

# **BACKGROUND PAPER FOR THE BOARD OF BARBERING AND COSMETOLOGY**

**(Oversight Hearing, March 19, 2013, Senate Committee on  
Business, Professions and Economic Development)**

## **IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BOARD OF BARBERING AND COSMETOLOGY**

### **BRIEF OVERVIEW OF THE BOARD OF BARBERING AND COSMETOLOGY**

The Board of Barbering and Cosmetology (Board) is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices and establishments. In 1927, the Board of Barber Examiners and the Board of Cosmetology were established. The Board of Barber Examiners governed the barbering profession, and the Board of Cosmetology governed the cosmetology profession. The Board of Barber Examiners consisted of 5 members, 2 of which were public members. The Board of Cosmetology consisted of 7 members, 2 of which were public members. Throughout the years there were minor changes to the laws of each profession. For example, the requirement of apprenticeship prior to master barber licensing for barbers and revision to the cosmetology laws to include a separate manicurist license, electrology license, and esthetician license. In 1939, the manicurist license and the electrology license were added, and in 1978 the esthetician license was added. In 1992, the Board of Barber Examiners and the Board of Cosmetology were merged to create the Board of Barbering and Cosmetology.

In July 1997, the Board of Barbering and Cosmetology was eliminated by the California Legislature and the duties, powers, and functions of the Board were transferred directly to the Department of Consumer Affairs (DCA) and were administered by the Bureau of Barbering and Cosmetology. The Board was reinstated through legislation in 2002 (SB 1482, Polanco, Chapter 1148) but sunset again, with its functions transferred back to a Bureau within DCA in 2008 (SB 797, Ridley-Thomas, Chapter 33). The Board was again reconstituted as the current Board of Barbering and Cosmetology (BBC) in 2009 through AB 1545 (Eng, Chapter 35, Statutes of 2008).

The Board, as an autonomous regulatory board under the DCA umbrella, is a special fund agency supported by fees, with full policy and enforcement authority over the practices of hair, skin and nail care, and electrolysis in the state. The Barbering and Cosmetology Act (Act) regulates the practice of barbering, cosmetology and electrolysis. Title protection is provided for the use of the term “cosmetologist” and “barber.” The Act also regulates the specialty branches within the practice of cosmetology of skin care and nail care. Those exempt from the Act are generally: (1) those involved in the health care field who, within their own scope of practice, may perform particular procedures which would constitute the practice of barbering or cosmetology; (2) commissioned officers in the military service, or their attendants, when engaged in the actual performance of their official duties; (3) persons employed in the movie, television, theatrical, or radio business; (4) persons not receiving

compensation and done outside of a licensed establishment; (5) persons who are demonstrating, recommending or selling hair, skin or nail products; (6) students performing services on the public while enrolled in an approved school.

The current Board mission statement, as adopted in October 2012 as part of the Board’s strategic plan, is as follows:

*To ensure the health and safety of California consumers by promoting ethical standards and by enforcing the laws of the beauty industry. The Board protects the interests of California consumers by: Serving as a guardian of their health and safety; Enhancing public and industry participation in decision-making; Promoting ethical and professional standards; and creating policies that are contemporary, relevant and responsive.*

The Board receives and processes an average of 40,656 applications for licensure as a barber, cosmetologist, manicurist, esthetician, electrologist and apprentice annually. On an average, the Board also receives an additional 6,198 applications annually for establishment of licenses.

The Board ensures that applicants for licensure have completed the necessary training and passed the written and practical (hands on) components of the examination. The examination requires that the individual demonstrate that they possess the knowledge and skills required to perform within the scope of their discipline while protecting the public’s health and safety. After successfully passing the examination, individuals are issued a license on the same day of the exam. The Board administers an average of 27,592 practical examinations and 32,111 written examinations.

The Board states that it is committed to ensuring that consumers are protected when they receive services from barbers, cosmetologists, manicurists, electrologists, estheticians, apprentices and the establishments in which they perform their services and does this through its licensing and examination program, its enforcement program, inspections and an education and outreach program.

The Board is comprised of nine members: five public and four professional members. The Senate Committee on Rules and the Speaker of the Assembly each appoint one public member. The other 7 members (4 public members and 3 professional members) are appointed by the Governor. As of March 1, 2013 three current Governor-appointed members’ terms will expire. The Board elects a president and vice-president, annually, who each serve a one-year term and can serve for a total of two years. The Board meets quarterly and rotates meeting locations between northern and southern California. All Board meetings are subject to the Bagley-Keene Open Meetings Act.

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority	Professional or Public
<p><b>Joseph Federico, President</b>            Mr. Federico has been the chief financial officer of the Federico Beauty Institute since 2009, where he was director of financial aid from 2006 to 2009 and has served on the board of directors since 2004. Mr. Federico has been a member of the American Association of Cosmetology Schools and the California Association of Student Financial Aid Administrators since 2006.</p>	10/30/2011	01/01/2015	Governor	Professional

<p><b>Wen Ling Cheng, Vice President</b> Ms. Cheng has been a State Farm insurance agent since 2001. Ms. Cheng is a long-time Bay Area resident who is involved in community service and is passionate about promoting equal education opportunities.</p>	05/02/2011	01/01/2015	Speaker of the Assembly	Public
<p><b>Bobbie Anderson</b> Ms. Anderson served as a field representative for Assemblyman Mike Davis from 2006 to 2009. She also worked as a supervising legal office assistant at the Los Angeles County Office of the Public Defender from 1978 to 2003, and as a typist clerk for the Los Angeles County Department of Public Social Services from 1957 to 1968. Ms. Anderson served on the executive board of the Legacy Service Employees International Union Local 660/721 from 1995 to 2003.</p>	10/24/2012	01/01/2015	Governor	Public
<p><b>Deedee Crossett</b> Ms. Crossett is the president and founder of the San Francisco Institute of Esthetics and Cosmetology (SFIEC). A graduate of Washington State University, with a bachelor's of arts degree in communications, Ms. Crossett spent approximately eight years working in marketing and sales promotions for various companies before moving into a field that she had always felt drawn to: the beauty industry. Ms. Crossett obtained her esthetics license in 2001, and worked as an esthetician, spa consultant, and esthetics trainer before opening SFIEC in 2002.</p>	01/12/2010	01/01/2013	Governor	Professional
<p><b>Katie Dawson</b> Ms. Dawson has been the principal of Dawson Dental Hygiene Practice since 2009. She was a dental hygienist for Dr. Damani Mitchell from 2001 to 2009, Dr. James Sweeney from 1995 to 2002, and Dr. Michael Hine from 1991 to 2002.</p>	11/30/2011	01/01/2013	Governor	Public
<p><b>Richard Hedges</b> Mr. Hedges is the owner and director of Community Horizons. Mr. Hedges was educated as a teacher in Kansas. He received his undergraduate degree in English and History at Kansas State University, and earned his Master's degree in American Urban History at San Francisco State University. Mr. Hedges was employed as a union representative for 28 years by the United Food &amp; Commercial Workers International Union.</p>	01/09/2013	01/01/2017	Senate Rules Committee	Public
<p><b>Frank Lloyd</b> Mr. Lloyd is a licensed tax preparer, real estate broker, and general contractor. Previously, Mr. Lloyd was a teacher at Chaffey Community College, where he developed the curriculum for real estate license renewal through the college. Mr. Lloyd is also a past member of the Commission on Aging.</p>	01/12/2010	01/01/2013	Governor	Public
<p><b>Christie Truc Tran, Board President</b> Ms. Tran has owned and managed Happy Nails of Costa Mesa since 2005. Previously, she was manager of Happy Nails of Newport Coast from 2002 to 2005. From 2001 to 2002, Ms. Tran was a nail technician at Happy Nails of Rancho Santa Margarita and a travel agent at Travel World from 1990 to 2001.</p>	01/02/2011	01/01/2015	Governor	Professional

Vacant	01/12/2010	01/01/2013	Governor	Professional
--------	------------	------------	----------	--------------

The Board is a special fund agency supported by fees. The Board has two primary sources of revenue: license renewal fees and administrative fines. The Board has a continuous renewal cycle for all of its license categories with one exception, the apprenticeship license, which is not renewable. The renewal cycle is biennial and expires at midnight on the last day of the month of issuance. A license that has expired may renew within five years following expiration upon payment of all accrued renewal fees and delinquency fees. If a licensee fails to renew within the five years, the license is cancelled and is no longer renewable. Renewal fees are primarily used to fund the Board's enforcement and inspection activities. Application and examination fees are not considered revenue because they are used solely to cover examination development and administration.

The Board has only adjusted its fee structure two times in the past ten years. In 2007, the Board established an application and examination fee of \$75, along with an existing separate initial license fee of \$35-\$50, depending on the license type. The Board also increased the license renewal fee by \$10. The Board saw these changes as necessary, without which it may have faced a negative fund balance in Fiscal Year (FY) 2008/09. In 2011, the Board increased its dishonored check fee to \$25 to reflect the amount charged by the the DCA, which handles cashiering for the Board.

The total revenues anticipated by the Board for FY 2012/13, is \$21,886,000 and for FY 2013/14, \$22,885,000. The total expenditures anticipated for the Board for FY 2012/13 is \$20,117,000, and for FY 2013/2014 is \$20,486,000. The Board anticipates it would have approximately 6.9 months in reserve for FY 2012/13, and 8.1 months in reserve for FY 2013/14.

Fund Condition						
(Dollars in Thousands)	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
Beginning Balance	\$12,153	\$6,245	\$10,049	\$16,084	\$9,993	\$11,742
Revenues and Transfers	\$19,475	\$19,248	\$21,034	\$21,855	\$21,866	\$22,885
<b>Total Revenue</b>	\$19,475	\$19,248	\$21,034	\$10,855	\$21,866	\$22,885
Budget Authority	\$18,413	\$17,095	\$17,433	\$15,985	\$20,141	\$20,141
Expenditures	\$15,562	\$15,389	\$15,098	\$16,946	\$20,117	\$20,486
Loans to General Fund				\$11,000		
Accrued Interest, Loans to General Fund						
Loans Repaid From General Fund	N/A	N/A	N/A	N/A	N/A	N/A
<b>Fund Balance</b>	\$6,066	\$10,104	\$15,985	\$9,993	\$11,742	\$14,141
<b>Months in Reserve</b>	4.8	8.0	12.7	6.0	6.9	8.1

During FY 2002/03, the Board provided the General Fund with a loan of \$9 million. In FY 2008/09, the Board provided the General Fund with a loan of \$10 million and in FY 2011/12 a loan of \$11 million, for a total loan amount of \$30 million. The Board has received repayment of loans in two installments, one in FY 2005/06 for \$5.5 million and the other in FY 2006/07 for \$3.5 million. The Board still has an outstanding loan balance of \$21 million.

Expenditures by Program Component								
	FY 2008/09		FY 2009/10		FY 2010/11		FY 2011/12	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	2,168,855	2,409,882	2,342,980	2,288,579	2,389,750	1,701,420	2,567,614	1,698,073
Examination	1,199,792	1,565,679	1,320,589	1,875,354	1,452,593	2,066,154	1,460,015	2,698,844
Licensing	784,479	636,145	1,235,390	633,881	1,077,731	477,180	1,308,979	637,177
Administration	1,568,959	400,694	681,594	196,587	1,030,873	245,420	755,180	163,399
DCA Pro Rata		4,411,054		4,438,739		4,137,400		5,242,693
Statewide Pro Rata		778,202		562,154		699,846		759,682
<b>TOTALS</b>	<b>5,722,085</b>	<b>10,201,657</b>	<b>5,580,553</b>	<b>9,995,294</b>	<b>5,950,947</b>	<b>9,327,420</b>	<b>6,091,788</b>	<b>11,004,858</b>

The Board encourages input from all segments of the industry. To do this, advisory committees, working groups and other forums have been established for various topics. The Board additionally has five standing committees and utilizes task force ad hoc committees and advisory committees that are formed to examine specific topics, and then disbanded following completion of the task. These committees recommend policies that advance mission-related goals.

