

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

**Joint Oversight Hearing, March 18, 2015**

**Senate Committee on Business, Professions and Economic Development  
and  
Assembly Committee on Business and Professions**

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

The Board of Barbering and Cosmetology (BBC) 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. 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 BBC.

In July 1997, the BBC was eliminated by the California Legislature and its duties, powers, and functions were transferred directly to the Department of Consumer Affairs (DCA) and were administered by the Bureau of Barbering and Cosmetology. The BBC was reinstated through SB 1482 (Polanco), Chapter 1148, Statutes of 2002, but was sunset again and its functions transferred back to a Bureau within DCA as a result of SB 797 (Ridley-Thomas), Chapter 33, Statutes of 2008. The current BBC was reconstituted in 2009 as a result of AB 1545 (Eng), Chapter 35, Statutes of 2008. The BBC's last sunset review was completed in 2012, and at that time it was granted a two-year extension to address outstanding issues as determined by the Legislature.

The BBC is an autonomous regulatory entity under DCA. It 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, including skin and nail care. Those exempt from the Act include: 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; commissioned officers in the military service, or their attendants, when engaged in the actual performance of their official duties; persons employed in the movie, television, theatrical, or radio business; licensed persons not receiving compensation for services outside of an establishment; and persons selling or demonstrating certain products.

The BBC licenses and regulates over 550,000 licensees. Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas. The BBC's licensing population includes: Barbers; Barber Apprentices; Cosmetology Apprentices; Cosmetologists; Electrologists; Estheticians; Manicurists; Establishments; and, Mobile Units.

Title protection is provided for the use of the terms "cosmetologist" and "barber".

Business and Professions Code Section (BPC) 7303.1 states the mandate of the BBC is protecting the public and protection of the public should be its highest priority in exercising its licensing, regulatory, and disciplinary functions; and, whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount.

The BBC's current mission statement, as stated in its 2014 sunset review report, is as follows:

***To ensure the health and safety of California consumers by promoting ethical standards and by enforcing the laws of the barbering and beauty industry.***

***The BBC 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 politics that are contemporary, relevant and responsive.***

The BBC manages, plans, and tracks its operations through its strategic plan. The BBC's most recent strategic plan, which was for five years, was adopted in October 2012.

### **Board Membership and Committees**

The board membership is comprised of nine members: five public and four professional. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. The other seven members (four public members and three professional members) are appointed by the Governor. BPC § 7303 specifies that board members are appointed to a four-year term, except that two of the public members and two of the professional members appointed by the Governor are appointed for an initial two-year term. Board members may not serve more than two consecutive terms. Board members receive a \$100-a-day per diem. Board meetings are held, at a minimum, four times per year. All board-related committee meetings are subject to the Bagley-Keene Open Meetings Act. BPC § 453 requires new members to complete a board member orientation provided by the DCA within one year of assuming office, which encompasses open meeting laws, ethics, conflicts of interest, legislative and regulatory process, reimbursement of expenses, and executive officer's responsibilities. Board members also receive on-the-job training in budgets, licensing, examinations, enforcement, and the disciplinary process. BPC § 7315 requires a majority of board members to be present in order to take action on agenda items. Since the BBC's last sunset review, no meetings have been cancelled due to a lack of a quorum. There are currently two vacancies. The following is a list of the current board members and their background:

