

## TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

### NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (“the Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held from 10:30. a.m.-11:30 a.m. on July 24, 2019 in the Sequoia Room at the Board’s offices at 2420 Del Paso Road, Sacramento, California, 95834. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its offices not later than 5:00 p.m. on July 24, 2019 or must be received by the Board at the hearing. The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7312, 7406, 7407, 7408.1, and 7417 of the Business and Professions Code, and to implement, interpret or make specific Sections 7406, 7407, 7407.1, 7408.1, 7409, 7414, and 7353.4 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

### INFORMATIVE DIGEST

#### A. Informative Digest

Amend Section 974 of the California Code of Regulations (CCR) regarding the schedule of administrative fines and adopt Section 974.3 of the CCR regarding payment plans for fines exceeding \$500.

Business and Professions Code (BPC) Section 7312 authorizes the Board to “make rules and regulations in aid or furtherance” of Chapter 10 of Division 3 of the BPC, also known as the Barbering and Cosmetology Act. BPC Section 7353.4 requires that the Board set a fine for failure to post a notice regarding employee labor rights in California. BPC Section 7406 authorizes the Board to levy fines, while BPC Section 7407 requires that the Board create a schedule of administrative fines. BPC Section 7407.1 requires the Board to show in regulation when fines are assessed to the holder of the establishment license, an individual licensee, or both for the same violation. BPC Section 7408.1 requires the Board create regulations regarding payment plans for fines exceeding \$500. BPC Section 7409 gives the Board discretion as to whether a person may avoid a fine if a first offense is corrected. Section 7414 authorizes the Board to refuse to renew a license when fines are unpaid, and Section 7417 governs license renewals.

B. Policy Statement Overview/Anticipated Benefits of Proposal

1) New or Revised Fines

**7404(l)** — This fine, which is levied on licensees who seek to delay and/or prevent an inspection that is in progress needs to be increased in order to discourage licensees from interfering with inspections and hindering the board's primary mission to protect consumers.

**7349** — Under BPC Section 7317, the board's fine schedule recognizes that although the law requires all individuals and establishments to have valid, current licenses while working or operating, there is a difference between someone performing barbering and cosmetology services without ever having had a license, or an establishment never having had a license, and someone performing services, or an establishment operating, under a license that has expired. The board is seeking to make the same distinction for the employment of persons under BPC Section 7349 by adding a smaller fine for cases where the employee's license is merely expired. The higher fine would be reserved for employing people who never obtained a license in the first place.

**7353.4** — In 2016, the Legislature passed AB 2437, which was signed by the Governor and filed with the Secretary of State on September 14, 2016. The bill required the California Labor Commissioner to create a notice regarding workplace rights and wages and hour laws that would be posted in Barbering and Cosmetology establishments on or after July 1, 2017. The bill also requires the Board of Barbering and Cosmetology set an administrative fine for establishments that fail to post the notice.

**984(a),(b),(e)** — These subsections are not new, nor do they create new fines. But in order to clearly identify whether it is the establishment license holder or the individual licensee who is responsible for the violation and fine pursuant to BPC 7407.1 (see (2) below), it is necessary to break up Section 984 in the existing fine schedule into its subparagraphs.

2) Fine Assessments

The Board is seeking to modify the fine schedule to list which fines are levied only against the holder of an establishment owner or the individuals working at the establishment, and those that may be levied against both for the same violation. This revision is designed to help licensees better understand the Board's fining policies and meet the requirements of SB 1044.

3) Payment Plans

The Board is seeking to adopt CCR Section 974.3 that will set parameters for payment plans for fines exceeding \$500, as required under BPC Section 7408.1.

C. Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and found it is not inconsistent or incompatible with existing state regulations.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Board estimates it will issue an additional \$51,600.00 in fines under the revised fines. Typically, the Board only collects 63 percent of fines levied, but because the payment plans will make it easier for licensees to pay large fines, the Board expects that percentage to increase to 80 percent, which means the Board expects an increase in annual fine revenue of \$41,280.00. The rules regarding who is cited for a violation and payment plans are not expected to have any fiscal impact.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

## EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will not have a significant adverse impact on small businesses because it only concerns fines for business owners who fail to follow the law.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affect businesses that fail to follow the law.

Benefits of Regulation:

The Board has determined that this regulatory proposal will help protect the health and safety of consumers by motivating licensees to follow the laws and regulations of the

Board of Barbering and Cosmetology. While this proposal will not directly protect worker health and safety, it will protect workers by helping to ensure that they are informed about their rights in the workplace and the Board's fining policies. This proposal will not affect the state's environment.

### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Contact Person named below.

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

### CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Kevin Flanagan
Address:	2420 Del Paso Road, Suite 100 Sacramento, CA 95834
Telephone No.:	(916) 575-7100
Fax No.:	(916) 928-6810
E-Mail Address:	Kevin.Flanagan@dca.ca.gov

The backup contact person is:

Name:	Patricia Garcia
Address:	2420 Del Paso Road, Suite 100

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E-Mail Address: Patricia.Garcia@dca.ca.gov

Website Access: Materials regarding this proposal can be found at  
[http://www.barbercosmo.ca.gov/laws\\_regs/prop\\_regs.shtml](http://www.barbercosmo.ca.gov/laws_regs/prop_regs.shtml)