- **Legislation and Budget Committee** – Reviews and tracks legislation that affects the Board and recommends positions on legislation. The committee provides information and recommendations to the Board of potential policy matters relating to the budget.
- **Examination and Licensing Committee** – Advises the Board on policy matters relating to the examining and licensing of individuals who want to practice barbering, cosmetology and electrology in California. The committee may also provide information and recommendations to the Board on issues related to curriculum and school approval, exam appeals, laws and regulations. Exercises oversight of all pharmacy activities and protects the public by preventing violations and effectively enforcing federal and state pharmacy laws when violations occur.
- **Education and Outreach Committee** – Provides recommendations to the Board on the development of informational brochures and other publications, planning of outreach events for consumers and licensees, preparing articles for submission in trade magazines, and attending trade shows.
- **Enforcement and Inspections Committee** – Advises the Board on policy matters that relate to protecting the health and safety of consumers. This includes recommendations on how inspections are conducted, the types of violations issued, maintenance of disciplinary guidelines, and other recommendations on the enforcement of the Board’s statutes and regulations.
- **Disciplinary Review Committee** – Conducts informal administrative citation review hearings and renders decisions regarding disputed citations. The committee has authority to affirm, modify or dismiss the citations including any fine. Due to the high volume of appeals all members of the Board are designated as members of the DRC; however, only three members attend meetings.

In addition to the five strategic committees, the Board occasionally establishes technical advisory committees designed to enlist the aid of experts in the industry. These committees offer the Board input on specific technology, processes or elements within the beauty industry and are usually comprised of between 3 to 10 specialized professionals. They offer opinions, research and tactical information used by the Board to address revision of regulations or clarification on processes related to health and safety. The Board uses the information gleaned from these committees to set policy or make regulation updates.

Recent examples of technical advisory committees formed by the Board are:

- Nail Advisory Committee which provided input on the use of liners in footspa basins, the health and safety of using disinfectable nail files and the FDA’s view of the health and safety of the use of methyl methacrylate monomer.
- Skin Care Advisory Committee which enhanced Board knowledge on the use of Alpha Hydroxy acids, safe ph readings, proper acid percentage amounts, safe procedure dissemination, and esthetic machinery.
- Electrolysis Advisory Committee aided the Board in reviewing out-of-date regulations and educated the Board on proper electrolysis techniques as well as offered practical suggestions in regard to procedures related to health and safety.

The Board is considered a partial member (partial membership does not allow for voting privileges) of the National Interstate Council of State Boards of Cosmetology (NIC). In 1969, the NIC testing program was established to create a national standard which would ensure consistency in the profession and enhance reciprocity among the states. The Board began using the NIC national exam in May 2009 and the NIC practical exam beginning in 2011. The contract between the Board and NIC requires NIC to provide valid, reliable and legally defensible national examinations that comply with generally accepted psychometric standards applicable to professional licensing examinations. The Board also requires NIC to provide test content so that the Board or its designated representative can ensure successful examinees have the knowledge and skills necessary to perform as competent licensees.

The Board also uses California subject matter experts (SMEs) and/or examination staff to assist with occupational analyses as well as exam development. For each test development workshop, NIC strives to assemble a diverse group of SMEs representatives of the population of practitioners for the specific discipline of a particular exam. The Board staff has reviewed and approved the NIC occupational analyses and development process and has also approved each NIC examination used in California to test the Board licensees. The Board staff administers the practical portion of the exam and rates candidates.

### Licensing

The licensing program is responsible for reviewing and processing all individual and establishment applications. As part of the review process, each application and corresponding documentation is evaluated to determine if the applicant meets the minimum qualifications as specified in statute and regulation. The Board currently has almost 550,000 licensees.

Licensee Population					
		FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Establishments	Active	40,176	40,978	42,090	44,555
	Delinquent	4,892	5,340	5,389	5,548
Mobile Unit	Active	14	14	15	19
	Delinquent	4	4	5	5
Barber	Active	17,925	18,241	18,939	19,519
	Delinquent	3,727	3,658	3,620	3,578
Barber Apprentice	Active	443	566	647	676

Cosmotology	Active	232,584	237,411	243,683	249,865
	Delinquent	34,712	35,960	36,350	37,060
Cosmetology Apprentice	Active	986	1,044	1,018	1,056
Electrology	Active	1,828	1,767	1,692	1,642
	Delinquent	576	544	530	514
Electrology Apprentice	Active	1	0	1	2
Manicurist	Active	97,451	97,318	97,798	99,011
	Delinquent	18,862	20,674	21,660	22,215
Esthetician	Active	45,454	48,979	52,409	55,770
	Delinquent	4,946	5,853	6,796	7,408
<b>Totals</b>		503,151	516,285	532,647	548,466

<b>Total Licensing Data</b>			
	FY 2009/10	FY 2010/11	FY 2011/12
<b>Initial Licensing Data:</b>			
*Initial License/Initial Exam Applications Received	46,932	48,948	49,425
*Initial License/Initial Exam Applications Approved	29,602	44,998	U/A**
*Initial License/Initial Exam Applications Closed**	U/A**	1,974	U/A**
License Issued	26,500	29,297	30,147
<b>Initial License/Initial Exam Pending Application Data:</b>			
Pending Applications (total at close of FY)	1,954	2,854	3,106
<b>Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):</b>			
Average Days to Application Approval (All - Complete/Incomplete)	104	64	52
Average Days to Application Approval (incomplete applications)**	U/A**	99	U/A**
Average Days to Application Approval (complete applications)**	U/A**	29	U/A**
<b>License Renewal Data:</b>			
License Renewed	200,477	209,285	210,107

\* Only exam applications are approved. All other applications result in licensure. The exam applications will also include any retake exam applications.

\*\* The Board does not utilize the database to track this information. During FY 2010/2011 the DCA provided this information as part of the Licensing for Job Creation Project.

The Board reports the following goals and performance measures related to licensing timeframes:

<b>Performance Measure</b>	<b>Definition</b>	<b>Target</b>	<b>Actual</b>
Initial Applications	Average days from receipt of application to examination scheduling.	42 days	44 days
Establishment Applications	Average days from receipt of application to license issuance.	28 days	26 days
Apprentice Application	Average days from receipt of application to license issuance.	28 days	8 days
Reciprocity Application	Average days from receipt of application to license issuance.	28 days	22 days
Examination Scheduling	Average number of days from date of approval of qualifications to examination date.	60 days	30 days

The Board's workload has increased over the last three years with additional applications being received but for the most part the Board has not seen significant delays in its licensing timeframes and

remains close to its timeline goals. The most considerable impact on the licensing process came as a result of mandatory furloughs for state employees. Due to furloughs, the Board's examination sites were closed 3 days a month, resulting in delays for over 6,000 applicants being able to take the necessary tests for licensure. The Board is now still processing this backlog and is addressing the issue by having staff work additional time at the examination sites.

All licensing examination applicants are required to apply for the examination and pay the required fee. All applicants seeking licensure, cosmetologist, barber, esthetician, and manicuring applicants, must be at least 17 years old and have completed the 10th grade or its equivalent. Apprenticeship program applicants must be over 16 years old and have a 10th grade education or its equivalent. Electrologist and instructor applicants must be at least 17 years old with a 12th grade education or its equivalent.

The Board states that it provides applicants with detailed instructions on the application process and requirements to obtain licensure. A proof of training document for applicants is provided to the Board by the administration of a training school (signed under penalty of perjury by a school official), verifying that an applicant has completed the required number of hours. The Board also requires all applicants to sign under penalty of perjury that all statements provided in an application are true and correct.

California provides a two-part licensing examination that consists of a written portion and a practical portion. Both parts of the examination are taken on the same day and results are issued after completion of the examination. The written portion of the examination tests candidates' general knowledge of the Board's health and safety laws and regulations. The practical portion of the examination tests the candidate's actual minimum competency in performing the required services for that licensing category. The Board offers its examinations in English, Spanish, Vietnamese and on September 1, 2012, Korean language examinations became available.

Once an application for exam has been received by the Board and evaluated for accuracy, Board staff schedules a test date for the applicant to take the written and practical exam. Both tests are generally scheduled to be taken on the same day. The written test may be administered in the morning and the practical examination in the afternoon, or vice versa. Once the applicant has passed both the written and practical portions of the exam, the license is issued immediately at the examination facility.

If an applicant fails either part of the exam, the individual must pay another testing fee to schedule a re-examination. The new application and fee must be paid to the Board within one year, as the Board only considers test scores valid for a one year period.

The Board maintains two examination facilities in this state, one in Northern California (Fairfield) and one in Southern California (Glendale) that operate Monday thru Friday. As the Board participates in a computer-based testing program, each examination facility is sub-leased to the vendor for the administration of the written examination which allows the Board to facilitate same day licensure for successful candidates. Candidates can take the written portion of the exam at one of the thirteen computer-based testing sites in the state.

The Board also conducts examinations in state correctional facilities and works closely with the California Department of Corrections and Rehabilitation to schedule and administer these examinations. The Board states a goal of licensing individuals as close to their release date as possible

in order to allow an individual to have a license in their hand with the ability to seek immediate employment in the field of cosmetology upon release. Since 2006, the Board administered 46 exams and licensed 30 individuals. To administer these examinations, Board staff travels to the correctional facility and provides both the written and practical portions of the examination. The examinations are graded and results are provided on the same day the examination is administered.

The Board monitors its performance in licensing on a weekly basis. Due to the high volume of workload, statistics are provided every Monday by licensing staff on the processing timeframes for the applications on their desks. In addition to the Board’s internal licensing statistics, data is also provided from the DCA’s cashiering unit to determine timeframes, including when checks were processed.

**Enforcement**

The Board’s mission is “to ensure the health and safety of California consumers by promoting ethical standards and by enforcing the laws of the beauty industry.” The Enforcement Unit is a key component of the Board’s operations and a critical tool for the Board to meet its mission and consumer safety goals. The Board states that all cases are investigated and investigations may include inspections, requests for additional information, requests for assistance by the DCA Division of Investigation (DOI), or requests for an expert’s opinion. Complaint cases are typically closed after the investigation reveals insufficient evidence to proceed, if compliance with the Board’s rules and regulations has been demonstrated or if disciplinary action has been taken against the licensee. The Enforcement Unit maintains a designated school analyst who processes complaints about the health and safety of Barbering and Cosmetology schools. The Enforcement Unit also works with the Division of Apprenticeship Standards, local education agencies throughout the state, and apprenticeship program sponsors as a means of ensuring proper oversight of the Board’s Apprentice Program and to ensure apprentices are properly trained in their chosen profession and taught proper health and safety standards.

In 2010, the DCA developed standard performance measures for each board and bureau to assess the effectiveness of its enforcement program. The DCA established an overall goal to complete consumer complaints within 12 to 18 months. The Board is meeting its enforcement targets.

Performance Measure	Definition	Target	Actual
<b>PM1</b> Volume	Number of complaints received	*	5,647
<b>PM2</b> Cycle Time	Average number of days to complete complaint intake.	10 days	3 days
<b>PM3</b> Cycle Time	Average number of days to complete closed cases not resulting on formal discipline.	120 days	71 days
<b>PM4</b> Cycle Time	Average number of days to complete cases resulting in formal discipline.	540 days	472 days
<b>PM5</b> Efficiency (cost)	Average cost of intake and investigation for complaints not resulting in formal discipline.	**	n/a
<b>PM6</b> Customer Satisfaction	Customer satisfaction with the service received during the enforcement process.	75% Satisfaction	***
<b>PM7</b> Cycle Time (probation monitoring)	Average number of days from the date a probation monitor is assigned to a probationer to the date the monitor makes first contact.	15 days	6 days
<b>PM8</b> Initial Contact Cycle Time (probation monitoring)	Average number of days from the time a violation is reported to the program to the time the monitor responds.	5 days	1 day

The Board reports a significant increase in complaints received since the last Sunset Review and states that the average complaints received per year since 2005 is 3,350. The Board did see average complaints received over the past three years increase by 50 percent. The Board attributes this increase to a number of complaints being opened internally, rather than opening in response to a consumer report or other method. These Board-initiated “follow up complaint cases” include establishments which have been cited for multiple health and safety violations, dirty foot spa violations, and unlicensed activity. This directly correlated to an increase in the number of establishments inspected over the last three years at 20 percent, and a rise in the number of establishments cited for unlicensed activity during this time, up 43 percent. The Board also experienced a 156 percent increase in cases opened for follow up on unlicensed activity.

