

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

INITIAL STATEMENT OF REASONS

Hearing Date: October 14, 2015

Subject Matter of Proposed Regulations: Demonstration of Products

Sections Affected:

- Adopt Section 965.1, Division 9 of Title 16, California Code of Regulations.

Specific Purpose of amendment:

1. Problem being addressed:

The Board is seeing a growing number of unlicensed individuals and/or businesses performing services that fall within a scope of practice regulated by the Board who are claiming they are merely offering a demonstration and that a license therefore is not needed.

2. Anticipated benefits from this regulatory action:

Board will be better able to identify and prevent illegal unlicensed activities through its inspections program

Factual Basis/Rationale

The purpose of Section 7319(e) of the Business and Professions Code has always been to exempt from Board licensing people who demonstrate products for the purpose of selling the product, such as employees at the cosmetic counter of a department store. But recently, the Board has come across a number of individuals, establishments and product manufacturers who are in effect providing barbering and cosmetology services for which a license is required but who claim they are exempt from licensing regulations under Section 7319(e), pertaining to product demonstrating. Following are examples of what the Board has experienced:

Eyelash Extensions: The Board has found instances of unlicensed individuals providing lash extension services in unlicensed establishments. Providers are taking a manufacturer's "how to" course, applying the lashes to a client and claiming they are only charging the client for the cost of the lashes, as the cosmetics counter of a department store might do. However, clients are not just paying for the lashes, as the cost for false eyelashes themselves is relatively low (\$20.00– \$30.00) and these purported lash extension "demonstrations" currently cost around \$150.00. It should be noted that the typical price for lash extensions by a licensed individual at a licensed salon is also around \$150.00.

Home Hair Coloring: Some hair coloring manufacturers are also attempting to circumvent the Board's regulations. One manufacturer describes itself in company literature as "a company that manufactures and sells at-home hair color and hair care products." The company also

offers customers the opportunity to purchase a consultation, full-service color and blow-out in the customer's home performed by a company employee who is licensed with the Board of Barbering and Cosmetology. It is a violation of Section 7317 B&P for a licensee to perform such services outside of a licensed barbering and cosmetology establishment. Nevertheless, the company states that "The purpose of the (service) is to both demonstrate and recommend (the company's) at-home hair color products", and, as such "is exempt pursuant to Section 7319 (e)."

By refining the definition of "demonstrating" in Section 7319(e) B&P to stress that the service in question is a one-time event performed without compensation so that the customer can apply the product herself in the future, the Board will be better able to prevent unlicensed activity. Unlicensed activity is a serious problem in the State of California that endangers consumers by subjecting them to often untrained or poorly trained, unlicensed service providers. Moreover, because the State has no record of unlicensed shops, such establishments may operate undetected for years and avoid oversight by the Board's inspection program, whose primary mission is to enforce health and safety rules and protect consumers. The Board has found that unlicensed shops are often unsanitary and allow services to be performed there that are prohibited by state law.

Underlying Data

None

Business Impact

This regulation will not have a significant adverse economic impact on businesses because there is no significant economic or fiscal cost associated with this proposal.

Economic Impact Assessment

This regulatory proposal:

- Will not create or eliminate jobs within the State of California, or create new business or eliminate existing business, or affect the expansion of businesses currently operating in the State of California. The Board has no way of identifying how many businesses or individuals might be engaging in this type of illegal, unlicensed activity, but those businesses should not be operating anyway under existing California law. The regulation proposed here will have no effect on businesses or individuals that are operating legally in California.
- Does help protect the health and welfare of California residents because it helps discourage people who are not legally qualified to work in the barbering and cosmetology industry from interacting and possibly endangering the public through their ignorance of California's standards and practices for that industry.
- Does not significantly affect worker safety because the rule regarding demonstrations has no bearing on worker safety.
- Does not affect the state's environment because the rule regarding demonstrations has no bearing on the environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- Maintaining the status quo: The Board has determined that failure to make the proposed changes will make it easier for unlicensed individuals and businesses to circumvent the law.