

## TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

### INITIAL STATEMENT OF REASONS

Hearing Date: January 24, 2019

Subject Matter of Proposed Regulations: Definition of Access

(1) Section(s) Affected: Title 16, Division 9, Article 1, Section 904

#### Specific Purpose of Amendment:

The Board is seeking to amend Section 904 of Title 16 of the the California Code or Regulations (CCR) by adopting subsection (f) to more specifically define areas of access under Section 7313 of the Business and Professions Code (B&P). The purpose is to make clear that Board representatives have the right to inspect all areas of a barbering and cosmetology establishment, mobile unit, or school.

#### Factual Basis/Rationale:

Section 7313 B&P states in part:

*(a) (1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.*

...

*(b) To ensure compliance with health and safety requirements adopted by the board, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. ...*

The Board is seeking to revise Section 904 to add subsection (f) in order to clarify in regulation the degree of access the Board expects when performing inspections of a barbering and cosmetology establishment, mobile unit, or school. This is necessary because some establishments simply rent space (often called a "booth rental") to individual barbering and cosmetology licensees whom they consider to be independent contractors rather than employees. As a result, establishment license holders sometimes erroneously fail to give the

Board “access” to the stations of these independent contractors for purposes of conducting inspections. Consequently, full inspections are sometimes stymied by locked rooms, drawers and cabinets used by these booth renters within the establishment, which may result in a citation and fine. While these independent contractor arrangements are not typically seen in schools, there is nothing in the Board’s regulations that prevents their occurrence. The Board needs to be able to inspect all areas of an establishment or school in order to effectively protect the public and wants to ensure that the establishment or school owner has access to these secured areas if the independent contractor is not present. The proposed regulation is also needed to clarify at the outset that “access” means full access to the establishment or school, which the Board anticipates will cut down on the number of citations for those who were unclear of this point.

#### Underlying Data

None

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses because it does not require any additional expense or any new reporting, recordkeeping or compliance requirements on the part of businesses or individuals. The proposed amendment merely clarifies existing law.

#### Economic Impact Assessment

This regulatory proposal will not create or eliminate jobs or businesses, or affect business expansion or the environment, or the health and safety of workers within the State of California, because the regulation only clarifies existing law regarding inspection access. It will have a beneficial impact to the public because the Board’s inspection program will be strengthened and it might also help some licensees and schools avoid stiff fines.

#### 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.

The only alternative would be to take no action, but the Board’s inspection program could become less effective if full access to an establishment is not granted for inspection because the law is unclear to establishment or school owners.