	FY 2005/06		FY 2009/10	FY 2010/11	FY 2011/12
Establishments Inspected	12,574		11,095	12,543	14,012
Establishments Cited for Unlicensed Activity	1,664		1,554	2,150	2,224
Internal Unlicensed Activity Follow-up Cases Opened	15*		261	627	669
Health and Safety Follow-Up Cases Opened	4*		148	321	275

\*Opening follow-up cases in the FY 2005/06 was not a high priority due to the number of pending cases, 2863.

Complaints	FY 2005/06		FY 2009/10	FY 2010/11	FY 2011/12
Opened	3,219		4,404	5,148	5,467
Closed	2,887		4,514	4,986	5,699
Pending	2,863		930	1,094	864
Average Days to Close	274		108	78	72

The Board attributes a number of factors to any shortages in meeting its enforcement goals. Specifically, staffing and workload issues affect the Board’s Inspections and Cite and Fine unit, as well as DOI, the Office of Administrative Hearings (OAH), Attorney General’s (AG) office, and local District Attorney’s (DA) offices, all of which increase processing times for Board cases. The Board also has two territories in the state with *no assigned inspectors* and some Board inspectors are assigned to territories covering a massive geographical area. Compounding this problem is that inspectors must travel throughout these territories, and due to Executive Orders regarding travel, many of these inspections are substantially delayed.

The Board recently began experiencing a backlog in processing inspections report and following up with citations and fines due to the volume of reports received and staff shortages. The Board has worked to redesign its internal process and speed up processing times so that Directed Inspection Reports first go to a case analyst and are then forwarded to Cite and Fine for citation issuance, allowing the case analyst to review an inspection report and quickly close cases that do not need additional follow up.

Enforcement Aging						
	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	Cases Closed	Average %
<b>Attorney General Cases (Average %)</b>						
Closed Within:						
1 Year	27	22	35	31	115	27%
2 Years	125	38	31	42	236	56%
3 Years	25	16	4	14	59	14%
4 Years	2	3	4	1	10	2%
Over 4 Years	2	3	0	0	5	1%
Total Cases Closed	181	82	74	88	425	
<b>Investigations (Average %)</b>						
Closed Within:						
90 Days	2,357	2,715	3,547	4,041	12,660	66%
180 Days	795	894	835	1,078	3,602	19%
1 Year	527	664	457	476	2,124	11%
2 Years	232	207	139	96	674	4%
3 Years	56	24	7	8	95	.05%
Over 3 Years	5	10	1	0	16	.008%
Total Cases Closed	3,972	4,514	4,986	5,699	19,171	

The Board referred 176 cases to the AG’s office in fiscal year 2005-2006. During the same year 137 accusations and 42 statements of issues were filed. The number of cases referred to the AG since fiscal year 2005-2006 has decreased 39 percent from 176 in 2005-2006 to 108 in 2009-2010. The Board attributes this to an internal change whereby so-called “Consumer Harm” cases are more thoroughly investigated at the Board level and only cases with clear and convincing evidence that a violation of the law occurred are forwarded to the AG’s office. Licensees who have committed a violation of the Board’s regulations are issued citations.

	FY 2005/06		FY 2009/10	FY 2010/11	FY 2011/12
Referred	176		108	108	113
Accusations Filed	137		53	45	49
Statements of Issues Filed	42		27	7	4

The Board initiated the Cite and Fine program in December 1994. Administrative citations are issued for violation of the Bureau’s rules and regulations, primarily related to health and safety issues. The Board conducts random as well as targeted inspections of establishments and administrative fines are assessed for violations of the Board’s rules and regulations while citations are issued to establishment owners and individual operators. For an unlicensed person, the Board may issue an administrative citation, or a peace officer, through the DCAs Division of Investigation (DOI), may issue a misdemeanor citation. The Board began using the DOI in July 2010 to assist the Board inspectors in gaining compliance when all other means have been exhausted. These misdemeanor citations resemble a traffic ticket and include a date to appear in court while all background information, including prior citations and correspondence, are forwarded to a local District Attorney for further review and action.

During the last two fiscal years, the Board has conducted an average of 13,200 inspections and issued an average of 18,400 citations. The number of inspections resulting in No Violations being cited has increased 58 percent since 2005.

	FY 2005/06		FY 2009/10	FY 2010/11	FY 2011/12
Establishments Inspected	12,574		11,095	12,543	14,012
Citations Issued to Establishments	6,719		7,565	10,884	10,543
Citations Issued to Individuals	7,067		5,475	7,734	7,683
Total Citations Issued	13,786		13,040	18,618	18,234
Establishments with No Violations Cited	1,070		1,815	2,246	2,863

The Board has reviewed and revised its Administrative Fine Schedule twice since it last came under Sunset Review; once in 2007 and once in 2011. In 2007, the Administrative Fine Schedule was updated to reflect a single fine amount for each violation, regardless of how many times the licensee had been cited for the same violation. The Board also updated its fines to indicate that no first time violations are considered correctable and are still eligible for a fine.

During the following years the Board determined that fines were too high for certain types of violations. For example, a violation of mislabeling a clean container could have resulted in a fine of \$600.00. After discussions at the Board meetings as well as input during DRC hearings, the Board found that high fine amounts were prohibitive to some businesses from continuing to operate.

In 2011, the Board reviewed its fines again and began assessing in accordance to a graduated fine scale where fines are now assessed according to how many times the licensee was cited for the same violation within the last five years. The Board previously assessed fines on a graduating scale. The Board also increased the maximum fine limit per citation from \$2500 to \$5000, although fines were not reduced to previously low levels but rather some fines for violations that specifically posed consumer harm were set higher, hoping to serve as a greater deterrent to those violations. Now, any citations with fines totaling more than \$5000 are modified so that the fine total does not exceed \$5000.

	2005/06	2007	2011
1st Occurrence	\$25	\$100	\$100
2 <sup>nd</sup> Occurrence	\$50	\$100	\$150
3 <sup>rd</sup> Occurrence	\$150	\$100	\$200
Correctable	Yes	No	No

Prior to February 2008, all citations were issued by the inspector at the time of inspection. In February 2008, the process was changed so that all citations are now issued by Board office staff. Inspectors now provide licensees with a copy of an inspection report as a record of the inspection while the original inspection report, photographs taken during the inspection, and any inspector comments are then forwarded to the Board's main office. The Cite and Fine unit reviews the inspection report, photographs, and inspector comments for accuracy before issuing a citation.

The Board still sees many of the same violations as were reported during its last Sunset Review. Citations are most often issued for violations of disinfecting non-electrical instruments and equipment as well as violations for disinfection and storage of tools, implements, instruments and products. The Board's primary non-health and safety related violation is failure to properly display an establishment license or individual license. Of most concern is that the Board's fifth most cited violation is practicing Barbering, Cosmetology, or Electrology for Compensation without a License (unlicensed establishment or unlicensed individual). The Board issued over 4,000 citations for this violation in FY 2011/12.

The Board allows anyone who is issued a citation the right to appeal any or all of the violations cited. As such, the Board received approximately 12,000 requests for appeal during the last four fiscal years. In FY 2011/12 the average fine per violation before an appeal was \$497 and the average fine amount per violation after an appeal decision by the Board's Disciplinary Review Committee (DRC) was \$207.

The Board seeks cost recovery regardless of whether the case is heard in administrative hearing or is settled by stipulation. If revocation and cost recovery are ordered as a result of an administrative hearing, the Board makes three written attempts to contact the respondent to request full payment or develop a payment plan. If the respondent fails to respond, the case is referred to the Franchise Tax Board (FTB) intercept program. Additionally, the Board has the authority to deny reinstatement of the license of any licensee who has failed to pay all ordered cost recovery. In cases where the respondent is placed on probation, cost recovery, including compliance with a payment schedule, is generally a condition of probation. Non-compliance with this term may result in transmittal of the case to the AG to seek revocation or extend the probation until the costs are paid in full. However, transmittal of the case to the AG to seek revocation or modification of the original terms and conditions of probation, results in additional enforcement costs.

The Board seeks cost recovery in all formal disciplinary actions. Most cases referred to the AG's office have the potential for a cost recovery order. The Board seeks cost recovery in every case, although the Administrative Law Judges (ALJ) often reduce the amount of cost recovery payable to the Board. The ALJ may award full or partial cost recovery to the Board or may reject the Board's request for cost recovery. In an effort to reduce the cost of prosecution and hearings, the Board may reduce the actual cost recovery amount due as an incentive to settle a case prior to a hearing, as hearings cause expenses to the Board that cannot be recovered.

For more detailed information regarding the responsibilities, operation and functions of the Board please refer to the Board's "Sunset Review Report 2012." This report is available on its Website at [http://www.barbercosmo.ca.gov/forms\\_pubs/sunset\\_report.pdf](http://www.barbercosmo.ca.gov/forms_pubs/sunset_report.pdf).

## **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

The Board was last reviewed in 2005 by the Joint Committee on Boards, Commissions, and Consumer Protection (JCBCCP). During the previous sunset review, the JCBCCP raised 19 issues. The final

recommendations from JCBCCP contained a set of recommendations to address those issues. Below are actions which the Board and the Legislature took over the past 8 years to address many of the issues and recommendations made, as well as significant changes to the Board's functions. For those which were not addressed and which may still be of concern to this Committee, they are addressed and more fully discussed under "Current Sunset Review Issues."

In November, 2012, the Board submitted its required sunset report to this Committee. In this report, the Board described actions it has taken since its prior review to address the recommendations of JCBCCP. According to the Board, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

- **Reconstitution as a Board of Barbering and Cosmetology:** JCBCCP found that a number of issues identified in previous review of the Board remained ongoing issues and that the Board continued to ignore the intent of the Legislature, as well as recommendations of the JCBCCP and prior Joint Legislative Sunset Review Committee (JLSRC) and DCA. The Board was sunset and reconstituted by Assembly Bill 1545 (Eng, Chapter 35, Statutes of 2008) which established a new Board of the same name and authorized the Board to appoint an Executive Officer. The current Board has been in existence since AB 1545 took effect in June 2008.
- **Steps Taken to Address the Issue of Foot Spas and Fungus Outbreaks:** Multiple outbreaks of infections and other health concerns relating to pedicures and the use of foot spas resulted in the DCA being directed to form a task force to look at the safety of foot spas. In 2006, the Board implemented emergency regulations that provided for specific cleaning and disinfecting requirements for foot spas, as recommended by the foot spa working group, and disseminated these new regulations in English, Spanish and Vietnamese to all licensed manicurists, cosmetologists and establishments. The Board was also granted authority to immediately suspend a license, implement a stay of the suspension and place the licensee on immediate probation if an immediate threat to consumers was found. Now, during an inspection, if a Board inspector observes that a foot spa is not clean and poses an immediate consumer threat, a photograph is taken and transmitted immediately to the Executive Officer, or designee, for a decision on whether to issue the immediate suspension notice. The Board has placed 144 licensees on "immediate suspension" which the Board believes is a very useful tool in addressing particularly unsafe, potentially harmful foot spas. The Board reports that follow up inspections at these foot spas have shown dramatic improvements in cleanliness. The Board also developed a video on how to properly clean foot spas and held town hall meetings to show how to properly clean foot spas.
- **Reciprocity With Other States:** The JCBCCP was concerned that individuals from other states and countries had to meet California-specific eligibility requirements and pass both a written and practical examination, regardless of years of experience in other states or countries in order to be licensed and practice here. The Committee saw reciprocity as a means of lowering market barriers, increasing competition, promoting employment, and better facilitating the ability of licensed professionals to begin working in California. The Board implemented reciprocity in 2007, allowing for the licensure of close to 9,000 individuals since that time.
- **Improvements to the Practical Exam:** On March 1, 2012 the Board eliminated the use of live models for the practical portion of the examination and switched to mannequin heads. The use

of a live model was seen as a problem and the cause of some candidates being eliminated from an examination. Models were often found to have broken skin, insufficient hair for a haircut, or were found to be coaching a candidate. Use of the mannequin still allows examiners to determine the minimal competency performed and prevents many health and safety protocols from being violated.