<b>Member Name</b> (Includes Vacancies)	<b>Appointed</b>	<b>Reappointed</b>	<b>Term Ends</b>	<b>Appointing Authority</b>	<b>Public or Professional</b>
<b>Mary Lou Amaro</b> Ms. Amaro has been owner of Mary Lou's Beauty Shop since 1977. She served as president of the California Cosmetology Association from 2010 to 2012.	4/5/2013		1/1/2017	Governor	Professional
<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. Anderson served on the executive board of the Legacy Service Employees International Union Local 660/721 from 1995 to 2003.	10/26/2012	02/02/2015	1/1/2019	Governor	Public
<b>Wen Ling Cheng</b> Ms. Cheng of Palo Alto is a State Farm insurance agent in Burlingame.	5/2/2011		1/1/2015	Speaker of the Assembly	Public
<b>Andrew Drabkin</b> Mr. Drabkin has been IT director at the California Democratic Party since 2010, where he was Deputy IT director from 2006 to 2010. He was staff for Phil Giarrizzo Campaign Consulting from 1999 to 2006.	4/5/2013		1/1/2017	Governor	Public
<b>Joseph Federico</b> Mr. Joseph Federico has been the chief financial officer of the Federico Beauty Institute in Sacramento since 2009, where he was director of financial aid from 2006 to 2009 and has served on the board of directors since 2004. He has been a member of the American Association of Cosmetology Schools and the California Association of Student Financial Aid Administrators since 2006.	12/29/2011	02/02/2015	1/1/2019	Governor	Professional
<b>Richard Hedges</b> Mr. Hedges received his undergraduate degree in English and History at Kansas State University. Mr. Hedges received his Master's Degree in American Urban History from San Francisco State University. He was employed as a union representative for 28 years by the United Food & Commercial Workers International Union.	1/1/2003	1/14/2009, 1/9/2013	1/1/2017	Senate Rules Committee	Public
<b>Polly Cordorniz</b> of Colusa, has been co-owner at Changes Salon since 2013. She was co-owner at Shear Class from 1986 to 2013. Seaver-Codorniz is a member of the California Cosmetology Association.	Pending Confirmation			Governor	Professional
<b>Dr. Kari Williams</b> Ms. Williams has been owner at Mahogany Hair Revolution Salon and Trichology Clinic since 2007 and was a hair stylist at Eclectic Salon from 2006 to 2007. She earned a Doctorate in trichology from Élan Center for Trichology.	4/5/2013		1/1/2017	Governor	Professional
<b>Vacant</b>	-	-	-	Governor	Public

Additionally, the BBC has five standing committees and utilizes task forces, ad hoc committees, and advisory committees that are formed to examine specific topics, and then are disbanded following completion of the task. These committees recommend policies that advance mission-related goals.

The five standing committees, described below, assist the BBC in establishing its goals and aids in organizing its activities in pursuit of ensuring the health, safety and welfare of the public.

- **Legislation and Budget Committee:** Reviews and tracks legislation and recommends positions on legislation. The Committee also provides information and recommendations regarding potential policy matters relating to the budget.
- **Examination and Licensing Committee:** Advises 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 on issues relating to curriculum and school approval, exam appeals, laws, and regulations.
- **Education and Outreach Committee:** Provides recommendations on the development of informational brochures and other publications; plans outreach events for consumers and licensees; prepares articles for submission in trade magazines; and attends trade shows.
- **Enforcement and Inspections Committee:** Advises on policy matters that relate to protecting the health and safety of consumers, including recommendations on how inspections are conducted, the types of violations issued, maintenance of disciplinary guidelines, and other recommendations on the enforcement of current statutes and regulations.
- **Disciplinary Review Committee (DRC):** Conducts informal administrative citation review hearings and renders decisions regarding appealed citations. The Committee has authority to affirm, modify or dismiss the citations, including any fines. The Board President annually appoints members to the committee which are made concurrently with the annual election of officers. 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.
- **Technical Advisory Committees:** Offers input on specific technology, processes or elements within the beauty industry, as needed. The Committee is usually comprised of 3-10 specialized professionals who offer opinions, research and tactical information that are used to revise regulations or clarify processes related to health and safety.

In addition, the BBC convened the following ad hoc committees and task forces during this reporting period:

- **Barber Advisory Committee:** On February 4, 2013, a panel of barbers and the BBC staff convened to discuss ways the BBC could assist in the promotion of the Barbering industry. Outreach ideas were discussed and input was given to the BBC staff on the updating of current procedures.

