

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

FINAL STATEMENT OF REASONS

Hearing Date: No hearing was scheduled or requested.

Subject Matter of Proposed Regulations: SB 803 Clean-Up

Section Affected: Title 16, Division 9, Sections 904, 909, 928, 931, 932, 934, 937, 950.1, 950.2, 950.3, 950.4, 962, and 998 of Title 16 of the California Code of Regulations (CCR)

Updated Information

The Initial Statement of Reasons is included in the file; the information contained therein is updated as follows:

No public hearing was originally set for this proposal, and none was requested. Board staff noticed the proposed rulemaking on October 13, 2023, with a 45-day public comment period ending on November 28, 2023, and sent to interested parties. The Board received comments from one commentor which is summarized below. The Board reviewed the comments at its February 26, 2024, meeting and approved the responses to the comments without further amendments to the text. The responses to the comments approved by the Board are summarized in the “Summary of, and Responses to, Comments Received During the 45-day Comment Period” section below.

Following discussion of those comments, the Board directed staff to take all steps necessary to complete the rulemaking process including the filing of the final rulemaking package with the Office of Administrative Law, authorizing the Executive Officer to make any non-substantive changes to the proposed regulation and the rulemaking documents, and adopting the proposed regulations as noticed for 16 CCR sections 904, 909, 928, 931, 932, 934, 937, 950.1, 950.2, 950.3, 950.4, 962, and 998. The rulemaking file was thereafter submitted to the Office of Administrative Law (OAL) on April 19, 2024 (OAL notice file number Z-2023-1003-02 and regulatory action number 2024-0419-05S).

After discussions with OAL in May 2024, the Board decided that further revisions were needed for the proposed rulemaking text and forms incorporated by reference “Proof of Training Document” (Form #F-BBC-05 (New 06/2024)), “(1008) Application for Mobile Unit License” (Form #03A-202 (New 06/2024)) and “Application to Use an Interpreter” (Form #03A-126 (New 06/2024)) to meet the clarity and consistency standards under the Administrative Procedure Act (APA). The Board withdrew the file on May 31, 2024, to edit the final text and forms incorporated by reference in response to discussion and comments received by OAL. The Board held a Board Meeting on June 24, 2024 to

review and address these concerns raised by OAL. The Board approved the modifications that are summarized below. The Board issued a 15-day notice and public comment period of availability of modified text on June 25, 2024 ending on July 10, 2024. The Board received no comments during this period.

Modified Text

In response to the above-mentioned review by the Office of Administrative Law, the Board made changes to the noticed proposed regulations as described below:

Documents Proposed to Be Repealed and Non-Substantive Corrections

The Board reposted corrected documents incorporated by reference previously posted during the 45-day comment period showing the repeal of the following forms: Application for License to Operate A Mobile Unit (Form #03A-202, Rev 1/93), and Request for Use of an Interpreter or Interpreter/Model (Form #03B-125, Form G (Rev. 8/94)) and (Form #03A-126, Form H (Rev. 8/94)). Due to computer errors in the conversion process, the prior forms contained formatting and typographical errors that were corrected to accurately reflect the forms previously adopted by the Board and that would be repealed in this rulemaking action.

Non-Substantive Changes

Unless otherwise specified and as further described below, the Board amended structure, syntax, cross-reference, grammar, punctuation, and gendered pronouns, and corrected underline and strikethrough of proposed added and repealed text throughout the proposed regulations that does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

For the reasons discussed below, the Board modified the proposed regulatory text and forms incorporated by reference “Proof of Training Document” (Form #F-BBC-05 (New 06/2024)), “(1008) Application for Mobile Unit License” (Form #03A-202 (New 06/2024)) and “Application to Use an Interpreter” (Form #03A-126 (New 06/2024)) as follows:

Amend Section 909

§ 909. title “Proof of Training” was inadvertently removed in the editing process and has been reinserted in its original location for accuracy and published in the modified text noticed to the public.

“Note” amendment: Additional typographical non substantive changes were made to add a comma after section 7322 in the Note at the end of this section and as follows. § 909 (b) “Proof of Training Document” (Form #F-BBC-05 (New 06/2024)) dates have been updated from 07/2023 to 06/2024 to reflect the date changes were made to the

form and approved by the Board (06/2024).