- **Improved Website and Use of Online Mediums to Communicate:** The Board's Website provides general information about the Board and its operations, including how to file a complaint, consumer brochures, informational fact sheets, Barbering and Cosmetology law and licensing and enforcement information. The Board states that its Website has grown as a primary method for communication contains more information than ever before. Over the past three years, the Board's Website averaged 3.7 million hits per year and recently underwent a revamp to now be more consumer and user friendly. The Board also recently began using Facebook and Twitter as quick and efficient means of timely transmittal of information.

The Board also posts a significant amount of information about licensees on its Website, including a licensee's name, license number, county of residence, license issue date, license expiration date and the current status of a licensee. The Board also includes a notation if the individual is currently on probation, has an accusation pending final decision or if the individual was previously disciplined.

In the summer of 2011, the Board produced its first *Smock Talk* newsletter which was posted to the Website.

- **Consumer Education and Fact Sheets:** The Board has developed a series of consumer materials covering a wide range of topics designed to educate the public on health and safety topics. Several of these items are also available in Spanish and Vietnamese and can be downloaded from the Board's Website. Some examples of recent fact sheets include "Hair Extensions", "Fish Pedicures", "10 Most Common Violations Cited During Inspections," "To Open a New School of Barbering/Cosmetology/Electrology" and "In Home Services." Industry bulletins that provide the Board's official position are posted to the Website. Some of the recent bulletins have covered information on: Disinfecting Nail Files Detox Foot Spas Callus Removal Needles Are Prohibited Monthly, the Board submits articles of interest to "The Stylist." A newspaper distributed to all licensed establishments in California. Topics include everything from "Meet the Board President" to "BBC's Top Ten Violations."

## CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committee, and other areas of concern for this Committee to consider along with background information concerning the particular issue. There are also recommendations by the Senate Business, Professions and Economic Development Committee staff which have been made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

## **BOARD ADMINISTRATION ISSUES**

**ISSUE #1 : (IMPLEMENTATION OF BreEZe.) The Board is included in the first phase of the rollout which is set to take place in early 2013. What is the status of The BreEZe Project?**

**Background:** The DCA is in the process of establishing a new integrated licensing and enforcement system, BreEZe, which would also allow for licensure and renewal to be submitted via the internet. BreEZe will replace the existing outdated legacy systems and multiple “work around” systems with an integrated solution based on updated technology. The goal is for BreEZe to provide all the DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve the DCA’s service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

In November of 2009, the DCA received approval of the BreEZe Feasibility Study Report (FSR), which thoroughly documented the existing technical shortcomings at the DCA, and how the BreEZe solution would support the achievement of the DCA’s various business objectives. The January 2010 Governor’s Budget and subsequent Budget Act included funding to support the BreEZe Project based on the project cost estimates presented in the FSR.

The Board believes that BreEZe will allow schools to directly enter student information online as well as electronically submit the proof of training documents required for licensure, both of which will help decrease the Board’s application processing and licensing timelines. The Board also plans to use BreEZe to produce statistical reports to gauge information about applicants and licensees, one example of which is determining the pass rate for first-time applicants taking the exam and comparing that data to pass rates for individuals re-taking the exam. The Board’s internal systems currently do not allow for that type of reporting.

The Board has reported at meetings for the past two years that implementation of BreEZe will occur shortly; however it is still unclear when BreEZe will ultimately become operational and it remains to be seen if the Board’s current needs will be met by the system’s design and functions, which were crafted a number of years ago.

**Staff Recommendation:** *The Board should provide an update of anticipated timelines, existing impediments and the current status of BreEZe.*

**ISSUE #2: (ADDRESSING DEFICIENCIES IN PRIOR INTERNAL AUDITS.) Has the Board made the necessary changes to its operations as recommended by prior DCA audits? What are the challenges the Board faces in implementing recommendations?**

**Background:** The Board has been reviewed by numerous legislative Committees, internal audits and also through legislative analysis and legislation affecting the Board over the past decade. However

some of the same issues facing the Board in 2002 were still relevant in 2005 and may still be pending today. The Board acknowledges that it has sufficiently addressed only three of six deficiencies found in its programs by a 2002 audit of the then-Bureau. The audit found that the Bureau's enforcement program lacked important elements that could assist management in measuring the success of its licensing and enforcement operations. The audit also cited deficiencies in the inspection unit. Specifically, the audit found that inspection operations were inadequate to ensure compliance with regulatory and internal policies and procedures. The DCA also conducted a performance audit of the Board in 2005-06 that raised similar concerns.

According to the Board, it has successfully taken action on three of six previously identified issues. The Board finally fully integrated a strategic plan into its operations and updated the plan in October 2012 to reflect current goals. In response to significant backlogs, the Board reports that processing times have significantly decreased and it is currently exploring further ways to reduce those times. Regarding deficiencies in its inspection program, the Board updated its fine schedule and now follows up on fines that have not been paid, conducts follow-up inspections when serious violations are found and enters inspection data into the current Board database. The Board is not, however, meeting its statutory mandate of inspecting new salons within 90 days of licensure, although the Board states that "inspections that are a result of a consumer complaint are given top priority".

The Board is still working to issue licenses in a timely manner, improvements to which were raised in the DCA audit ten years ago. The Board states that it is waiting for implementation of BreZE to then review business processes and determine where improvements can be made. The audit also raised concerns about continued problems in enforcement and the Board believes that by 1) establishing performance measures for enforcement cases, 2) acknowledging complaints within 10 days, 3) creating internal processes to ensure inspections based on complaints are quickly assigned, and 4) creating quality control measures, it has resolved these issues. In response to problems with staff access to a safe where cash is stored, the Board has now limited the ability of staff to access that safe.

***Staff Recommendation:*** *The Board should provide the Committee an update on its implementation of previous audit recommendations and describe any challenges it continues to face, as well as any statutory or regulatory efforts that might additionally aide the Board in fulfilling its duties. The Board should also explain any proactive steps it takes to deal with administrative barriers.*

**ISSUE #3: (PROPER ASSESSMENT AND ALLOCATION OF RESOURCES FOR THE BOARD TO FULFILL ITS MISSION.)** The Board is taking in a lot of money and may need to evaluate its fees. Prior Sunset Reviews found that the Board spent more on its examination program than it takes in and recommended that the Board needs to assess the actual costs related to exams, and take in corresponding revenue. The Board has also cited many challenges including mandatory furloughs and travel and budget restrictions as impediments to the Board effectively fulfilling all of its responsibilities.

**Background:** The Board has a fund balance that continues to grow with a substantial amount of licensing fees coming in, and is due to receive over \$20 million in repayment for loans provided to the General Fund. It would be helpful for the Committee to understand what efforts the Board is taking to evaluate its fees and determine if current fees are appropriate given its healthy fund.

While the Board has a healthy fund balance, other barriers may be preventing it from effectively carrying out its consumer safety mission. Business and Professions Code Section 7423 states that fees shall be the actual cost to the Board for developing, purchasing, grading, and administering the

examination. Further, Business and Professions Code Section 7421 requires that the fees collected by the Board shall be in amounts necessary to cover the expenses of the Board in performing its duties. The Board's testing costs are higher than other boards and bureaus within the Department largely because the practical examination administration requires that the Board maintain and staff exam facilities. On December 1, 2007 the Board implemented a new fee schedule that established an application and examination fee of \$75.00 for each license type. It would be helpful for the Committee to understand how the Board prioritizes costs related to exams and if there have been any savings or improvements since the Board adopted the national exam.

The Board also acknowledges that it has not always been able to meet performance goals due to "staffing limitations and budget restrictions" and that to effectively process the high volume of applications, the Board has instituted overtime for staff members and redirected staff to assist with the backlog. While the Board states that it is "always looking for ways to improve the processing times in licensing, especially considering the impact to employability delays can have", it is not clear if the Board has exhausted all possible means of dealing with its workload. The Board did receive approval through the Budget Change Process (BCP) to augment its spending authority to hire an additional 4 inspectors; however, a hiring freeze prevented the Board from actually filling those positions. The Board states that from July 29, 2010 to December 31, 2011, two Inspectors, a Cosmetology Examiner and a Supervisor Cosmetology Examiner retired from the Board and the Board was unable to fill those positions due to a hiring freeze. The Board also cites vacancies from July 1, 2010 to July 1, 2012, stemming from the Board's inability to fill two limited term Inspector positions because it was not able to find qualified individuals in the necessary geographic location. According to the Board, the recruitment process alone is a barrier to filling vacancies, as it can take up to three months to fill a new position due to lengthy timeframes to post an announcement, conduct interviews, perform eligibility verifications, and obtain the necessary approvals to extend an offer.

As part of its current strategic plan, the Board is planning to conduct an in-depth workload analysis of its licensing and examinations unit to ensure resources are being properly allocated. The Board has also looked at increasing its capacity at examination sites as a means of decreasing wait times for applicants to take exams and eventually be employed sooner.

***Staff Recommendation:*** *The Board should explain to the Committee any unique efforts it is making in light of certain administrative barriers and discuss if resources are being properly assessed and allocated. The Board should also comment on its ideal staffing circumstances and if pursuing a BCP or gaining additional staff could better help it fulfill its mission.*

**ISSUE #4: (OUTREACH.)** The Board's outreach efforts have been impacted by travel restrictions and budget constraints. Can the Board do anything outside of travel to stay in touch with and actively engage stakeholders? Are there any efforts other DCA Boards are pursuing that the Board can also take?

**Background:** Outreach by the Board allows consumers, practitioners and Board staff to remain engaged on current state and national trends, as well as health and safety efforts and laws. The Board maintains outreach efforts to both consumers as well as the industry. Some highlights of the Board's outreach efforts are:

- Development of a Powerpoint presentation in 2009, in association with Federico's Beauty College, outlining the proper way to clean footspas. The Board conducted a town hall meeting

where a practical demonstration was given on how to properly disinfect foot basins, providing Board staff the opportunity to discuss how establishment owners and licensees could maintain compliance with the Board's rules and regulations. The Board encouraged public participation by sending postcard invitations to targeted consumers. The town hall meeting provided Board staff the opportunity to discuss how establishment owners and licensees could stay in compliance with the Board's rules and regulations.

- Conducting a live Question and Answer session via webcast in 2009. The Executive Officer provided a brief summary of services the Board provides and how to stay compliant. Licensees called the Board or emailed in questions that were responded to in real-time.
- Participation in the California State Fair, wellness fairs, town hall meetings, workshops and seminars to assist with educating the public on health and safety issues.
- Operating a booth at trade shows throughout the state.
- Visiting beauty colleges in California to assist students in developing familiarity with Board regulations and processes.

The Board historically maintained an active presence at beauty industry events but has been limited in attending those due to travel restrictions and state budget constraints (on April 26, 2011 Executive Order B-06-11 took effect, limiting the ability of Board staff to travel to outreach events. The Board also states that "budget restrictions have been imposed which regrettably have suspended the Board's presence at the above mentioned events). The Board has improved its Website and has worked to create a Facebook and Twitter presence as well as posting consumer information online. The Board also mails out materials to trade shows and consumer fairs to encourage interest in the Board.