- *Electrolysis Advisory Committee*: On August 20, 2012, industry experts aided the Board in reviewing out-of-date electrolysis regulations. They offered practical suggestions in adapting verbiage for new the BBC regulations. The Committee assisted in educating the BBC on proper electrolysis techniques and offered practical suggestions in regard to procedures related to health and safety.
- *Skin Care Advisory Committee*: On May 14, 2012, a panel of industry experts met with the Board to discuss issues involving skin care. The Committee was able to enhance the knowledge of the Board by explaining the use of Alpha Hydroxy acids, safe pH readings, proper acid percentage amounts, safe procedure dissemination, and esthetic machinery. Experts gave input in defining the demarcation between the esthetic field and the medical field. Future trends in esthetics were also discussed.

On August 12, 2013, the panel met again with the BBC to discuss health and safety issues involving skin care. The Committee was able to enhance the knowledge of the BBC by giving input on proposed regulatory changes, product knowledge, and input on [AB] 1153 (Eggman) of 2013.

- *Schools Advisory Committee*: On September 9, 2013, a panel of school owners, instructors, textbook advisors and the BBC staff met to discuss the ever-changing needs of California Board-approved schools. Discussions ensued on how best to prevent the selling of schools hours and the revision of the publication “Health and Safety for Hair Care Professionals.” Student outreach ideas were also presented.
- *Natural Hair Care Task Force*: On April 14, 2014, the BBC met with a panel of industry leaders to discuss what role, if any, natural hair care providers have with the BBC. Participants discussed the upsurge, within the State, of traction alopecia cases, caused by improper braiding, and the possibility of the spread of infectious disease by improper disinfection or lack of knowledge. The panel provided the board with a legislative recommendation.

## **Staffing**

Kristy Underwood was appointed to the position of Executive Officer on August 10, 2005. The BBC reports that it encounters very little turnover, has minimal staffing issues, and staff retention is excellent. The BBC anticipates individuals will seek retirement in the future and ensures steps are being taken to recruit new staff prior to the retirement of these individuals, so training can take place and there will be a smooth transition for the change.

However, the BBC reports that there is a concern about inspectors within the Inspection Program. Currently, the BBC has 26 inspector positions, three of which are supervisor positions, and two vacancies. Inspectors are responsible for conducting random, initial and targeted inspections of licensed establishments and mobile units. Inspector positions are considered hard-to-fill as the pay is equivalent to an entry-level clerical position. The BBC conducted a classification study on the inspector class and it was determined that the positions are classified correctly, but that the pay should be reviewed during the bargaining process.

The BBC has submitted a Budget Change Proposal (BCP) to increase its inspector positions: the BBC submitted BCP's requesting 17 positions for Fiscal Year (FY) 2014-15 and seven positions for FY

2015-16. Both requests were unsuccessful. The BBC reports that ideally, it would like inspectors to have a case load of 1,000 establishments, as it would potentially result in inspectors being able to inspect each establishment annually and still handle consumer complaints and unlicensed activity. This means that the number of inspector positions is dependent upon the number of establishment licensees. The BBC reports that it will continue to pursue BCP's until the Inspections Program is adequately staffed. The BBC believes its staffing levels for all other programs are adequate.

As of February 1, 2015, the BBC reported it had 89.5 permanent staff positions. The positions breakdown is as follows: 12 in licensing; 11 in enforcement; 10 in compliance (citations); 23 inspectors and 3 inspector supervisors; 9.5 in administration and DRC; 7 through DCA cashiering; and 14 in examination sites.

### **Fiscal and Fund Analysis**

As a special fund entity, the BBC receives no General Fund (GF) support, relying solely on fees set in statute and collected from licensing and renewal fees.

### **Renewal Cycles and Fee History**

The BBC has a continuous renewal cycle for all of its licensing categories except 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 be renewed within five years following expiration, upon payment of all accrued renewal fees, and delinquency fees. If a licensee fails to renew within five years, the license is cancelled and is no longer renewable.

The BBC's fee schedule is specified in BPC §§ 7337.5, 7421, 7423, and 7425. The BBC reports that it rarely amends its fee statutes and does not anticipate any fee increases in the near future. There have only been two amendments to the BBC's fee structure in the last decade: once in 2007 to establish an application and examination fee and once again in 2011, to update the fee for a dishonored check.

The BBC does not have a mandated reserve level. At this time, the BBC does not plan to increase or reduce fees.