Amend Section 931

§ 931 Interpreter has been updated to reflect the Board approving typographical non-substantive changes made throughout the section.

§ 931 (b) “Application to Use an Interpreter” (Form #03A-126 (New 06/2024)) dates have been updated to delete references to the 07/2023 date and to add the 06/2024 date to reflect the Board approving the typographical substantive and non-substantive changes that were made to the form in June 2024. The Board also added parentheses around “New 06/2024” to correspond to how this information is represented on the form itself.

Amend Section 937

§ 937. Licensing and Operation has been updated to reflect the Board approving typographical non substantive changes made throughout the section.

§ 937 (a) has been updated to clarify all the requirements an applicant must submit to operate a mobile unit. The form date for “(1008) Application for Mobile Unit License” has been changed from “F-BBC-05 New 07/2023” to Form #03A-202 (New 06/2024)) to correct an error in form numbering and accurately reflect the date of the Board approving the typographical changes made to the form. Grammatical changes were made to strike the words “which shall include” and replace them with “by submitting all of the following” and strike a superfluous “and” near the end of the sentence. In addition, clarifying language was added to this section (a) to specify the cross-reference where the nonrefundable application fee is located, which is “specified in section 998.”

§ 937 (j): For grammatical reasons, the word “which is” was added after the words “The Board shall inform the applicant in writing of it’s decision regarding an application,” and before the words “contingent upon the applicant scheduling an appointment...”

§ 950.2 Curriculum for Cosmetology Course is being repealed, a typographical non substantive change to add a hyphen to correctly represent the originally text, was noted and corrected in section (4).

Amend Section 962

§ 962. Definitions has been updated to reflect the Board approving typographical non substantive changes made throughout the section.

§ 962 (a): Grammatical and clarifying language was added to delete “as specified in” and insert “, subdivision (c)(3), and 7395.2” to correctly cross-reference and specify sections referenced for the terms “good standing” consistent with where those terms are cross-referenced in BPC sections 7395.1 and 7395.2.

§ 962 (b): Grammatical and clarifying language was added to delete “as specified in” and insert “, subdivision (g)(3), and 7395.2” to correctly cross-reference and specify sections referenced for the terms “appropriate training” consistent with where those terms are cross-referenced in BPC sections 7395.1 and 7395.2.

§ 962 (c): Grammatical and clarifying language was added to delete “as specified in” and insert “, subdivision (g)(3), and 7395.2” to correctly cross-reference and specify sections referenced for the terms “chemical treatment” consistent with where those terms are cross-referenced in BPC sections 7395.1 and 7395.2.

§ 962 (d): Grammatical and clarifying language was added to delete “as specified in” and insert “, subdivision (g)(3), and 7395.2” to correctly cross-reference and specify sections referenced for the terms “direct and immediate supervision” consistent with where those terms are cross-referenced in BPC sections 7395.1 and 7395.2.

§ 962 (e): Grammatical and clarifying language was added to delete “as specified in” and insert “, subdivision (g)(3), and 7395.2” to correctly cross-reference and specify sections referenced for the terms “directly supervises” consistent with where those terms are cross-referenced in BPC sections 7395.1 and 7395.2.

Note amendment: Added a new reference to BPC section 7395.2 in the Reference section of this note consistent with its use in this section and added the letter “s” behind the word “Section” for grammatical reasons.

Amend Section 998

§ 998. Schedule of Fees has been updated to reflect the Board approving typographical non-substantive changes to correct text originally noticed as existing text but has since been added to include the words “in dollars” so that the introductory sentence would read “The following fees (in dollars) shall be charged by the Board” and to strike a comma from the Note behind the reference to BPC section 7337.5 for grammatical reasons.

Amend “Proof of Training Document” (Form #F-BBC-05 (New 06/2024)) incorporated by reference at CCR section 909

- The dates have been updated to reflect the Board approving the typographical non substantive changes made to the form and the date associated with this form number from 07/2023 to 06/2024.
- For “Notice to Applicants and Schools” section on page 3 of the new form, non-substantive changes were made to reflect the new location of the Boards physical address, as the Board relocated office effective April 1, 2024 to 1625 N. Market Blvd., Suite 202, Sacramento, CA 95834.