The Board also noted in its Sunset Report to this Committee that staff is periodically asked to provide lectures at California schools to discuss the role of the Board, its licensing program, enforcement program, duties of the licensee in charge and other topics. The Board states that these presentations are intended to ensure that potential licensees understand the Board's role and activities. For example, during presentations about the Board's enforcement program, the Board highlights the top ten violations commonly cited during an inspection which helps students better understand how to avoid getting cited for a violation while working in a salon. However, the Board reported that dual oversight of schools with the Bureau for Private Postsecondary Education (BPPE) is a hindrance to its current outreach to schools.

While Board staff based in Sacramento may not be able to attend large events in other parts of the state and nation, it would be helpful to know what other efforts, other than attendance at shows, the Board believes are necessary to maintain a presence with its licensee and stakeholder population. We note that the Board conducted a Q&A webcast in 2009, but it has not conducted a similar event since 2009. They have also developed a Powerpoint presentation on footspas, which could be made available on the Board's Website. A recent search of the Board's Website did not reveal the Powerpoint, but staff was able to locate a video on how to clean footspas. However, it was difficult to find the video without searching for "footspa." It appears the Board could enhance its Website to make helpful information more readily available. It would also be helpful for the Committee to understand why the Board believes it can no longer reach out to students, its future licensee population, because the BPPE was reconstituted.

**Staff Recommendation:** *The Board should explain efforts it is taking to use existing resources like Board Members who live in certain parts of the state, the media, its Website, field staff and stakeholders to maintain a presence amongst its licensees and the public. The Board should articulate why dual oversight of schools is a barrier to interacting with students in barbering and cosmetology programs in California who will become Board licensees.*

**ISSUE #5:** (PROMOTING SAFETY.) Many products used in Board licensed establishments and by Board licensees may not be safe. What does the Board do in the event that a product is perceived to be unsafe? How does the Board promote the health and safety of its licensees as well as consumers receiving services, sometimes with dangerous products, from licensees?

**Background:** There are growing health and safety concerns about many of the products used in Board licensed establishments and by Board licensees; products that may pose a threat to consumers but also to practitioners. The U.S. Food and Drug Administration's (FDA) legal authority over cosmetics is different than the FDA's regulation of other products like drugs and medical devices. Certain cosmetic products and their ingredients are not subject to the FDA authority and the FDA maintains that cosmetic firms are responsible for ensuring that their products are safe prior to marketing them. The FDA regulations, do, however prohibit or restrict the use of several ingredients in cosmetic products and require warning statements on the labels of certain types of cosmetics. The U.S. Environmental Protection Agency is responsible for gathering health and safety and exposure data on pollutants and toxic substances that can affect public health. The U.S. Department of Labor's Occupational Health and Safety Administration (OSHA) sets Permissible Exposure Limits (PELs) at which many chemicals are considered safe.

Certain chemicals found in products contain chemicals that are of concern and listed on California's Proposition 65 list of chemicals known to cause cancer or reproductive toxicity, but are not prohibited for use in cosmetics in the U.S. In 2005, Senate Bill 484 (Migden, Chapter 729, Statutes of 2005) was signed into law creating California's Safe Cosmetics Act which requires manufacturers to provide the state with a list of products that contain chemicals known to cause cancer or reproductive toxicity. In recent years, many advocates like the California Healthy Nail Salon Collaborative have worked to raise the issue of unsafe products and the harmful exposure to toxic chemicals that can occur in certain professions licensed by the Board.

Nail salons are of particular concern due to the high preponderance of minority women working for extremely long hours in settings that are not properly ventilated and having constant contact with potentially dangerous chemicals linked to illness and reproductive health problems. In 2008, the Senate Office of Research published a report *Pedicures At What Price* exploring the unique dangers posed by this profession which also included recommended steps for state regulatory bodies like the Board to take in order to better promote health and safety.

Recently, salons throughout the state began promoting the "Brazilian Blowout," hair smoothing process; however, the product was found to contain unsafe levels of dangerous products. The manufacturer label indicated that the product was "formaldehyde free" but in fact the false labeling failed to warn consumers and cosmetics workers about actually high levels of formaldehyde in the product. Formaldehyde is a chemical that can sting eyes and cause respiratory problems and has also been linked to cancer. The AG eventually settled with the manufacturer, requiring the creation of a safety information sheet with the carcinogen warning that must be included with product shipments

and posted on the manufacturers Website. The settlement also limited the sale of Brazilian Blowout to professionally licensed stylists and required products to undergo testing at a the DOJ approved laboratory.

The Board was aware of the growing use of Brazilian Blowout in establishments in California and monitored efforts by other states like Oregon to determine whether the product was in fact unsafe, but it is unclear what steps the Board took early on to warn licensees and consumers about the potential dangers of the product.

**Staff Recommendation:** *The Board should comment on its efforts to promote awareness about potentially harmful products used by practitioners and consumers. The Board should report to the Committee on steps that it has taken to make its licensees and consumers aware of the Brazilian Blowout product.*

**ISSUE #6: (SCHOOL APPROVALS.)** The Board approves many aspects of a barbering, cosmetology and electrology program in California while the Bureau for Private Postsecondary Education (BPPE) approves many institutions and ensures student protections for individuals attending schools. What is the appropriate relationship for each entity as it relates to school oversight, approval and actions against bad schools?

**Background:** The Board plays an important role in ensuring the educational quality of barbering, cosmetology and electrology programs in California, as well as guaranteeing the health and safety of these facilities and the practitioners and students working in them, as well as consumers who may receive services at schools. The Board approves curriculum, facilities, equipment and textbooks for schools offering training programs for eventual licensees. The issue of what appropriate role the Board should play in school and program approval has been raised in prior Sunset Reviews and has been the subject of proposed legislation, legislative amendments and confirmation hearings before the Legislature during the past 5 years.

Business and Professions Code Section 7362 states that a school that is approved by the Board is one which is licensed by the Bureau for Private Postsecondary Education (BPPE). A school that offers cosmetology, barbering or electrology must first be licensed by the BPPE and then must receive approval from the Board. The Board issues schools a unique code which is included on Board applicants' proof of training documents. To receive approval from the Board, a school must possess certain equipment, have a certain amount of floor space, use Board-approved text books, receive Board approval for the school curriculum and provide the Board with a list of potential bona fide students. However, the Board does not receive a fee from schools for the work it conducts to provide approval. It would be helpful for the Committee to better understand some of the history involved in the establishment of the BPPE, the dual responsibilities of the BPPE and the Board in approving schools and in verifying the viability of each school, the relationship between each, and the requirements for both the BPPE and Board before final approval is granted to a school.

To begin, there have been serious problems in the past with the approval and oversight of private degree granting and non-degree granting (career and vocational) schools by the state agencies charged with regulation. After numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, AB 48 (Portantino, Chapter 310, Statutes of 2009) took effect on January 1, 2010, to make many substantive changes that both created a new, solid foundation for oversight and responded to the major problems with prior law. The California Private

Postsecondary Education Act (The Act) requires all *unaccredited* colleges in California to be approved by the new Bureau for Private Postsecondary Education (Bureau), and all *nationally accredited* colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors, and, most importantly, it gives the Bureau an array of enforcement tools to ensure colleges comply with the law. The Act establishes a robust fee structure to ensure the BPPE's operational effectiveness, including \$5,000 application fee and an annual fee to BPPE-approved schools, including schools of barbering, cosmetology and electrology, that amounts to three-quarters of 1 percent of the institution's annual revenues derived from students in California, not to exceed \$25,000.

Prior to the enactment of AB 48, California was without a regulatory body for private postsecondary institutions after the previous Bureau for Private Postsecondary Vocational Education (BPPVE) was allowed to sunset in July 2008, leaving approximately 1,500 private postsecondary institutions to operate in California without state oversight. A number of boards within the DCA also have a role in overseeing educational *programs* attended by licensees but do not have express authority to approve *institutions* offering these programs. While some boards are required to review the curriculum and sometimes even the institutions offering programs, others require Bureau approval in order to meet educational requirements for licensure, certification or registration. The Respiratory Care Board of California (RCB) reviews the accreditation standing of respiratory care programs in the state. The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) staff grants approval Vocational Nursing and Psychiatric Technician *programs* but does not have oversight of *institutions* offering these programs. The Board of Registered Nursing (BRN) approves all nursing school *programs* in the state.

During the sunset of the former Bureau for Private Postsecondary and Vocational Education (BPPVE), many Boards, including the Board of Barbering and Cosmetology, took on a more direct role in institutional approval. Prior to the BPPVE Sunset, the Board and BPPVE worked according to a formal Memorandum of Understanding (MOU). The Board was responsible for establishing school curricula (BPC § 7362), school size, and minimum equipment standards, as well as enforcing health and safety standards while the BPPVE was responsible for student protections and ensuring financial solvency of schools. The MOU provided for an active working relationship to ensure that schools met all requirements for licensure before being licensed or approved. The Board and BPPVE worked collaboratively on school inspections and shared information on a daily basis regarding school compliance. During the sunset of BPPVE and prior to the reconstitution of the new BPPE, the Board was granted authority to approve schools until 2008 if the school met certain criteria including entering into an agreement with DCA and being operational by a certain date.

**Criticisms of the BPPE by the Board.** The Board stated to the Committee in its Sunset Report that it has been attempting to work with the BPPE since it was reconstituted in January 2010; however, the Board believes that many of the same problems that the Board experienced with the BPPVE “are repeating, to the great consternation of all concerned, including most importantly students. While dual oversight explains a lot of the confusion and issues, there are also intractable communication issues and lack of consistent action on the part of BPPE enforcement staff. This has created an environment where fraudulently operated schools continue to exist and even proliferate, while honest and well-established schools are being hit with costly new fees and long delays in application reviews and

approvals that seem largely pointless.” The Board outlines student confusion and potential “harmful practices” that arise with both entities overseeing certain, specific aspects of schools.

The Board further states that, “lack of communication between the Board and the BPPE is causing student harm and potentially increases unlicensed activity in the industry.” The Board also states in its report that it does not receive the information it needs to ensure applicants are attending approved schools and that the Board is not made aware of schools that are out of compliance with the BPPE. The Board states that it must go online and monitor schools on a regular basis to determine if schools are in compliance with the BPPE because BPPE does not report this information to the Board. The Board states that students “often are the last to know and are usually informed by being denied admittance to the exam from the Board.”

**Committee Staff Comments:** The statement by the Board that there is student confusion and potential “harmful practices” that arise when the BPPE and the Board are both involved in approving schools seem to conflict with previous discussions with this Committee and Legislative leadership staff, most especially since the Board and the BPPE have been working to establish a formal MOU for close to two years, the result of which is a new, updated formal MOU agreed to and adopted by both entities. It would be helpful for the Committee to know how the Board has been working with BPPE and how specifically the relationship between the two has not been successful. It would be helpful for the Committee to understand how one state entity supporting curriculum quality and health and safety standards for training facilities for future licensees, and one entity focused on supporting fair business practices and student protections is a harmful practice.

It would also be helpful for the Committee to better understand what a lack of communication is, given that the two entities operate within the same Department, share many of the same resources and are in contact regularly with Board staff submitting lengthy, full school inspection reports to BPPE on an ongoing basis.

In a breakdown of complaint statistics provided by the Board about schools, the vast majority are of the “non-jurisdictional” nature; however it is unclear what these are and how the Board processes these, other than to just assert that the complaint does not fall into its jurisdiction. It would be helpful for the Committee to understand the Board’s current process to ensure timely, proper reporting of concerning issues to the BPPE and what follow-up the Board takes to ensure consumer health and safety protections are met.

FY	Health and Safety	Non-Jurisdictional	Instructor	Financial	Hours	Consumer Harm	Unlicensed
2007/2008	3	2	0	0	0	0	0
2008/2009	0	1	0	0	0	0	0
2009/2010	47	120	19	17	23	0	0
2010/2011	56	73	8	5	8	2	3
2011/2012	84	90	6	2	17	2	2
<b>Total</b>	190	286	33	24	48	4	5

The Board outlines several instances in which it finds violations of health and safety standards, as well as falsification of training documents. The Board attempts to conduct annual inspections of schools, in addition to the timely inspections of new schools seeking approval. The Board often finds various health and safety violations. A citation without fine is issued to the school owner but it is unclear what takes place next other than the Board forwarding these violations to the Bureau without additional context and communication. As a result, bad practices conducted in some schools are then carried out into the industry which poses a continued and growing threat to consumer safety.