The BBC began FY 2013-14, with a reserve level of 9.1 months and had year-end expenditures of \$20,441,000. The total revenues anticipated for FY 2015-16, are \$23,510,000 and for FY 2014-15, is \$23,505,000. The total expenditures anticipated for FY 2015-16, is \$21,387,000, and for FY 2014-15, \$20,985,000. The BBC anticipates it will have approximately 10.3 months in reserve for FY 2014-15 and 11.3 months in FY 2015-16.

The BBC has provided three loans to the State's GF totaling \$30 million. Currently, the BBC has received a partial repayment of these loans in two installments, one payment in FY 2005-06 for \$5.5 million, and another payment in FY 2006-07 for \$3.5 million. The outstanding GF loan balance is \$21 million. The BBC has not reported any impact on operations as a result of its GF loans.

### **Expenditures by Program Component**

The BBC notes that it breakdown its expenditures by two separate program components, personnel services (staff and benefits) and operating expenses. The table below shows the percentage of

expenditures, by program component, for enforcement, examinations, licensing, administration and pro rata:

Numbers are %	FY 10/11	FY 10/11	FY 11/12	FY 11/12	FY 12/13	FY 12/13	FY 13/14	FY 13/14
	Personnel	Operations	Personnel	Operation	Personnel	Operation	Personnel	Operations
Enforcement	49%	24%	53%	21%	48%	20%	51%	17%
Exams	15%	23%	15%	27%	17%	25%	13%	19%
Licensing	22%	6%	24%	5%	26%	7%	20%	6%
Admin	14%	3%	8%	1%	9%	1%	16%	3%
DCA Pro Rata		44%		46%		46%		55%

Note. This table was taken from the BBC's 2014 Sunset Review Report

## Licensing

The BBC's total licensing population is comprised of more than 550,000 licensees, including individuals, establishments and mobile units. Cosmetology licensees have the highest total licensing population, at just over 235,000. In FY 2013-14, the BBC issued over 28,000 new licenses and renewed over 212,000. Licensure renewals are continuing to increase while the issuance of new licenses has decreased over the past year.

The Licensing Program strives for public protection by ensuring licenses or registrations are issued only to applicants who meet the statutorily minimum requirements and who have not committed acts that would be grounds for denial.

Licensing Data			
	FY 2011/12	FY 2012/13	FY 2013/14
<b>Total Licenses Issued</b>	30,191	30,856	28,357
<b>Total Licenses Renewed</b>	210,107	210,428	212,118

Note. This table was taken from the BBC's 2014 Sunset Review Report

Licensee Population					
		FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
Establishments	Active	42,090	44,555	44,175	41,830
	Delinquent	5,359	5,548	5,788	8,643
Mobile Unit	Active	15	19	19	21
	Delinquent	5	5	5	6
Barber	Active	18,939	19,519	20,423	19,992
	Delinquent	3,620	3,578	3,718	4,873
Barber Apprentice	Active	647	676	746	887
Cosmetology	Active	243,683	249,865	256,466	253,571
	Delinquent	36,350	37,060	38,618	46,625
Cosmetology Apprentice	Active	1,018	1,056	998	1,162
Electrology	Active	1,692	1,642	1,589	1,512

	Delinquent	530	514	488	495
Electrology Apprentice	Active	1	2	2	2
Manicurist	Active	97,798	99,011	100,187	98,613
	Delinquent	21,660	22,215	23,074	27,100
Esthetician	Active	52,409	55,770	59,158	60,803
	Delinquent	6,796	7,408	8,623	11,290
<b>Totals</b>		532,647	548,466	564,112	577,425

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

The Act specifies the regulations and requirements for licensure. The BBC provides applicants with detailed instructions on the application process and requirements to obtain licensure. For applicants who have received training from a BBC-approved school, the BBC provides the schools a Proof of Training document (POT) that is completed by the school administration. The POT verifies how many hours of training were completed. In order to verify submitted POT documents, a representative from the school is required to sign, under the penalty of perjury, that the information is true and correct. The BBC requires individuals seeking licensure as a barber, cosmetologist, esthetician, electrologists, or a manicurist to take and pass both a written examination and a practical examination."