**Amend “Application to Use an Interpreter” (Form #03A-126 (New 06/2024))
incorporated by reference at CCR section 931**

- The dates have been updated to reflect the Board approving the typographical non substantive changes made to the form and the date associated with this form number from 07/2023 to 06/2024.
- Who can request an Interpreter section on page 2: Non-substantive changes were made to add the word “hairstylist” consistent with the proposed text at CCR section 931. This is necessary to clarify that applicants for a hairstylist examination may apply for and request authorization to use an Interpreter along with any other type of applicant.
- The Following Persons are Prohibited from Acting as an Interpreter section on page 2: Non-substantive changes were made to make this section consistent with proposed text at CCR section 931 by deleting “currently or have been formerly” owners or employees of any school and replace it with “current or former” owners or employees of any school of barbering, cosmetology, electrology, hairstyling, nail care, or skin care.
- “What Forms Must Be Completed to Use an Interpreter” section on page 3 at the top: The words “last page” were struck and replaced with “Authorization to use an Interpreter” section on page 7” to correct a cross-referencing error. This change will avoid confusion by affected applicants since the last page of the form is merely informational and the Board intended to have the applicant present the completed Authorization on page 7, not the last page of this form at the exam facility on the day of examination as part of the admissions process.
- Important Notes section on page 3:Non-substantive changes were made specifying the licensing categories within this section. These changes to strike “or any of the branches” and add “hair styling, electrology, nail care or skin care” were added to more accurately reflect the language proposed to be amended at CCR section 931(g). In addition, the Board proposes to delete gendered pronouns “he or she” and replace them with nongendered “they.”
- Information Collection, Access, and Disclosure Address section, page 4: non-substantive changes were made to reflect the new location of the Boards physical address, as the Board relocated office effective April 1, 2024 to 1625 N. Market Blvd., Suite 202, Sacramento, CA 95834.
- Application to Use an Interpreter Section A: Applicant Information
 - Consent to Recording section on page 5 (Section A): The substantive amendment to the package requested by OAL was regarding the applicant

and interpreter consenting to recording on pages 5 and 6 of the form. OAL recommended that the Board make it clearer that both parties identified on the application, the applicant and the interpreter, are informed that they must consent to be recorded during the exam, otherwise the application to use an interpreter will be denied. As a result, the consent questions on pages 5 and 6 are revised to remove the question mark, making it a declaratory statement and include a notice to both the applicant and the interpreter that if the applicant and the interpreter do not both check "Yes" in response to the Board's request for consent to recording that this application will be denied. This helps ensure that applicants have adequate notice of, and are fully informed about, the Board's requirements for authorizing an interpreter before answering the question.

- Application to Use an Interpreter Section C, page 6: Interpreter Qualifying Criteria
 - Consistent and clarifying language in line with page 2, The Following Persons are Prohibited from Acting as an Interpreter section, non-substantive changes were made to delete "have you been" and "an" and make other grammatical changes so that the sentence now reads: "Are you a current or former owner or employee of any school of barbering, cosmetology, nail care, skin care, hairstyle, or electrology. This is necessary to make this section of the application form consistent with amendments made to CCR section 931.
 - Consent to Recording section: The substantive amendment to the package requested by OAL was regarding the applicant and interpreter consenting to recording on pages 5 and 6 of the form. OAL recommended that the Board make it clearer that both parties identified on the application, the applicant and the interpreter, are informed that they must consent to be recorded during the exam, otherwise the application to use an interpreter will be denied. As a result, the consent questions on pages 5 and 6 are revised to remove the question mark, making it a declaratory statement, and to include a notice the interpreter that if the applicant and the interpreter do not both check "Yes" in response to the Board's request for consent to recording that this application will be denied. This helps ensure that interpreters have adequate notice of, and are fully informed about, the Board's requirements for authorizing an interpreter before answering the question.

- Important Notice section on page 8: non-substantive changes were made to strike the word "This" and add "The" and "on page 7". This is necessary to clarify the cross-reference to the "Authorization to use an Interpreter" section on page 7 to help ensure no confusion over which part of the form must be authorized by the Board and presented at the exam facility on the day of examination.