The Board reports that it recently conducted an investigation of a single school that was allegedly selling hours to individuals by allowing them to pay for completed Proof of Training Documents despite not having received any instructional time. The Board describes the vast amount of resources utilized in its investigation. The Board also states that the Board is forced to take a reactive position on a case like this because it does not have sole oversight for schools. However, the BPPE has many investigative and subpoena authorities under the Act to review student records and properly investigate a situation as described above. It would be helpful for the Committee to understand what direct efforts and communication the Board takes to work with BPPE and find common ground that will trigger a BPPE investigation.

Despite budget and staff constraints noted throughout this Report, the Board has requested to the Committee that it be granted sole oversight and sole approval of barbering, cosmetology and electrology schools in the state. The Board states that “it is the best positioned regulatory entity to have sole oversight of schools;” however, the Board currently has no laws related to upholding fair business practices like contracts or recourse for students in the event of an abrupt school closure when students have already paid tuition. The Board’s recommendations to this Committee on how to transfer all school approval duties are:

- Grant the Board with authority to charge fees to cover the expense of initial, annual, directed and random inspections and all other necessary oversight duties commensurate with sole licensure authority.
- Require schools to register their students with the Board upon enrollment.
- Choose between the following options related to student tuition recovery in the event of an abrupt school approval:
  - Cosmetology, barbering and electrology schools can be required to post bonds.
  - The BPPE will continue to handle this for barbering, cosmetology and electrology schools.
  - This function be transferred to the Board.

Given the expertise of the Board staff in the educational and training requirements for its licensees to safely interact with patients, it is no doubt appropriate for the Board to have approval over barbering, cosmetology and electrology programs offered in California. Similarly, it is appropriate for the Board to have the ability to remove its approval of schools and programs that do not meet the educational quality standards necessary for an individual to learn how to be a safe, effective beauty practitioner. However, it also appears as if the BPPE serves an important function in providing approval to these schools and the continued oversight it provides as well as the student protections.

**Staff Recommendation:** *The Board should provide the Committee with an update on its current working relationship with BPPE. The Board should continue to work with the BPPE under the MOU. The Board should be granted statutory authority to remove its approval of a school, which will then allow the BPPE to take action for offering a training program to students who will not be*

*eligible to sit for licensure and close down bad schools. The Committee may wish to explore providing the Board with additional resources for its school approval program. The Committee may wish to amend statute to clarify that approval of a school by BPPE is contingent upon approval of a program by the Board.*

**LICENSING AND ENFORCEMENT ISSUES**

**ISSUE #7: (TESTING ISSUES.)** It is still taking a long time for applicants to receive notice of their examination date. The Board recently implemented a national exam but has seen a decline in passage rates. The Board has also worked to determine the most appropriate scoring methods. What is the current status of the Board’s scoring method? The Board has also seen a consistently lower passage rate for Spanish language test takers compared to other languages. What accounts for this disparity? The Board recently began offering exams in Korean; however, the process was significantly delayed and it is unclear how implementation is going. The Board also faces delays in its ability to offer examinations in a timely manner, impacting the employability of applicants.

**Background:** The Board requires a written and practical examination to determine applicant competency and ability to practice safely as a Board licensee. The Board works to schedule exams in a timely manner; however, candidates still face lengthy wait times to receive a date on which they can take their exams, a factor that can negatively impact the employment opportunities of many applicants. In cases where the Board delays making a licensing decision, for example, while investigating a criminal background of an applicant, the job intended for an applicant may be given to another individual. Delays have a negative impact on students to get jobs and in many cases, begin paying student loans, but also on schools and their loan default rate. It would be helpful for the Committee to understand what additional measures the Board plans to take to address these delays.

The Board administers examinations Monday through Friday. Approximately 80 examinations are scheduled per day. The most common delay at the Board is an applicant that has been approved but is awaiting their scheduled examination date. The Board plans to look at the possibility of adding an additional examination site allowing for a quicker examination. The Board also believes that the implementation of Breeze will reduce the processing times of applications.

According to the Board, there has been a decrease in passage rates since its recent transition to the national exam, a factor the Board attributes to the national exam being current and relevant to current practices while the previous state-developed exam had been in circulation for many years and schools often provided specific assistance in passing that exam. The Board asserts that implementing the national exam “verifies that the Board is testing for minimal competency and that schools are teaching minimal competency”.

Practical Examination Data		National-Interstate Council of State Boards of Cosmetology- Practical				
Exam Title		Barber	Cosmetology	Esthetician	Electrology	Manicurist
License Type		Barber	Cosmetology	Esthetician	Electrology	Manicurist
FY 2008/09	# of Candidates	1,031	14,623	5,991	22	6,069
	Pass %	80%	76%	89%	95%	84%
FY	# of Candidates	1,145	14,559	5,382	29	5,089

2009/10	Pass %	75%	72%	86%	93%	81%
FY 2010/11	# of Candidates	1,470	16,466	5,635	24	5,544
	Pass %	81%	72%	86%	96%	78%
FY 2011/12	# of Candidates	1,447	16,292	5,317	25	29,804
	Pass %	81%	86%	90%	88%	86%
Date of Last OA		2006	2009	2007	2011	2008
Name of OA Developer		National-Interstate Council of State Boards of Cosmetology (NIC).				
Target OA Date		2011	2014	2012	2016	2013

Written Examination Data																
Exam Title		California Written Examination/ National-Interstate Council of State Boards of Cosmetology- Written														
License Type		Barber			Cosmetology			Esthetician			Electrology			Manicurist		
Language		E	Sp	Viet	E	Sp	Viet	E	Sp	Viet	E	Sp	Viet	E	Sp	Viet
FY 2008/09	# of 1 <sup>st</sup> time takers	908	10	4	10,766	879	22	3,943	0	70	21	0	0	1,308	5	3,687
	Pass %	81%	80%	50%	78%	58%	0%	73%	0%	9%	81%	0%	0%	68%	40%	84%
Exam Title		National-Interstate Council of State Boards of Cosmetology- Written														
Language		E	Sp	Viet	E	Sp	Viet	E	Sp	Viet	E	Sp	Viet	E	Sp	Viet
FY 2009/10	# of 1 <sup>st</sup> time takers	954	45	48	9,147	817	390	3,004	10	956	26	0	0	732	33	2,978
	Pass %	76%	89%	75%	79%	40%	24%	81%	10%	63%	85%	0%	0%	74%	52%	70%
FY 2010/11	# of 1 <sup>st</sup> time takers	1,142	69	59	10,127	743	406	3,235	3	1,225	20	0	0	1,188	36	3,239
	Pass %	82%	86%	95%	80%	42%	45%	84%	33%	70%	95%	0%	0%	78%	61%	75%
FY 2011/12	# of 1 <sup>st</sup> time takers	1,133	70	44	12,732	683	591	3,212	8	1,090	23	0	0	719	33	3,584
	Pass %	83%	81%	98%	70%	33%	50%	85%	50%	78%	91%	0%	0%	79%	55%	82%
Date of Last OA		2006			2009			2007			2011			2008		
Name of OA Developer		National-Interstate Council of State Boards of Cosmetology (NIC).														
Target OA Date		2011			2014			2012			2016			2013		

The Board also continues to discuss the best way to score licensing exams, which it has struggled with since the previous two Sunset Reviews. When the Board was reconstituted in 2005, statute required the Board to issue a report to the Legislature regarding “aggregate scoring,” or the practice of averaging two separate written and practical test scores into one score, instead of requiring applicants to pass both parts of the exam. That report indicated that the use of aggregate scoring was not legally defensible. The Board told the JBCCP that it would change its regulations to include a criterion-referenced scoring method as recommended by the DCA and allow 5 points to be carried over to the written from the practical disinfection and sanitation portion of the exam. Criterion reference allows the passing score to be lower for a more difficult examination and raised for a less difficult examination, a method that is seen as being beneficial to students by leveling the playing field and also good for safeguarding consumers who depend on the examination to determine if an applicant for licensure has the minimum skills required to perform his or her trade effectively and safely. However,

the Board is still using aggregate scoring for its barbering license examination. The Board has had a number of very lengthy conversations at meetings during the past number of years about exam scoring and has obtained various legal and DCA opinions on this topic, all of which recommended the use of criterion reference to determine the passing score and to standardize scores.

According to a staff report presented at the April 30, 2012 meeting, the regulation that would eliminate aggregate scoring for this exam was rejected by the Office of Administrative Law (OAL). The regulation has been modified in response to concerns raised by OAL, and the Board planned to resubmit it for reconsideration.

Data also presented at the April 30, 2012 Board meeting also shows that the pass rates for some of the Spanish-language licensing examinations are significantly lower than pass rates for the English and Vietnamese-language examinations. As the table below indicates, pass rates for the Spanish-language barber exam are consistent with the overall pass rate. However, the Spanish language exam for cosmetologist, manicurist, and esthetician licenses are far below the overall percentages. The Board members raised this same issue in 2011 yet the problem seems to persist.

Examination Results January – March 31, 2012		
License Type	Spanish Pass Rate	Overall Pass Rate
Barber	80%	86%
Cosmetologist	25%	56%
Manicurist	27%	72%
Esthetician	50%	75%

The Board states that it is currently working with NIC to determine the cause for the low pass rates for examinations offered in Spanish and reports that while NIC already reviewed and verified translation for Vietnamese, it is in the process for reviewing the translations for Spanish.

The Board also experienced concerning delays in providing Korean licensing examinations. The Board stated that the barbering, cosmetology, electrology, manicurist and esthetician licensing exams would be available in Korean on September 1, 2012 but it would be helpful for the Committee to better understand the current status of that language option and whether other impediments still exist to implementation of the exam in Korean.

***Staff Recommendation:*** *The Board should address the average time it takes to schedule an exam for an applicant and report on any delays in this process. The Board should report on measures it is taking to review decreased passage rates for the national exam and efforts it will take to monitor the situation. The Board should comment on the anticipated implementation date of the new scoring methodology and how the Board is prepared to implement it. The Board should also comment on whether it anticipated pass rates for the barber exam to fall after aggregate scoring is eliminated. The Board should identify efforts it is taking to determine the cause for the lower pass rates in the Spanish-language examinations and how it is addressing this problem.*

**ISSUE #8:** (APPROPRIATE LICENSING CATEGORIES.) The Board routinely comes across services being offered that *may* be within the scope of a Board license, but is being provided by an individual not licensed by the Board. Should the Board evaluate the addition of specialized certificates or licensure in certain practices? How is the Board keeping up with trends in the marketplace and industry and reflecting those in its education requirements and licensure?

**Background:** Unlicensed activity remains the Board's top enforcement issue. The Board first works to bring those cited for unlicensed activity into compliance by sending letters and questionnaires requiring quick response times. The Board is able to close some cases based on the responses it receives from these letters but many cases require follow up through an inspection. The Board believes that major problems with unlicensed activity have to do with the inability of the Enforcement Unit to take disciplinary action against an establishment owner if that individual does not have a personal license. Similarly, individuals are cited for unlicensed activity during an establishment inspection but many times the individual flees or gives false identity information. In this instance, fines become meaningless because there is no penalty if an unlicensed person does not pay fines.

There are also problems with certain services being performed in licensed establishments that may fall under a Board license but the individual practitioner may not be licensed. There are many "unregulated services," the numbers of which continue to grow. Examples of such unregulated services include application of permanent makeup, body wraps, teeth whitening, microdermabrasion, foot detoxifying and ear candling to name a few. The Board believes that there is a significant lack of clarity for the Board and inspectors to determine who is performing what services because they are taking place in legitimate establishments, sometimes right next to legitimate licensees. The Board is concerned that while it recommends establishments that offer un-regulated services to have those services performed in a separate room where a Board license is not displayed, this recommendation cannot be enforced due to lack of oversight of those services.