Regarding criminal history, the BBC reports that it requires all applicants to sign, under penalty of perjury, that all statements on an application are true and correct. Applicants are required to disclose all misdemeanor and felony convictions, and if they have ever had a professional or vocational license or registration denied, suspended, revoked, placed on probation, or if any other disciplinary action was taken.

At this time, the BBC must rely on an applicant's honesty to disclose prior convictions on their applications for licensure, as the BBC is not authorized to conduct fingerprint background checks. Once a prior conviction is disclosed, an application is forwarded to the Enforcement Program for further review. The applicant may be required to submit court documents regarding the conviction, along with any mitigation or rehabilitation information an individual may have.

In September 2010, the BBC established a process that allows an applicant who has past convictions to submit an application prior to enrolling in school. This enables the BBC to review the convictions and determine if they are substantially related to the practice of the profession prior to a student paying tuition, and completing schooling only to be denied approval to sit for the licensure examinations.

There is no national databank relating to disciplinary actions and the BBC does not require primary source documentation.

## **Performance Targets**

The Licensing Program is responsible for reviewing and processing all individual and establishment licensing applications received by the BBC. The BBC reports that it has one of the highest licensing workloads. The Licensing Program is unique in that examinations are administered Monday through Friday, and an individual who passes the examinations obtains a license on the same day.

The BBC has internal performance measures for application processing as listed below:



Performance Measure	Definition	Target	Actual*
Initial Applications	Average days from receipt of application to examination scheduling.	42 days	28 days
Establishment Applications	Average days from receipt of application to license issuance.	28 days	22 days
Apprentice Application	Average days from receipt of application to license issuance.	28 days	21 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	21 days

\*Data obtained via manual tracking. *Note. This table was taken from the BBC's 2014 Sunset Review Report*

The BBC reports that it monitors its Licensing Program on a weekly basis. Due to the high workload, statistics are provided every Monday by licensing staff on the processing timeframes for the applications on their desks. In addition to the BBC's internal licensing statistics, statistics are also provided from DCA's cashiering unit. These numbers include the date of the oldest application being cashiered and the date incoming mail is processed.

With respect to licensing, the BBC reports that the implementation of the BreEZe database allowed BBC to significantly reduce its licensing processing times. Initially, the BBC prepared for the BreEZe implementation by focusing on processing all pending applications. After the implementation, the BBC took several steps to change its internal business processes to ensure that the processing times did not increase. As BreEZe stabilizes, and the BBC is able to implement more online transactions, the BBC believes that cashiering times will be reduced and therefore allow applications to be processed even more quickly.

## Reciprocity

BPC § 7321 *et seq.* requires the BBC to admit to an examination an individual that has:

“Practiced outside of this State for a period of time equivalent to the study and training of a qualified person who has completed a course from a school the curriculum of which complied with requirements adopted by the BBC. Each three months of practice shall be deemed equivalent of 100 hours of training for qualification as specified in the chapter.”

BPC § 7331 specifies the requirements to issue a license to a person licensed outside of California. The BBC issues licenses to individuals who meet the following requirements:

- Submit an application and the licensing fee;
- Submit proof of a current license issued by another state that has not been revoked, restricted, or suspended, is in good standing; and,
- Has been active for three of the past five years.

The BBC has issued 14,130 licenses to persons licensed outside the state since implementing reciprocity in 2007.

## Out of Country Licensing

For an out-of-country applicant, the individual must contact an independent evaluation company to review and determine the equivalency standards of their education. Upon receipt of the application and required supporting documentation, an examination is scheduled.

### **Continuing Education**

The BBC does not require continuing education for any of its licensees.

### **Enforcement**

The BBC’s Enforcement Program opens cases based on complaints or issues submitted internally by staff, consumers, agencies, or any outside entity. To ensure the health and safety of consumers, all cases are investigated.

Investigations may include an inspection of the establishment, requests for additional information from the consumer or licensee, assistance from the Division of Investigation (DOI) within the DCA, or an evaluation by an expert. Complaint cases are closed after the investigation has revealed insufficient evidence to proceed, compliance with the BBC’s rules and regulations has been demonstrated, or disciplinary action has been taken against the licensee.

