

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

INITIAL STATEMENT OF REASONS

Hearing Date: April 9, 2014

Subject Matter of Proposed Regulations: Lash and Brow Tinting

Sections Affected: .

- Amend Sections 950.2 and 950.9, Division 9 of Title 16, California Code of Regulations.

Specific Purpose of amendment:

1. Problem being addressed:

Currently, the board's curriculums for cosmetology students and barbers taking the cosmetology crossover course require schools to teach lash and eyebrow tinting. However, the U.S. Food and Drug Administration (FDA) disapproves* of the use of all lash and brow tints or dyes around the eye area and Section 989 of the California Code of Regulations forbids barbering and cosmetology schools and establishments from using, or even having on their premises, any product that is disapproved by the FDA. This makes the Board's curriculum requirements concerning the teaching of tinting unclear and has led to confusion among the schools.

2. Anticipated benefits from this regulatory action:

The benefit of this regulatory proposal is that it will clarify the Board's curriculum requirements regarding brow and lash tinting for Board-approved schools.

Factual Basis/Rationale

The factual basis/rationale for this proposed regulatory change is that the FDA disapproves of the use of all eyebrow and lash tinting products around the eye, and the Board, under Section 989 of the California Code of Regulations, prohibits the use of any products disapproved by the FDA. Therefore the Board cannot reasonably require schools to teach a skill if there is no legal product available with which to teach it. While the Board's proposed amendment largely restates the prohibition of Section 989, the Board has determined that the duplication is justified and necessary because several schools and licensees have expressed confusion regarding whether they should teach tinting. The Board has also found it necessary to broaden the caveat about brow and lash tints to include the Occupational Safety and Health Administration and the Environmental Protection Agency, because these agencies could also weigh in on the legality or use of barbering and cosmetology products.

* The FDA does not "approve" products, but will disapprove of certain substances and/or how they are used.

Underlying Data

- E-mail from Anna-Marie N. Brown, a staffer with the U.S. Food and Drug Administration's Office of Cosmetics and Colors.

Business Impact

This regulation will not have a significant adverse economic impact on businesses because there is no economic or fiscal cost associated with these curriculum proposals

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the lack of legal eyebrow and lash tinting products has no economic or fiscal impact on businesses or the state. These types of products are already forbidden under existing regulations. This regulatory proposal merely fixes an inconsistency in Board regulations.
- It will not create new business or eliminate existing businesses within the State of California because the lack of legal eyebrow and lash tinting products produces no economic or fiscal impact on businesses or the state. These types of products are already forbidden under existing regulations. This regulatory proposal merely fixes an inconsistency in Board regulations with regard to school curriculums.
- It will not significantly affect the expansion of businesses currently doing business within the State of California, although some salons are offering lash and brow tinting. However, these practices are forbidden under existing regulations. This regulatory proposal merely clarifies the Board's regulations.
- This regulatory proposal does affect the health and welfare of California residents because the possible use of these illegal products could be dangerous.
- This regulatory proposal benefits does not significantly affect worker safety because the application of eyebrow and lash tinting products on customers poses no significant safety risk to workers who apply the products.
- This regulatory proposal benefits does not affect the state's environment because the use of tinting products on eyebrows and lashes has no effect 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 to the Board's curriculum regulations would perpetuate confusion regarding the Board's regulations concerning the teaching eyebrow and lash tinting.