Numerous industry representatives have appeared before the Board and have approached the Legislature to determine whether they are operating in compliance with the law. It is unclear whether a consistent message on the Board's enforcement policies related to unlicensed activity is being disseminated to professionals throughout the state. It is also unclear whether many of these services require the mandatory schooling and training hours necessary for a cosmetologist or esthetician. While there may be significant health concerns related to some of these practices, there may also not be a need for an individual performing specialized services to invest in a whole training program. Additionally, training for many of these services is provided directly from manufacturers and likely not even reflected in Board approved curriculum and at Board approved schools. Many entrepreneurial individuals throughout the state, including a large number of women and minorities, have become successful small business owners focused on providing one specialized service.

There are a number of examples where regulation and practice intersect and it may be appropriate to find a middle ground. Waxing, makeup artistry and eyelash extension application are all considered as part of the Board's cosmetology curriculum but a growing segment of professionals offering these services do not ever intend to work as a hair stylist, and rather than taking cosmetology courses, have taken product-specific courses. Some professions, such as makeup artists, are pushing for recognition by the Board for that specific practice. Through a voluntary certification process, advocates for makeup artists believe that these individuals will be allowed to practice their specific trade without fear of Board action for unlicensed activity and with increased employment opportunities in establishments that otherwise would only be able to employ licensed individuals. However, licensure or other recognition by the Board of these practices may also require the development of a scope of practice and the Board may see a number of duplicative scopes for different services.

The Board may need to explore balancing the consumer health, safety and harm from certain services with the desire to keep people employed throughout the state offering limited services. It would be

helpful for the Committee to better understand what steps the Board is taking to address this issue, what other states are doing related to these limited services and whether registration with the Board should be required for individuals desiring to offer only one service. It would also be helpful for the Committee to better understand how many unregulated services the Board may need to consider and whether studies exist on the necessary training and education to perform these specialized services.

**Staff Recommendation:** *The Board should review the issue of recognizing specialized service providers like eyelash extension applicators, makeup artists and waxers. The Board should work with national groups, professional associations, colleagues at NIC, school owners and licensees to determine if steps are necessary to create easier paths to Board recognition for individuals performing limited services. The Board should provide the Committee with statutory recommendations by January 1, 2014 on this issue.*

**ISSUE #9:** (REGULATION OF HAIR BRAIDING.) Exempt from regulation since 1997, the Board believes it should once again regulate hair braiders.

**Background:** Prior to 1997, the Board held that hair braiding services fell within the scope of practice for cosmetology. In 1930, California Cosmetology law placed all regulation of all hairstyling under the then-State Board of Cosmetology. On May 16, 1982, the AG issued an opinion that African hair braiding was covered by cosmetology license requirements. In 1997, the Institute of Justice filed suit in federal district court challenging the statute and regulations on behalf of practitioners of African hair braiding and other forms of natural hairstyling. *Cornwell v. Hamilton* contended that the cosmetology licensing requirements were unconstitutionally applied to hair braiding services and in 1999, the court ruled in favor of the plaintiff, effectively guaranteeing that the 1600-hour required cosmetology course for licensure in California, as well as subsequent licensing examination, were not rationally related to the plaintiff's hair braiding activities. It was determined that the state's mandated curriculum did not teach braiding and requires braiders to learn too many irrelevant and even potentially harmful tasks.

Subsequent legislation (SB 235, Haynes, Chapter 37, Statutes of 2000) exempt the practice of hair braiding, as narrowly defined, from licensure requirements by the then-Bureau. Under this exemption, hair braiding may not include shampooing, cutting or use of chemicals. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

The Business and Professions Code section 7316(b)(1) defines the scope of cosmetology as arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

California Code of Regulations Section 950.2 (1) states that the curriculum for cosmetology includes hairstyling which includes (but is not limited to) hair analysis, shampooing, finger waving, pin curling, comb outs, straightening, waving, curling with hot combs, hot curling irons, and blower styling.

The Board approves all textbooks utilized in cosmetology, barbering and electrology schools. Approved textbooks do contain material on braiding. In Chapter 18 "Braiding and Braid Extensions" of the Milady Standard Cosmetology text book, steps are provided on how to prepare for a braiding

service. Step 1 is to drape the client, and step 2 is to shampoo and condition the client. The steps continue to indicate blow drying the hair, noting caution to not cause a burn to the scalp.

The Board is concerned that some salons are now not just practicing hair braiding but rather engaging in practices that are within the scope of cosmetology. According to the Board, because of the exemption for hair braiders, there are no health and safety regulations that braiders and braiding salons must follow and there is no guarantee that braiding is being performed properly and safely for consumers and that tools are being properly disinfected. The Board states that while there are types of braiding that are a cultural practice, the industry has changed since the 1999 court ruling and the Board has determined that braiding is no longer a cultural specific practice. According to the Board, braiding done incorrectly can cause scarring to an individual's scalp and result in hair loss.

The Board believes that the popularity of braiding has allowed the practice to become more diverse and that now individuals from all ethnic backgrounds get their hair braided and have hair extensions applied. The Board would like the practice to be properly taught in schools and that individuals performing braiding to consumers should understand the risks involved while also being fully versed in health and safety practices.

While the Board recognizes that some forms of braiding are passed down by generations, it believes that individuals that perform this type of braiding, so long as the braiding is not offered as a service to the public, should continue to be exempt. However, the Board recommends that if an individual is offering braiding services to the public, which includes shampooing, combing, blow drying and styling of the hair, that individual falls under the scope of cosmetology and should be licensed as such. In addition, an establishment offering beauty services to consumers should be required to maintain an establishment license.

**Staff Recommendation:** *Hair braiding should continue to be exempt as a practice. The Board should conduct a thorough study and convene stakeholder meetings to further explore the issue and provide a report to the Committee on those efforts.*

**ISSUE #10:** (CONTINUOUS PROBLEMS WITH BOARD INSPECTORS.) The Board has faced numerous challenges with its inspectors, including inappropriate use of their position, lack of proper training and an inability to fill vacancies. What does the Board plan to do to address the problem of inspectors?

**Background:** The JLSRC was concerned as far back as 2003 about the Board's inspectors. The field inspector program is still in need of review. Of significant concern is the overzealous nature of Board inspectors and inappropriate use of their position.

In December 2009, the Board settled a lawsuit filed by the ACLU alleging racial discrimination on the part of the Board. Police in body armor and code officers joined inspectors in visits to four Moreno Valley barber shops over the course of one day. Inspectors in essence facilitated armed, warrantless searches of barber shops claiming routine health and safety inspections. No serious charges were filed against licensees; most were cited for violations like failing to appropriately display a license and failure to label supply cabinets and towel drawers. Under the settlement, the Board adopted a formal policy against racial discrimination. However, on April 28, 2010, the Cal Coast News published a story alleging disparate treatment of minority owned salons by a board inspector in San Luis Obispo

County. The Executive Officer requested an audit of the field inspector program, the results of which would be helpful for the Committee to hear about.

Board inspectors in Bakersfield have also come under scrutiny for targeting certain salons and conducting numerous repeat inspections, while not inspecting other salons at all. Salon owners reported to local media and their State Senator about fear of retaliation by inspectors and an overall lack of consistency in inspector actions. Salon owners believed that inspectors will purposely look for violations in order to issue citations and that in some instances, an inspector will not cite for one thing, only to come back and cite for it shortly thereafter.

The Board has discussed guidelines for inspectors at recent meetings and executive staff indicated that there is a formal process for tracking complaints about inspectors, including a progressive discipline process in compliance with civil service rules.

Compounding this issue of far-reaching inspectors is the Board's stated inability to conduct inspector training. The Board states that its most important resource is its staff and "without a well trained staff, the Board is unable to meet its mandate efficiently and effectively". The Board states that it supports and encourages training opportunities to improve or enhance performance, as well as training that will encourage learning and development for future career growth. The Board reports that it conducts employee performance reviews where managers and staff work together to identify training opportunities that will promote desired goals and that each staff member is encouraged to develop an Individual Development Plan (IDP) to be used as a road map for success, outlining areas of accomplishment as well as areas for improvement. The Board states that has developed a very robust training program that is offered at no cost to Board staff.

The Board acknowledges that due to travel restrictions, staff training is now limited, so it is unclear what specific, robust training inspectors are receiving from the Board leadership and the DCA. In FY 2011/12, the Board spent only \$730 on staff training. At its October 22, 2012 meeting, the Board discussed that annual training meetings are not happening and that the primary method for executive staff to maintain contact with inspectors is via email.

With a clear need for improved training of staff, particularly field inspectors, it would be helpful for the Committee to understand what unique, proactive steps the Board is taking to properly train and monitor staff, even in the midst of budget challenges and travel restrictions.

***Staff Recommendation:*** *The Board should comment on its audit of inspectors and tell the Committee how its racial discrimination policy implementation is working. The Board should report on any cost-effective measures it is taking to appropriately train staff, particularly field inspectors. The Board should comment on its internal tracking efforts related to inspector complaints and what efforts it is taking to inform the public about the ability to file a complaint with the Board. The Committee may wish to direct the Board to design inspector training and administrative procedures and create inspector performance measures to ensure inspectors understand the unique nature of the Board licensees and the communities in which they operate.*

**ISSUE #11: (BACKLOGS CONTINUE TO EXIST FOR THE BOARD'S DISCIPLINARY REVIEW COMMITTEE.)** How are backlogs impacting the Board's enforcement work? What are steps the Board is taking to address the backlog? A large number of the DRC cases may be related to problems with inspectors and an overzealous inspector community. How does the Board track appeals related to inspectors?

**Background:** The Board’s Disciplinary Review Committee (DRC), established in Business and Professions Code Section 7410, allows an individual who has been cited and fined to appeal the violation by appearing in person, or submitting in writing their evidence relating to the facts and circumstances regarding the citation. Meetings are held in Northern and Southern California throughout the year. These hearings are held on a monthly basis for three days at a time. The 2012 DRC hearing schedule indicates two hearings were scheduled in Southern California and three in Northern California. The Board reports that the only time there is difficulty in scheduling these meetings when there is not an approved state budget and staff is not able to travel, in which case hearings are held in Sacramento.

In the last three years the DRC held 107 meetings, processing an average of 80 cases at each meeting (240 cases a month). Backlogs of disciplinary appeal hearings appear to be on the rise. As of September 2010, the board had about 1,100 pending appeals. According to data presented at the April 30, 2012, board meeting, there are currently 2,286 pending appeals, over 1,600 of which are pending before the Southern California committee.

DRC Statistics as of June 30, 2012			
	FY 2009/10	FY 2010/11	FY 2011/12
Total Appeals Received	2,222	3,434	3,660
Appeals Pending at FY End	1,040	1,910	2,550
<b>Hearings</b>			
Scheduled	2,242	2,536	2,971
Appeared	837	941	922
Defaulted	256	301	273
Written Testimony	1,021	1,138	1,622
Withdrawals	128	156	115

Although the Board does not publish wait times for appeals, it is clear that individuals with charges pending against them must wait many months before they have the opportunity to resolve the matter. DRC hearings also have an impact on the Board’s budget, the largest costs for which are associated with member and staff travel.

The Board is addressing the backlog by scheduling a higher number of cases each month. The Board’s 2013 DRC schedule includes two Northern California hearings and four Southern California hearings.

**Staff Recommendation:** *The Board should update the Committee on the steps it is taking to reduce the DRC backlog. The Board should also report on trends in the DRC appeals to determine if proactive steps need to be taken to reduce violations in certain areas.*

**ISSUE #12: (BOOTH RENTALS.)** Schools and establishment owners continue to report to the Board at its meetings that booth rentals are a problem and need a separate licensing category. What is the Board’s current stance on booth rentals?