### **Performance Measures**

In 2010, the DCA developed standard performance measures for each of its regulatory entities to assess the effectiveness of their enforcement programs. The DCA established an overall goal to complete cases filed with the Attorney General (AG) within 12 to 18 months. Each regulatory entity is responsible for determining its performance targets.

<b>Performance Measure</b>	<b>Definition</b>	<b>BBC's Target</b>	<b>Actual FY 2013-14</b>
Volume	Number of complaints received	*	4,879
Cycle Time	Average number of days to complete complaint intake.	10 days	4 days
Cycle Time	Average number of days to complete closed cases not resulting in formal discipline.	120 days	50 days
Cycle Time	Average number of days to complete cases resulting in formal discipline.	540 days	702 days
Efficiency (cost)	Average cost of intake and investigation for complaints not resulting in formal discipline.	**	N/A
Customer Satisfaction	Customer satisfaction with the service received during the enforcement process.	75% Satisfaction	***
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	4 days

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
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\*Complaint volume is counted but is not a measurement.

\*\*Legacy systems do not capture this data; however, the new Breeze system will have this functionality by the time all releases are complete.

\*\*\* Due to lack of consumer response, data is not available for this measure.

Note. This table was taken from the BBC's 2014 Sunset Review Report

The average number of complaints received per year in the previous reporting period (2009-2012) was 5,006, an increase of 50 percent over the prior reporting period. During the last two FYs, the number of complaints received leveled off at an average of 4,853 complaints per FY. The BBC also opens “follow-up” cases against establishments which have been cited for multiple health and safety violations, dirty foot spa violations, and unlicensed activity. The number of establishments inspected has leveled off to an average of 11,780, during the last two FYs. During that period, the number of establishments cited for unlicensed activity has also leveled off to an average of 1,926. The number of complaints opened internally as the result of inspections has averaged about 870 per FY during this reporting period (2012-2014). The BBC reports that its number of analysts in the Enforcement Program has remained constant.

	FY 2011-12	FY 2012-13	FY 2013-14
Establishments Inspected	14,012	11,580	11,979
Establishments Cited for Unlicensed Activity	2,224	1,958	1,893
Internal Unlicensed Activity Follow-up Cases Opened	669	593	497
Health and Safety Follow-Up Cases Opened	275	217	362

Note. This table was taken from the BBC's 2014 Sunset Review Report

## Complaint Prioritization

The BBC reports that cases are prioritized using guidelines similar to those found in DCA’s *Complaint Prioritization Guidelines for Health Care Agencies*. Complaints are prioritized according to the most egregious violation alleged in the complaint such as consumer harm, gross negligence or incompetence. Complaints alleging health and safety or unlicensed activity violations are considered high priority, along with cases opened as the result of inspection reports indicating egregious health and safety violations or unlicensed activity.

## Mandatory Reporting and Statute of Limitations

The BBC has no mandatory reporting requirements, nor does it operate within the statute of limitations.

## Unlicensed Activity

Unlicensed activity violations are considered a high priority by both the DCA and the BBC. As the result of an inspection, owners who are operating unlicensed establishments and owners who employ unlicensed individuals are fined up to \$1,000. Each unlicensed individual is also cited and fined \$1,000. Cases involving licensed owners who have been repeatedly cited for employing unlicensed individuals are forwarded to the AG for discipline including, license suspension, probation, or revocation.

Unlicensed Activity	FY 2011-12	FY 2012-13	FY 2013-14
Complaints Received from the Public	1,027	755	906
Citations Issued to Owners for Employing Unlicensed Individuals	994	872	815

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

The BBC's only recourse for owners and individuals who perform services without a BBC-issued license is to issue administrative citations. However, 65% of those citations issued to unlicensed individuals go unpaid. Collecting administrative citation fines remains a challenge. The BBC reports that it utilizes two different services to collect outstanding fines, the Franchise Tax Board (FTB) Intercept program and Fidelity Creditor Services, Inc., (collection agency). In order to process a citation for collections through the FTB, a Social Security number is necessary and the collections agency requires a valid ID number. The BBC finds that unlicensed individuals often do not provide their legal name, current address, or any type of valid photographic identification and without proper identification, the BBC cannot obtain the appropriate information needed for collection purposes. The BBC allows 30 days for the payment of fines before they become delinquent. Payment request notices are issued for citations with fines that have not been paid in a timely manner. Three requests for payment are issued per citation before the citation is forwarded to Fidelity Creditor Service, Inc.