Amend “(1008) Application for Mobile Unit License” (Form #03A-202 (New 06/2024)), which is incorporated by reference at CCR section 937

- The numbering and date of approval have been updated to reflect the Board approving the typographical non substantive changes made to the form from 07/2023 to 06/2024.
- Section D – Background Information technical and non-substantive changes were made to remove obsolete statutory subdivisions and correct cross-referencing, including the following changes:
 - 12. a. vi. Strike subdivisions (b), (c), (d), or (e) in reference to Health and Safety Code section 11357. This clarifies all subsections of related convictions under Health and Safety Code section 11357 are applicable in consideration of question #1.
 - 12.c. is updated to re-number Question 5 to Question 6 to accurately reflect this section is regarding question #6 of the form and not question #5.
- Information Collection, Access, AND Disclosure Address section, page 4: Non-substantive changes were made to reflect the new location of the Boards physical address, as the Board relocated office effective April 1, 2024 to 1625 N. Market Blvd., Suite 202, Sacramento, CA 95834.
- Any Known or Foreseeable Disclosures which may be made of the Information, page 4: Non-substantive changes were made including updating Section 6250 to §§ 7920.00. During the preparation of the rulemaking file, it was discovered that California’s Public Records Act (PRA) law had been amended and renumbered. Pursuant to Assembly Bill 473 (Stats. 2021, Ch. 614, Sec. 2), effective January 1, 2022 and operative January 1, 2023, the PRA, previously cited at Government Code section 6250 and following was reenacted and renumbered at Government Code section 7920.000 and following. Other grammatical and typographical changes were made to correct capitalization errors and the citation format for the aforementioned PRA and Information Practice Act laws currently mentioned in the Notice for this form to remove “Section” and replace with the symbol “§”.
- I qualify for expedited application processing based on one of the below criteria sections on page 5 of the form was updated with clarifying language, to make it clear the three categories that are eligible for expedited applications processing.
 - The first box selection was updated for Active duty members of the United States Armed forces enrolled in the United States Department of Defense SkillBridge program have been added as it was discovered that Business and Professions Code Section 115.4 (b) law has been added and became

effective on July 1, 2024 and operative on or after July 1, 2024, pursuant to Assembly Bill 883 (Stats. 2023, Ch. 348). We believe these changes to be necessary to assist the applicant to make the appropriate selection that will correspond with the required paperwork to validate the expedition of the application in accordance with BPC section 115.4(b).

- The second box selection was updated to reflect this section is regarding those who served as an Active duty member of the United States Armed Forces and was Honorably Discharged. We believe these changes to be necessary to assist the applicant to correctly select the appropriate selection that will correspond with the required paperwork to validate the expedition of the application that is listed on page 5 and to conform more precisely with the criteria specified in BPC section 115.4(a).
- Section D: Background Information – Check Yes or No for each of the questions below.
 - Question (2) Deletes references to “or” and the incorrect word “officer” after “partner” to provide more accurate notice of the categories covered by this question, which are applicant, partner or controlling officer of the business. In addition, the Board corrected the numbering (there were two “C”s in the enumerated list) for Question No. 2 on the application.
 - Question (5)(a) has been updated the Board has revised the proposed text at CCR section 937 on the application form incorporated by reference entitled “(1008) Application for Mobile Unit License” Form #03A-202 (New 06/2024)), and the following was added to comply with newly effective BPC section 115.4(b):

On page 8, question no. 5 on the application the following question was added for applicants who are serving or previously served in the U.S. military regarding whether the applicant was requesting expedited review based on this criterion:

a. Active duty member of a regular component of the US Armed Forces enrolled in the US Department of Defense SkillBridge program? (BPC section 115.4(b))

**If YES, attach a copy of a written approval document or letter from their respective United States Armed Forces Service branch (Army, Navy, Air Force, Marine Corps, Space Force or Coast Guard) signed by the applicant’s first field grade commanding officer that specifies the applicant’s name, the approved SkillBridge opportunity, and the specified duration of participation (i.e., start and end dates).*

A representative from the Department of Consumer Affairs consulted with representatives from the Department of Defense (DOD) in the development of these criteria and these revisions were made consistent

with the Board’s understanding of those common requirements for showing approval of such enrollees in the DOD SkillBridge partner application process across all branches of the US Armed Forces. This amendment is necessary to implement and give adequate notice of these qualifying requirement to obtain expedited review per BPC section 115.4(b).

- Question (5)(b) has been updated to delete “members of the US Armed forces” and replace it with “Served as an Active Duty member of the US Armed Forces”. The text is revised for consistency with the specific authorizing language in BPC section 115.4(a) and to specify those qualifying criteria include those who served as an active duty member of the United States Armed Forces and were Honorably Discharged (see BPC section 115.4(a)).

