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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation	18 VAC41-50
Regulation title	Tattooing Regulations
Date	November 6, 2015

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

Code of Virginia § 54.1-201 gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 7 of Title

54.1 of the *Code of Virginia*. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
<p>Brian Fillman</p>	<p>Regulations should be simplified. The separation of “regular” tattooing and “permanent makeup” tattooing is unnecessary.</p> <p>The industry self regulates.</p> <p>The state may be liable for bad acts if it regulates for the protection of citizens.</p> <p>A test regarding sterilization, and knowledge of blood borne pathogens, should be all that is required for licensure.</p>	<p>On April 17, 2002, the General Assembly of Virginia approved an Act to amend and reenact §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the <i>Code of Virginia</i>, relating to the regulation of body piercing and tattooing. The comment mainly speaks to amending and reenacting the aforementioned sections of the <i>Code of Virginia</i>. Statutory changes are outside of the scope of this periodic regulatory review.</p> <p>Per 18 VAC 41-50-10 of the Tattooing Regulations, a licensed permanent cosmetic tattooer may only tattoo the skin of the face, including but not limited to eyebrows, eyeliners, lip coloring, lip liners, full lips, cheek blush, eye shadow, and on the body for breast and scar repigmentation or camouflage. However, a permanent cosmetic tattooer may not perform tattooing beyond this outlined scope.</p> <p>Per §54.1-700 of the <i>Code of Virginia</i>, a licensed tattooer may perform all the functions of a permanent cosmetic tattooer, in addition to the tattooing upon or under any portion of the skin of a person. A licensed tattooer is not required to hold a separate permanent cosmetic tattooer’s license if they wish to perform permanent cosmetic tattooing functions.</p> <p>The Board is responsible for establishing entry level competence in order to protect the health, safety, and welfare of the public. Comments taken under advisement. Current standards of practice and sanitation and exam requirements and administration will be reviewed and may be considered in future regulatory review.</p>
<p>Sharon K. McCarty-</p>	<p>As a part of the coalition that worked to bring licensure of the</p>	<p>The Board encourages anyone knowledgeable of a possible violation of the</p>

<p>Painter, Body Art Tattoo Studio</p>	<p>profession, is disappointed in the outcome of the licensing program.</p> <p>Expresses concern about the large numbers of unlicensed tattooers working out of their homes.</p> <p>Does not want to remove regulations, but need to improve education and vendor distribution practices to improve the profession.</p>	<p>regulations or statutes to submit a complaint for review. The Compliance and Investigations Division is responsible for enforcing criminal laws under DPOR’s jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth’s Attorneys for prosecution.</p> <p>Comments taken under advisement. Current standards of practice and education requirements will be reviewed and may be considered in future regulatory review.</p>
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An informal advisory group was not formed for purposes of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation meets the criteria set forth in Executive Order 17 (2014). The regulation contains the requirements for obtaining a license, renewal and reinstatement of licenses, safety and sanitation procedures, standards of professional conduct, to ensure competence and integrity of all licensees and that the health and sanitary standards and safety are adequate in parlors, schools, and other facilities where tattooing services are provided, and administer the regulatory program in accordance with Chapter Chapters 2 and 7 of Title 54.1 of the *Code of Virginia*. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The Board is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Code of Virginia § 54.1-201.5 mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooer, instructor, salon, or school license, or apprentice permit. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Comments received during the public comment period revolved around a select few points, mainly; (1) the perceived lack of enforcement of unlicensed practice of tattooing; (2) the differentiation of permanent cosmetic tattooing from tattooing. The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with federal or state law or regulation.

The most recent evaluation occurred in 2011.

On November 2, 2015, the Board reviewed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.