## Performance Barriers

The BBC's enforcement performance barriers include internal and external entities. The staffing and workload issues of the DOI, the Office of Administrative Hearings (OAH), the Deputy Attorney General's (DAG) Office, and the District Attorney's (DA) Office increase processing times and result in an increase in the age of BBC's caseload. The processes of the OAH, the DAG, and the DA are outside of the BBC's control. The BBC analysts provide these offices with as much information as possible when cases are submitted. The submission of complete cases eliminates requests for information and decreases turn-around times. Case analysts regularly check case statuses to ensure cases are processed as quickly as possible.

An inspection request involves both the BBC's Inspection and Cite and Fine Programs. Inspectors run into barriers with inspections that require travel or DOI assistance. The BBC will utilize the DOI inspectors when necessary because the DOI inspectors can issue misdemeanor citations and the BBC cannot. Travel involves the submission of a Request to Travel document which must go through an approval process, delaying the date of inspection. Requests for inspection that include the DOI assistance are coordinated according to the DOI investigator's schedule. Joint BBC and DOI inspections can take several months to schedule.

## Inspections and Cite and Fine Authority

To ensure compliance with the BBC's health and safety and licensing regulations, random and targeted inspections of establishments are conducted. The inspectors provide the licensee with a copy of an inspection report as a record of the inspection. The original inspection report, the photographs taken during the inspection, and any inspector comments are then forwarded to the BBC's home office. The Cite and Fine Program reviews the material for accuracy, issues a citation and enters the citation information into the BreEZe system. Citations with egregious health and safety violations or unlicensed activity are forwarded to the Enforcement Program for further investigation.

	FY 2011-12		FY 2012-13	FY 2013-14
<b>Establishments Inspected</b>	14,012		11,580	11,979
<b>Citations Issued to Establishments</b>	10,543		8,977	8,257
<b>Citations Issued to Individuals</b>	7,683		6,291	6,452
<b>Total Citations Issued</b>	18,234		15,268	14,709
<b>Establishments with No Violations Cited</b>	2,863		2,051	3,046

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

Fines are assessed according to how many times the licensee was cited for the same violation within the last five years.

Section 981(a)	2014
<b>1st Occurrence</b>	\$100
<b>2<sup>nd</sup> Occurrence</b>	\$150
<b>3<sup>rd</sup> Occurrence</b>	\$200

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

In 2004, authority was provided to increase the maximum amount of a fine from \$2,500 to \$5,000. Any citations with fines totaling more than \$5,000 are modified so the fine total does not exceed \$5,000.

	FY 2011/12	FY 2012/13	FY 2013/14
<b>Citations Modified to Down to \$5,000</b>	31	15	3

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

The BBC reports that the health and safety infractions cited most often are violations of rules regarding the disinfection and storage of tools, implements, instruments, and products. The top non-health and safety-related violation is not properly displaying establishment or individual licenses as required in Title 16 CCR § 965.

### Number of Violations by Fiscal Year

Violation	FY 2011-12*	FY 2012-13	FY 2013-14
Non-electrical instruments - not disinfected properly	13,442	9,583	12,611
Storage and labeling of liquids, creams, powders and cosmetics	6,563	5,035	6,638
No disposal of instruments and supplies that cannot be disinfected	5,546	4,286	5,779
Unlicensed establishment, individual, expired establishment license, expired individual license	4,049	2,916	4,700
Proper display of license	3,024	3,651	4,979

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

Anyone issued a citation has the right to appeal any or all of the violations cited. In 2007, the 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. As a result of this, the BBC found that it was modifying a large number of appealed fine amounts. In 2011, the BBC reviewed and revised the fine schedule again and returned to a sliding fine scale. Fines are now assessed according to how many times the licensee is cited for the same violation within the last five years. As a result of the most recent revisions to the fine schedule, the BBC reports that it is seeing a reduction in the average dollar amount appealed per citation and an increase in the average citation amount. During this reporting period (2012-14), the average fine per citation before an appeal has decreased from \$891 to \$729, and the average fine amount per citation after an appeal decision by the DRC has increased from \$372 to \$565.