Additional Rationale

In addition, the Board adds the following rationale for the exclusions from disclosure related to past criminal convictions involving Health and Safety Code sections 11357 and 11360(b) that are listed under Section D, Item #12.a. on page 2 of the instructions on “(1008) Application for Mobile Unit License” (Form #03A-202 (New 06/2024)). An applicant is not required to disclose convictions under Health and Safety Code sections 11357 or 11360(b) which are two years or older because California law at Health and Safety Code section 11361.5(a) prohibits this State from keeping records of these types of convictions beyond two years from the date of the conviction(s).

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Board has determined that the proposed regulations would affect small businesses. Although the proposed regulation will directly affect businesses statewide, which may include small businesses, the Board does not anticipate any adverse economic impact as described in the Business Impact Estimates section of the Initial Statement of Reasons. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted. However, to the extent that any individuals who have professional licenses issued by the Board or other business

entities are considered a “small business”, the Board provides the following analysis of the economic impact of this proposal.

This proposal does not require any significant new expense or reporting, recordkeeping, or compliance measures on the part of businesses, including Board approved schools. Any costs are anticipated to be incurred within normal business operations.

Licensees and applicants are currently required to complete and submit the existing versions of the three forms, as specified, and are not anticipated to incur additional workload or costs to complete and submit the updated versions.

As a result, the regulations do not result in business impacts to the state. Any economic impacts, including costs, savings, or decreased revenues are a result of current law.

Anticipated Benefits

The Board has determined that this regulatory proposal will have the following benefits.

The Board has determined that the regulatory proposal will avoid confusion about licensing requirements and provide consistency between the statutes and regulations for applicants, licensees, and schools who will benefit from these changes. The proposal will also update existing forms with corresponding instructions to assist applicants, licensees, and schools in providing the correct and required information, and allow the Board to communicate with them more effectively, thereby ensuring only qualified applicants obtain licensure for the benefit of the health and welfare of California residents.

Summary of, and Responses to, Comments Received During the 45-day Comment Period:

The following individual submitted written comments to the Board on the proposed rulemaking during the comment period:

- Justin Kachadoorian, CounselOne Professional Corporation (by letter sent via email and dated November 28, 2023)

Comment (A) from Justin Kachadoorian: Justin Kachadoorian expressed concern over the Board’s interpretation of Senate Bill (SB) 803 (Chapter 648, Statutes of 2021). The commenter does not believe this law enacted by the legislature removed the Board’s authority to prescribe by regulations a minimum number of practical operations corresponding to the curriculum now delineated by statute. The commenter urges the Board to reconsider eliminating the practical operations requirement entirely and to instead continue to specify a number of practical operations corresponding to the current curriculum in regulations based upon various legal arguments for why the Board still retains this rulemaking authority, including, for the following reasons:

(1) The requirement for schools to provide students with a minimum number of practical operations dates back to at least 1942 and was probably adopted by the former Board of Cosmetology (BC) soon after the first Cosmetology Act was passed in 1927. It has been a feature of California law ever since.

(2) Before 1990 (when BPC section 7362 was first enacted giving this Board express authority to set the minimum number of practical operations), these statutory provisions did not explicitly mention “practical operations” at all but BC’s regulations prescribing a definite number of operations to be performed in each subject still satisfied review under the Administrative Procedure Act because they were “reasonably necessary to effectuate the purpose of the statute” – here, providing practical training to prepare students for careers in the field. See Cal. Gov. Code § 11342.2 (state agency may adopt regulation pursuant to “the express or implied terms of any statute” where regulation is “consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”).

(3) Current BPC § 7362 still gives the Board the power to approve schools and “a course of instruction approved by the board.” Further, BPC § 7362.1(c) requires schools to “maintain a course of practical training and technical instruction for the full cosmetology course **as specified in this chapter and in board regulations.**” (Emph. added.)

(4) Current BPC § 7334(f), relating to apprenticeship programs, specifies that “[a]pprentices shall be required to obtain at least ... **[the] minimum number of practical operations for each subject as specified in board regulations for courses taught in schools approved by the board[.]**” (Emph. added.) SB 803 did not amend or revise this provision.

