practitioner.</p> <p>Additional detail provided to regulatory citation to accurately reflect the applicable sections: "18 VAC 41-20-20.A and 18 VAC 41-20-100." The regulation cited too much of 18 VAC 41-20-20, incorporating parts that could not be applicable to licensure by endorsement. Additionally, there was no citation to the instructor requirements regulation.</p> |
| 18 VAC 41-20-50 | | Provides exceptions to training requirements. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>Subsection D is amended to include nail technicians.</p> |
| 18 VAC 41-20-60 | | Establishes examination requirements and fees. | <p>New subsection E establishes that any candidate who fails to apply for licensure within five years of passing the examination will have to retake both portions of the exam. It also provides that records of exams will be kept for no more than five years. A candidate who does not apply within five years of their exam is less likely to be knowledgeable of their training or the trade. As no candidate can apply if their exam is more than five years old, there is no purpose in maintain records beyond this point.</p> |
| 18 VAC | | Establishes examination | This section is amended to incorporate wax |

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| 41-20-80 | | administration requirements. | technician regulations, 18 VAC 41-40, into the Board's regulations. |
| 18 VAC 41-20-90 | | Establishes the barber, cosmetology and nail technician temporary permits. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>New subsection E adds the language that temporary permits will not be issued where grounds for denial exist. This ensures that candidates who may disqualify under the Board's regulations are not given temporary licenses and allowed to practice on the public.</p> |
| 18 VAC 41-20-100 | | Establishes the general requirements for a barber, cosmetology or nail technician instructor certificate. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>Subsection A is reworded for greater clarity. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing individuals who are minimally competent to engage in the profession.</p> <p>New subsection A.2 adds the requirement that the applicant hold a current license in the field in which they wish to become an instructor. This ensures that instructors are familiar and minimally competent in the fields in which they teach.</p> <p>New subsection A.6 includes a requirement that certain misdemeanors and all felonies within the last 20 years must be disclosed by the applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history.</p> |
| 18 VAC 41-20-110 | | Establishes the requirements for student instructor temporary permits. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>Old subsection A is removed because its language is read more easily by splitting out its concepts into separate sections.</p> <p>New subsection A consists of the first portion of old subsection A, namely, allowing student instructor temporary permits as long as they are functioning under the direct supervision</p> |

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| | | | <p>of a licensed instructor.</p> <p>New subsection B consists of old subsection A's requirement that the temporary permits are good for 12 months, non-renewable and non-transferable.</p> <p>New subsection C consists of old subsection A's prohibition against issuing more than one temporary permit to each applicant.</p> <p>New subsection D consists of old subsection A's requirement that failure to maintain an applicant's professional license will disqualify an applicant for a temporary permit.</p> <p>New subsection E adds the language that temporary permits will not be issued where grounds for denial exist. This ensures that candidates who may disqualify under the Board's regulations are not given temporary licenses and allowed to practice on the public.</p> |
| <p>18 VAC 41-20- 120</p> | | <p>Establishes the general requirements for a shop.</p> | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>New subsection A.1 adds the requirement that the applicant and members of responsible management be in good standing as a licensed shop, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing shops/salons which are minimally competent to engage in the profession.</p> <p>New subsection A.2 requires the applicant to disclose his physical address. This ensures the Board can maintain appropriate oversight and communication with the licensee, should the license be granted.</p> <p>New subsection A.3 requires the applicant certify that he has read and understands Virginia's laws and regulations regarding its profession. This will help ensure that every licensee understands its professional obligations and is minimally competent.</p> |

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| | | | <p>New subsection A.4 includes a new requirement that certain misdemeanors and all felonies within the last 20 years must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history.</p> <p>New subsection A.5 requires the applicant to disclose the firm's responsible management. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>Subsection B is amended to read with greater clarity. The disclaimer from old section 280.A.6 is added, noting that the Board is not responsible for a licensee's failure to receive communications if the licensee has not notified the Board of a change of address. This requirement ensures that every applicant is aware that it is responsible for updating its address with the Board.</p> <p>Subsection C is reworded to read with greater clarity and specificity.</p> <p>New subsection D requires that any change to officers, managers or directors of certain business entities be reported to the Board within 30 days of the change. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>New subsection E requires the shop/salon allow the Board to inspect the shop/salon during reasonable hours, and defines reasonable hours as 9 a.m. to 5 p.m. This addition ensures that the Board will have access to the regulated shops and salon and that compliance with the Board's regulations can be verified. This is particularly important if the Board is to fulfill its duty to protect the health, safety and welfare of the public.</p> |
| <p>18 VAC 41-20-130</p> | | <p>Establishes general requirements for a school license.</p> | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>Subsection A incorporates the requirement from repealed section 190.A that applicants must apply at least 60 days before the date for which approval is sought.</p> |