**Background:** The Board receives feedback from stakeholders regularly that the current practice of licensees operating as individual business owners in an establishment by renting a space, or booth, is problematic. Booth renters are licensed professionals who may not own an establishment but rent

space from an owner. Industry has reported to the Board that there are significant issues of accountability, in that establishment owners are being forced to be accountable for the deficiencies and subsequent violations of booth renters, and that it should be the individual licensee, not the owner who should have to comply with deficiencies. Establishment owners believe that they already have many laws and regulations to comply with and that if something is cited at the station of a booth renter, the establishment owner should not be forced to oversee that renter, and potentially receive a citation and fine for that individual's actions. Owners do not want to be held liable for the actions of individuals who in their eyes are independent contractors.

The Board has been working for several years to establish a "booth renters license" which would identify licensees who are independent contractors, as opposed to those who are employees of salon owners. The stated purpose of this new license is to clarify the responsibility of the booth renter and that of the salon owner; alleviate confusion for inspectors in the field as to who is responsible for violations; clarify insurance issues; and facilitate collections of potentially thousands of dollars in tax revenue that is currently not collected.

This effort could potentially be perceived as owners not wanting to maintain responsibility for individuals operating at their place of business and it is unclear why a responsible business owner would potentially want to ignore violations in their establishment and not require all individuals working closely with them to obey the law.

**Staff Recommendation:** *The Board should update the Committee on its current stance related to booth rentals and the status of stakeholder conversations on this topic.*

**ISSUE #13: (UNLICENSED ACTIVITY.)** The Board states that this is its top enforcement priority and remains a big problem for the Board.

**Background:** Complaints regarding and citations issued for unlicensed activity are increasing. Unlicensed activity violations are considered a high priority by the DCA and the Board. As the result of an inspection, owners who are operating unlicensed establishments and owners who employ unlicensed individuals are fined \$1,000.000. Each unlicensed individual is also cited and fined \$1,000.00. Cases involving licensed owners who have been repeatedly cited for employing unlicensed individuals are forwarded to the District Attorney's office for license discipline. Discipline may include license suspension, probation, and/or revocation.

The Board has no disciplinary recourse for owners and individuals who are performing services without a Board issued license. Administrative citations are issued to unlicensed individuals but sixty-five percent (65%) of these citations go unpaid. Collecting the fines for these citations provides a challenge. In order to process a citation for collections Franchise Tax Board requires a social security number and the collections agency the Board has contracted with requires a valid ID number. Unlicensed individuals often do not provide their legal name, current address, or any type of valid photographic identification. Without proper identification the Board cannot gather identifying information such as a California Identification or Driver's License number, birth date, or social security information.

In an effort to enforce the Board's licensing rules and regulations, beginning July 1, 2010 cases which involve unlicensed establishments and unlicensed activity are referred to the DCA's Division of Investigation (DOI) for assistance. The Board requests that during a joint Board Inspector/DOI

Investigator inspection the DOI investigators issue unlicensed owners and unlicensed individuals misdemeanor citations. The Board includes a packet with the DOI Request for Service (RFS) which includes copies of any previously issued citations, correspondence, and License Certifications for the establishment or unlicensed individuals. If the DOI investigator issues a misdemeanor citation the information provided in the RFS packet is used as background information when the case is filed by the DOI with the local District Attorney's office (DA). Cases the DA prosecutes could result in probation, BBC fine recovery, and/or jail depending on the county. Every DA's Office handles the Board's unlicensed activities cases differently. Some DA's request multiple misdemeanors be issued to indicate a pattern of unlicensed activity and/or non-compliance. DA's offices with limited resources may decline the case. Counties with Unlicensed Activity Task Forces usually accept the Board's cases.

Some owners continue to operate their business without complying with the Board's Licensing Regulations. The cited owners and operators do not pay their fines and because the DA's Office does not prosecute cases fully the issuance of misdemeanor citations is not always a deterrent. The cycle of inspections and non-compliance continues and the safety of the Board's inspectors becomes an issue.

The Board inspectors and the DOI investigators are experiencing instances where the workers in the establishments are refusing the inspection. The majority of the establishments refusing inspection have previously been cited for unlicensed activity. Even though B&P Section 7313 authorizes the inspection of an establishment during business hours or at any time the Board regulated services are being performed, the inspector cannot force operators to unlock the doors or allow entry for an inspection. The assistance of the DOI investigators does not help in these situations because the DOI investigators cannot use force for entry during inspections. The Board has no recourse except the issuance of a citation for Inspection Refusal (B&P §7313) which carries a fine of up to \$750.00.

In an effort to decrease the issuance of unlicensed establishment citations in 2009, the Board's Enforcement Unit contacted the Business License Department in each city in the State of California. The City Business License Departments were sent a letter advising them that State Law requires establishments which offer Board regulated services be licensed by the Board of Barbering and Cosmetology. The letter requested that the city representative refer salon owners to the Board's Website or toll-free number for licensing information. Business License Departments that responded with contact information were provided informational flyers and Board establishment license applications. A handful of Business License Departments still use the Enforcement Unit as a contact to ask questions about the Board's rules and regulations and to verify licensure with the Board. The Board enforcement analysts use the Business License Department listing and contact information to verify ownership of establishments.

**Staff Recommendation:** *The Board should comment on further ways in which it can deal with or prevent unlicensed activity.*

**ISSUE #14:** (REMEDIAL EDUCATION.) **The Board has discussed offering the option of remedial education in lieu of citations and fines for some violations. Is this enough of a deterrent to violating the law?**

**Background:** The option for remedial education has been explored by the Board and supported by certain advocacy groups as a means by which licensees may better operate according to the Board's laws and regulations. The Board stated in the past that it believes there may be more success in

protecting California consumers by ensuring its licensees receive proper education. Typically when boards and bureaus at the DCA require remedial education, it is as a condition of probation, particularly for health practitioner boards to correct deficiencies with additional training.

According to the Board, many licensees received their education years ago, sometimes in other countries and states. The Board asserted that a monetary fine may help deter a violation from occurring but that allowing a licensee to take a remedial education course in order to have a fine waived could prevent future violations and allow licensees to gain a better understanding of Board laws and regulations. Advocates for workers in the nail industry like the California Healthy Nail Salon Collaborative state that language and cultural barriers can prevent nail salon workers from fully understanding important occupational health and safety information and regulations. Currently, the Board's Disciplinary Guidelines include remedial education as an optional condition of probation in more serious disciplinary cases that rise to the level of an accusation being filed. The Board also requires eight hours of remedial education under its immediate suspension regulations when a licensee is cited for unsanitary footspas. The Board proposed legislation in 2010 to authorize the Board to develop a remedial education program which would allow a licensee to take a four to eight hour course in lieu of paying a fine for the first offense of a violation.

There is some concern that fines are for specific violations, and remedial education should remain connected to disciplinary action and probation, as it may not be as great a deterrent to violating the law as having to pay a monetary amount. Similarly, it is unclear how much licensees would have to pay for remedial education and how those courses would be offered at less money than a citation and fine.

***Staff Recommendation:*** *The Board should update the Committee on its efforts toward remedial education. The Board may consider establishing a technical advisory committee on this issue to better explore all of the avenues involved with a remedial education proposal. The Committee may wish to require the Board to track specific data on violations for certain licensees to determine if trends exist among licensees for whom language barriers could be at the heart of unintentional violations of the law.*

## **WORKFORCE ISSUES**

**ISSUE #15: (POSSIBLE BARRIERS TO REENTRY.)** How is the Board assisting those leaving incarceration in finding employment opportunities as Board licensees? Does the Board believe that there are barriers in its licensing process to ensure timely approval of applicants? The Board may need to take additional proactive steps to address this important topic.

**Background:** The Board has come under scrutiny since its last Sunset Review for possible barriers to applicants leaving the correctional system and becoming licensed in a timely manner. Applicants for licensure are required to disclose all misdemeanor and felony convictions, as well as if the individual has ever had a professional or vocational license or registration denied, suspended, revoked, placed on probation or any other disciplinary action taken. Unlike many other boards, the Board does not require fingerprinting or a Department of Justice (DOJ) livescan but rather relies on the applicant to honestly disclose a criminal background. The Board does forward an application to its Enforcement Unit for further review when a prior conviction is disclosed by an applicant. Applicants are also required to submit court documents regarding convictions as well as any mitigation and/or rehabilitation efforts related to terms of probation.

Assembly Bill 861 (Bass, Statutes of 2006, Chapter 411) required the Board to conduct a study on the effects of laws, regulations and policy that may create unnecessary barriers to employing people with criminal records. The Board reported its findings in 2007, and asserted that it has a low denial rate considering the high population of applicants and licensees and that only applicants who pose a significant threat to consumer safety are prevented from obtaining a license. At the time, the Board stated that current laws, regulations, and policies do not create a barrier to licensure and that the Board “is being proactive in its effort to streamline processes for applicants who have had a criminal conviction in the past.”

The Board takes into consideration all rehabilitation that has been completed, or is in the process of being completed, by an applicant. For example, if an applicant had a conviction of a non-violent drug charge and was ordered to complete a drug rehabilitation course, the Board would review the certificate of course completion. In September 2010, the Board established a process that allows an applicant who has past convictions to submit an application prior to enrolling in school, allowing the Board to review convictions and determine if those convictions are substantially related to the practice. The Board does this prior to a student paying tuition and completing a training program to ensure that the individual does not go through those channels only to later be denied licensure due to the nature of their convictions.

There may still be concerns about barriers to employment in the field, as raised by a Board member during a 2010 meeting. The member noted, during a presentation by the Director of the DCA, that there are still concerning delays for individuals with convictions and that it generally takes these individuals longer to get licensed.

**Staff Recommendation:** *The Board should suggest any statutory improvements necessary and should comment on its efforts to help put people back to work.*

## **BARBERING AND COSMETOLOGY RELATED STATUTORY IMPLEMENTATION EFFORTS**

**ISSUE #16: (CONSUMER SATISFACTION SURVEY.) How is the Board doing? What is the impression of survey respondents?**

**Background:** To obtain information on consumer satisfaction, the Board attempts to reach licensees through online surveys. Since April 27, 2009, the Board has posted a direct link to a survey on its utilizing Survey Monkey to track consumer satisfaction. The Board has also developed an anonymous survey that is posted on its Website that encourages licensees to evaluate the Board’s inspectors and inspection process. An Inspection Satisfaction Survey is also included with all citations. The consumer satisfaction report is compiled quarterly and distributed internally to executive staff, the Inspector Program manager, inspector supervisors also shared with inspectors.

**Staff Recommendation:** *The Board should report on the results of its surveys and comment on how it is doing in the eyes of licensees and those who interact with the Board and the Board’s staff. The Board should update the Committee on improvements it makes as a result of survey responses and comments.*

**CONTINUED REGULATION OF THE BOARD OF BARBERING AND  
COSMETOLOGY**

**ISSUE #17: (CONTINUED REGULATION BY BOARD OF BARBERING AND COSMETOLOGY.) Should the licensing and regulation of barbers, cosmetologists, electrologists, manicurists and estheticians be continued and be regulated by the current Board membership?**

**Background:** The potential for public health problems stemming from unlicensed practitioners could be quite severe. Although most injuries caused during beauty services heal, there are some injuries that can cause permanent injury and/or scarring. In addition, the practice of these professions requires physical contact between licensees and consumers which increases the chance of spreading disease from person to person. These professions are the only non-medical professions regulated by the Department where licensees come into close contact with and touch their clients while providing hair, skin, and nail services. This is also the only other group of non-medical professions that has the potential for spreading blood-borne diseases, as well as diseases such as bacterial or fungal infections, lice and other skin ailments that can cause physical harm to consumers.

The Board's vast licensing population and the contact of licensees with millions of Californians also requires a successful, organized and forward thinking regulatory body. This Board continues to face challenges, many of which have been present for at least a decade. New, more sophisticated products and techniques, such as skin care practices and other machines, and the use of acids and chemicals, continue to come into the marketplace every day. These emerging technologies, combined with the existing use of chemicals will continue to provide challenges to the Board.

**Staff Recommendation:** *Recommend that the barbering, cosmetology, electrology, manicure and esthetician professions continue to be regulated by the current Board members in order to protect the interests of the public and be reviewed once again in two years.*