(5) The practical operations requirement is important for a number of reasons including, that the purpose of this training is to learn how to perform services on actual people, with supervision and evaluation by competent instructors. The requirement for schools to ensure that students perform a definite number of practical operations, and maintain records documenting such performance, guarantees students the practical experience for which they are paying.

(6) The removal of the practical-operation requirement will give schools free rein to provide as much or as little of these practical-operation opportunities to students as they desire with the result that the students will be less qualified and the public will receive services from this stock of less qualified students.

Response (A): The Board acknowledges the comment from Justin Kachadoorian. However, due to the passage of SB 803 (2021) which was brought about due to the

recent joint sunset review oversight of the BBC by the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions, the Board believes those legislative amendments have been accurately reflected in this rulemaking package. As discussed further below, Sections 950.1, 905.2, 950.3 and 950.4 are being repealed to reflect the amendments made to BPC sections 7338 and 7362 including striking the requirement for administration of a practical examination and removal of the Board's authority to determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum number of practical operations for each subject, and the authority to determine how much training is required before a student may begin performing services on paying patrons. Therefore, the regulations regarding the curriculum for barbering, cosmetology, skin care or nail care courses are superseded by these changes to the Board of Barbering and Cosmetology Act and are no longer applicable to the Board.

The Board, in consultation with its Regulations Counsel, provides the following analysis:

The practical examination was eliminated by SB 803 along with the Board's express authority to set minimum standards for the number of practical operations that must be performed as part of curriculum in schools.

In 2021, BPC section 7338 stated, in part:

"The examination of applicants for a license shall include both a practical demonstration and a written test and shall embrace subjects typically taught in a program approved by the board."

To support the objective of preparing applicants to take and pass the Board's practical demonstration examination, the Board adopted Sections 950.1-950.4, which set minimum standards for the number of practical operations that must be performed as part of the curriculum offered for a barbering, cosmetology, skin care or nail care course.

However, with the enactment of SB 803, the practical examination was eliminated, and BPC section 7338 currently reads:

- (a) The examination of applicants for a license shall **consist of a written examination** that evaluates competency in protecting the health and safety of consumers of the services provided by licensees.
- (b) The examination shall include written tests to determine the applicant's skill in, and knowledge of, the practice of the occupation for which a license is sought and shall include written tests in antisepsis, disinfection, and the use of mechanical apparatus and electricity as applicable to the practice for which the

applicant has applied for licensure.” (Emphasis added.)

In a legislative bill analysis for SB 803, the California Assembly on Business and Professions noted that “the elimination of the practical exam would remove a major barrier to entry into the profession and likely reduce costs to those seeking licensure.” (See, Underlying Data, “Assembly Committee Analysis, Assembly Committee on Business and Professions,” p. 11). Further, following analysis of this Board’s recommendations to reduce hourly requirements for curriculum, the Committee noted the following:

“[T]he BBC’s sunset background paper stated that ‘the Committees may wish to decrease the amount of hours required for licensure in order to allow individuals a swifter path to completing necessary curriculum that will lead to safe beautification services practice.’ This bill implements that recommendation by reducing the required number of hours for courses in both barbering and cosmetology to 1,000 and **codifying course content requirements** to align with that change.” (Emphasis added, p. 11 Committee Analysis.)

SB 803 therefore codified these new curriculum content requirements at BPC sections 7362.5, 7363, 7364, and 7365 (and BPC section 7366 added later by AB 2196 (Stats. 2022, ch. 57)), which did not include specified minimum requirements for the number of practical operations.

In 2021, BPC section 7362 read (as provided in Stats. 2013, ch. 333, sec. 9 (SB 308)), in part, as follows:

(a) A school approved by the board is one that is first approved by the board and subsequently approved by the Bureau for Private Postsecondary Education or is a public school in this state, and provides a course of instruction approved by the board. However, notwithstanding any other law, both the board and the Bureau for Private Postsecondary Education may simultaneously process a school’s application for approval.

(b) The board shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons. (Emphasis added)

(c) Notwithstanding any other law, the board may revoke, suspend, or deny approval of a school, in a proceeding that shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when an owner or employee of the school has engaged in any of the acts specified in paragraphs (1) to (8), inclusive....”