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| | | | <p>New subsection A.1 adds the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing schools which are minimally competent to engage in the profession.</p> <p>New subsection A.2 requires the applicant to disclose his physical address. This ensures the Board can maintain communication and appropriate oversight of the licensee, should the license be granted.</p> <p>New subsection A.3 requires the applicant certify that he has read and understands Virginia’s laws and regulations regarding its profession. This will help ensure that every licensee understands its professional obligations and is minimally competent.</p> <p>New subsection A.4 includes a new requirement that certain misdemeanors and all felonies within the last 20 years must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant’s criminal history.</p> <p>New subsection A.5 requires the applicant to disclose the firm’s responsible management. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>Subsection B is amended to read with greater clarity. A disclaimer is added that the Board is not responsible for a licensee’s failure to receive communications if the licensee has not notified the Board of a change of address. This new requirement ensures that every applicant is aware that he is responsible for updating his address with the Board.</p> <p>Old subsections C and D are removed and replaced with new subsection C, in order to provide greater clarity.</p> |
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| | | | <p>Subsection C is added requiring a school to return its license within 30 days of when it becomes void and identifies what will void a license. This regulation will assist the Board in keeping track of which licensees are active and which are inactive. This, in turn, will allow for more accurate information to be distributed to the public regarding licensees.</p> <p>New subsection D requires that any change to officers, managers or directors of certain business entities be reported to the Board within 30 days of the change. This will ensure that the Board is informed as to who is actually operating the school.</p> <p>New subsection E incorporates language from repealed section 190.B, which exempts schools under the Virginia Department of Education from licensure requirements. This ensures that the Board's regulations do not conflict, overlap or duplicate other state laws or regulations.</p> <p>New subsection F requires schools to allow the Board to inspect the school during reasonable hours, and defines reasonable hours as 9 a.m. to 5 p.m. This addition ensures that the Board will have access to the regulated schools and that compliance with the Board's regulations can be verified. This is particularly important if the Board is to fulfill its duty to protect the health, safety and welfare of the public.</p> |
| 18 VAC 41-20-140 | | Establishes fees. | This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations. |
| 18 VAC 41-20-160 | | Establishes that license renewal is required. | Old subsections A, B and C are removed and replaced with simplified language identifying when licenses expire. |
| 18 VAC 41-20-180 | | Establishes provision for when licensees fail to renew. | <p>Subsection A is amended to add greater clarity.</p> <p>Subsection B is replaced with simplified language and adds business entities to the its requirements.</p> <p>Old subsection C is removed and incorporated into subsection B. Subsequent subsections are renumbered.</p> <p>Old subsection E is amended to remove a</p> |

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| | | | <p>reference to “a penalty fee.” The Board does not have a penalty fee.</p> <p>Old Subsection F removes an exception provided to school licenses in order to simplify the regulations.</p> |
| 18 VAC 41-20-190 | | Established requirements for applicants for state approval. | This section is repealed and its requirements are incorporated into section 130. |
| 18 VAC 41-20-200 | | This section establishes general requirements for schools. | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board’s regulations.</p> <p>Subsection 5 is amended to add the explicit requirement that all changes to curricula must be approved by the Board. This requirement is already implicit in the regulation and 18 VAC 41-20-280 allows for discipline of schools for teaching items outside their Board approved curriculum. This clarifying change is meant to make the requirement explicit in the requirements section, and reduce the need for schools to contact the Board to determine if resubmission is required.</p> <p>Subsection 7 is amended to add greater clarity.</p> <p>New subsection 8 requires schools possess the necessary equipment or implements to teach the respective curriculum. This will ensure that schools are adequately equipped to prepare its students to engage in the profession and help insure minimum competency of the regulant population.</p> |
| 18 VAC 41-20-210 | | Establishes curriculum requirements for schools. | <p>Subsection A.21 is modified to add greater clarity.</p> <p>New subsection C identifies the curriculum requirement for nail schools. This addition will ensure that nail technicians possess the minimum competence to engage in the profession.</p> <p>New subsection D incorporates wax technician regulations, 18 VAC 41-40, into the Board’s regulations.</p> |
| 18 VAC 41-20-220 | | Establishes the required hours of instruction and performances. | This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board’s regulations. |

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| | | | Subsections B and C are amended to add greater clarity. |
| 18 VAC 41-20-230 | | Establishes requirements for school identification. | This section is repealed to provide greater simplicity to the regulations. |
| 18 VAC 41-20-240 | | Establishes recordkeeping requirements for schools. | <p>Old subsection A is reworded and expanded for greater clarity. The added portion specifies for the regulant which records must be kept.</p> <p>New subsection B adds the requirement that schools must produce to the Board any document concerning a student within 10 days of the request. This will better enable the Board to prevent fraud, investigate regulatory violations, and better assist the regulant community.</p> <p>New subsection C requires that schools, within 21 days of a student's request, produce documentation and performances completed by that student. This provision will assist students in obtaining their records and addresses a frequent complaint that schools are withholding progress documentation from their students.</p> <p>New subsection D requires that schools provide performance documentation to students prior to closing or changing ownership. This will add another layer of protection for students enrolled in school, ensuring that they will have access to their progress reports and transcripts.</p> <p>New subsection E requires that schools, for a period of one year after a change in ownership, provide records within 21 days of a request of a current student.</p> |
| 18 VAC 41-20-250 | | Establishes reporting requirements for schools. | <p>This section is amended to read with greater clarity. The language from this section is moved to new subsection B.</p> <p>New subsection A adds the requirement that schools submit a roster of all current students twice a year, at specified intervals. This will better enable the Board to prevent fraud, investigate regulatory violations and better assist the regulant community.</p> |
| 18 VAC 41-20-260 | | Establishes a requirement for licenses to be displayed. | This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations. |

