

## TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

### NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter “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 10:00. a.m.-12:00 p.m. on April 29, 2020 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 April 27, 2020 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 Business and Professions Code (BPC) Sections 7312, 7402.5 and 7421 of the Business and Professions Code (BPC), and to implement, interpret and make specific those sections, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST

##### A. Informative Digest

BPC Section 7402.5 authorizes the Board to “issue a personal service permit to an individual who meets the criteria for a personal service permit set forth in regulation” and mandates that the Board “issue regulations” setting forth that criteria. The Board therefore is proposing to adopt Section 965.2 of the California Code of Regulations (CCR) detailing the conditions under which the Board will issue a Personal Service Permit (PSP) and specify those services that may be performed outside of a licensed establishment by barbers, cosmetologists, estheticians, and manicurists. In keeping with the Legislature’s intent to allow PSP holders to work outside of licensed establishments, the Board is also proposing to adopt Section 900 to clarify that the definition of “establishment” under BPC Section 7346 excludes offsite locations where PSP holders perform services.

BPC Section 7312 authorizes the Board to set fees in the amounts necessary to cover the expenses of the Board. The Board is therefore proposing to amend Section 998 of the CCR to adopt fees that cover the cost of issuing the PSP, pursuant to Section 7421 of the BPC.

##### B. Policy Statement Overview/Anticipated Benefits of Proposal

During the 2015-2016 session, the Legislature passed AB 181, which was signed by the Governor and chaptered on October 2, 2015. The bill required the Board to determine whether to issue a personal service permit and set forth in regulation the conditions

under which the permit would be issued. Currently in California, all Board-regulated beautification services are required to be performed within a Board-licensed establishment. BCP Section 7317 specifically states that it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology or electrolysis practices, for compensation, in an establishment or mobile unit which is not licensed by the Board. Legally, Board-licensed professionals can only give services in Board-licensed establishments or mobile units. However, current trends in the beauty industry show consumers are beginning to seek services outside the walls of licensed establishments, and that a number of Board licensees are illegally offering such services in private homes, hotels, businesses, and other non-traditional locations. The creation of a PSP will give these licensees the opportunity to participate legally in the workforce as “freelancers” in the beauty industry while giving the Board oversight over their activities.

#### 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: There is no expected savings or costs in federal funding to the State. The initial PSP fee of \$25 and renewal fee of \$10 proposed by the Board for Section 998 have been set by the Board to cover the cost of issuing PSPs by the Board.

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. The Board estimates it will cost a first-time applicant \$95 to acquire a PSP, and \$10 every two years to renew.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will not have an adverse impact on brick-and-mortar small businesses’ ability to attract employees, because the number of establishments has grown despite the increasing popularity of so-called “on-demand”

services outside of licensed establishments, which are now being performed illegally by Board licensees.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

##### Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will have little or no 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 the proposed regulation almost exclusively affects individuals who are already providing the services in question illegally.

##### Benefits of Regulation:

The Board has determined that this regulatory proposal will help protect the health and safety of consumers because the PSP will give the Board some ability to oversee barbering and cosmetology activities outside of brick-and-mortar establishments.

#### 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: Allison Lee  
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  
Sacramento, CA 95834  
Telephone No.: (916) 575-7100  
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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)