Following enactment of SB 803 (Stats. 2021, ch. 648) effective January 1, 2022, BPC section 7362 was revised as follows:

(a) A school approved by the board is one that is first approved by the board and subsequently approved by the Bureau for Private Postsecondary Education or is a public school in this state, and provides a course of instruction approved by the board. However, notwithstanding any other law, both the board and the Bureau for Private Postsecondary Education may simultaneously process a school's application for approval.

~~(b) The board shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons.~~ (Emphasis added)

(c) Notwithstanding any other law, the board may revoke, suspend, or deny approval of a school, in a proceeding that shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when an owner or employee of the school has engaged in any of the acts specified in paragraphs (1) to (8), inclusive.

(1) Unprofessional conduct which includes, but is not limited to, any of the following:

(A) Incompetence or gross negligence, including repeated failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology, or disregard for the health and safety of patrons.

(B) Repeated similar negligent acts.

(C) Conviction of any crime substantially related to the qualifications, functions, or duties of the owner of an approved school, in which case, the records of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(2) Repeated failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Public Health, for the regulation of board-approved schools.

(3) Repeated failure to comply with the rules adopted by the board for the regulation of board-approved schools.

(4) Continued practice by a person knowingly having an infectious or contagious disease.

(5) Habitual drunkenness, or habitual use of, or addiction to the use of, any controlled substance.

(6) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(7) Refusal to permit or interference with an inspection authorized under this chapter.

(8) Any action or conduct that would have warranted the denial of a school approval.

“Regulations that alter or amend the statute, or enlarge or impair its scope, are invalid.” (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014). 11342.2. Government Code section 11342.2 also provides that, “Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”

As demonstrated above, the Board’s authority to administer a practical examination and to determine by regulation the minimum practical operations for each subject was repealed effective January 1, 2022. When the Legislature repeals a statute, all authority exercised pursuant to that statute is likewise annulled or revoked (“[the] effect of repealing a statute is ‘to obliterate it as completely from the records of the parliament as if it had never passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded while it was an existing law.’” (*People v. Pinedo* (2021) 66 Cal.App.5th 608, 619 *quoting* *Spears v. County of Modoc* (1894) 101 Cal. 303, 305).

As a result, the Board must reject the commenter’s recommendation since the Board is without authority to supersede the revisions enacted by the Legislature as noted above. The Board is obligated to enforce the law as written and according to the legislative purpose outlined in the Committee analysis for SB 803. Retaining these requirements as recommended by the commenter would be inconsistent with the express actions taken by the Legislature to repeal the Board’s authority to both administer a practical examination and to adopt rules to prescribe the minimum number of practical operations for each subject.

Comment (B) from Justin Kachadoorian: Justin Kachadoorian also expressed concern about other failures to meet apparent qualitative standards for the approval of schools, including:

What is happening at some beauty schools, however, is the excess teaching of “theory” – including rote learning of subjects tested on the licensing exam – to the exclusion of practical training on real persons. Students are given insufficient opportunities to perform on live models and must often perform operations on mannequins where live models would be preferred. Often little or no supervision or evaluation occurs during the performance of these operations at Board-approved schools.”

Response (B): The Board acknowledges the comment. However, the qualitative

standards for the approval of schools are not the subject of, and therefore outside the scope of, this proposed rulemaking.

Summary of Comments Received During the 15-day Notice Comment Period

The Board received no comments during the 15-day Notice and Public Comment Period from June 25, 2024 through July 10, 2024.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board's meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. All recommendations from the public provided during this rulemaking were considered by the Board and rejected as discussed herein.

Incorporation by Reference -- 1 CCR 20

The incorporation by reference method was used for the following forms in this proposal because it would be impractical and cumbersome to publish these forms in the California Code of Regulations (CCR):

- (a) (1008) Application for Mobile Unit License (Form #03A-202 (New 06/2024)) (New form to be adopted)
- (b) Application to Use an Interpreter (Form #03A-126 (New 06/2024)) (New form to be adopted)
- (c) Proof of Training (Form #F-BBC-05 (New 06/2024)) (New form to be adopted)

The forms are intended to assist applicants with complying with the Board's numerous licensing and regulatory requirements in the simplest way possible. The forms were developed to establish consistency in Board implementation and facilitate greater compliance with these statutory and regulatory requirements by the regulated community. If the forms were incorporated into the CCR, it would increase the size and complexity of Division 9 and may cause confusion for the affected applicants. The aforementioned forms were made available to the public and were posted on the Board's website.