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| | | | <p>This section is amended to read with greater clarity.</p> |
| <p>18 VAC 41-20- 270</p> | | <p>Establishes sanitation and safety standards for shops, salons, and schools.</p> | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board's regulations.</p> <p>This section is reworded and reorganized to read with better clarity. Requirements for labeling stored chemicals are also added.</p> <p>The new requirements in this section are added to provide a more sanitary and safe environment for the public and licensed professionals.</p> <p>Old subsection B.5 is re-numbered and amended, incorporating a new requirement that the area immediately surrounding wax pots shall be clean and free of clutter.</p> <p>New subsection B.8 is added incorporating parts of old subsection D.1 and specifying the manner in which sinks, bowls, tubs and other surfaces are to be cleaned. Additionally, the reference to "appropriate disinfectant" is changed to "EPA-registered hospital (grade) and tuberculocidal disinfectant." The use of "appropriate" was vague, and the new language is consistent with type of disinfectant required in other subsections of the section.</p> <p>Subsection C.4 is amended with the added requirements that a bathroom be maintained for exclusive client use (except for shops and salons that located to the non-compliant facility prior to January 1, 2017), have hot and cold water, and allows for a hand air-drying device.</p> <p>Old subsection E.10 is amended to required lotions, ointments, creams and powders be labeled. These products come from the manufacture/retailer with labels. There is danger of confusion and misuse by removing the label. This change should not require any action on the part of the licensee, beyond maintaining pre-existing labels.</p> <p>Old subsection E.1 is re-numbered and amended to include new requirements for storing soiled and clean linens.</p> |

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| | | | <p>Old subsection F.1 is amended to replace the antiquated language “Material Safety Data Sheets” with current language “Safety Data Sheets.” MSDS has been replaced by the international standard SDS. Industry was required under federal law to complete the switch by December 1, 2015 and MSDS are no longer provided by manufacturers or distributors.</p> <p>Old subsection F.2 is re-numbered and amended to include specific requirements for blood spill cleanup kits.</p> <p>Old subsection F.4 is amended to required chemicals be labeled. These products come from the manufacture/retailer with labels. There is danger of confusion and misuse by removing the label. This change should not require any action on the part of the licensee, beyond maintaining pre-existing labels.</p> |
| <p>18 VAC 41-20-280</p> | | <p>Establishes grounds for disciplinary action.</p> | <p>This section is amended to incorporate wax technician regulations, 18 VAC 41-40, into the Board’s regulations.</p> <p>This section is reworded to read with greater clarity.</p> <p>New prohibited acts are added to better enable the Board to prevent fraud, investigate regulatory violations, and better protect the public.</p> <p>New subsection 5 adds the grounds for discipline of bribing a public official.</p> <p>New subsection 6 adds the grounds for discipline of failing to respond to the Board, or providing false, misleading, or incomplete information to an inquiry of the Board.</p> <p>New subsection 7 adds the grounds for discipline of failing or refusing to allow the Board or its agent to inspect any licensed shop, salon, or school.</p> <p>Old subsection 6 is re-numbered and a portion of it is moved to section 120.B.</p> <p>Old subsection 7 is re-numbered and adds the ground for discipline of making a misrepresentation.</p> <p>Old subsection 8 is re-numbered and</p> |

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| | | | <p>removes two uses of “other”, so that section applies to “any jurisdiction”, rather than “any other jurisdiction.” This wording was creating a situation where the Board was able to discipline individuals for disciplinary action outside of the state, but not for disciplinary action within the state by another board. This change will enable the Board to properly address all disciplinary action taken against licensees.</p> <p>Old subsection 9 is repealed. This section was duplicative with old section 20.A.4.</p> <p>New subsection 12 adds grounds for discipline for having been convicted of certain misdemeanor and any felony.</p> <p>New subsection 13 adds grounds for discipline for failing to report to the Board any conviction within 30 days of being convicted.</p> <p>New subsection 14 adds the grounds for discipline for any shop, salon, or school owner or operator who allows an unlicensed person to practice, unless that person is a registered apprentice.</p> <p>New subsection 15 adds the grounds for discipline for an owner or operator of a school who allows the practice of an unlicensed instructor.</p> <p>New subsection 16 adds the grounds for discipline of failing to take sufficient measures to prevent the transmission of communicable diseases or fails to comply with laws and regulations pertaining to sanitation and safety.</p> <p>New subsection 17 adds the grounds for discipline of failing to comply with procedures established by the Board and testing service with regard to conduct during any Board examination. This change allows the Board to better address fraudulent activities occurring during examinations.</p> |
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