	2011-12*	2012-13	2013-14
Average Dollar Amount Appealed per Citation	\$891	\$834	\$729
Average Citation Amount After DRC Adjustment	\$372	\$521	\$565

\* In 2011, fine amounts were reduced which resulted in less violations being adjusted.

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

### Cost Recovery

BPC § 125.3(a) authorizes the BBC to seek cost recovery for the reasonable costs of investigation and adjudication of a case, and the BBC will seek cost recovery regardless of whether the case is heard in an administrative hearing or is settled by stipulation.

During the last three FYs, the total amount of cost recovery ordered was \$383,524; however, approximately \$131,644 may be uncollectable. This estimated total represents cost recovery assessed to individuals whose license was revoked or surrendered. In the majority of those cases, payment of cost recovery isn't required unless they reapply or petition for reinstatement of licensure. Additionally, any case in which BBC loses jurisdiction after the licensee is placed on probation may be uncollectable, and the BBC will refer those cases to the FTB intercept program.

<b>Cost Recovery Ordered</b>		
<b>FY 2011-12 through FY 2013-14</b>		
<b>Revocation*</b>	19 Cases	\$94,006
<b>Surrenders</b>	8 Cases	\$37,638
<b>Probationers</b>	79 Cases	\$251,880
*A case may include more than one license issued to the same respondent. If one of those license types is placed on probation, in addition to revocation or surrender of another license, the cost recovery ordered appears in the Probationers column.		

*Note. This table was taken from the BBC's 2014 Sunset Review Report*

### **Franchise Tax Board Intercepts**

If the respondent has failed to respond to a request for payment, has stopped complying with a payment plan, or a petition to revoke probation has resulted in a default decision, the case is referred to the FTB intercept program to help collect any outstanding balance. Currently the BBC has 113 cases in the FTB intercept program. As on November 1, 2014, the program has collected \$33,987 and the outstanding balance is approximately \$404,849.

The BBC reports that intercepted funds are nominal, and typically collected only one time. Because of the BBC's limited success with the FTB program, the BBC also contracts with Fidelity Creditor Service, Inc. to collect outstanding cost recovery.

The BBC is not currently using FTB intercepts for the collection of administrative fines.

### **Enforcement Concerns**

The BBC reports that some establishment owners continue to operate businesses without complying with licensure requirements. The owners and operators, who are cited, typically do not pay their fines and because the DA's office does not always 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 inspectors becomes an issue.

The BBC reports that both inspectors and the DOI investigators have experienced occasions where establishment employees will refuse an inspection. The majority of these establishments have previously been cited for unlicensed activity. BPC § 7313 authorizes the inspection of an establishment during business hours or at any time regulated services are being performed, but inspectors 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 force entry for an inspection. A citation for an inspection refusal (BPC § 7313) carries a fine of up to \$750.

The BBC cannot ensure compliance if inspections cannot be conducted due to inspector safety concerns.

In an effort to decrease the number of establishment owners cited for operating unlicensed establishments, the Enforcement Program recently designated an analyst to help bring them into compliance. The BBC reports this began in the spring of 2014, and the BBC has seen positive results. Cases of noncompliant establishment owners are also referred to local licensing or code enforcement entities for follow-up as the BBC has established working relationships with several local licensing enforcement contacts throughout the State.

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

The BBC was last reviewed jointly in 2012, by the Senate Business, Professions and Economic Development and Assembly Business, Professions and Consumer Protection Committees. During the previous sunset review, 16 issues were identified in the Senate Business, Professions and Economic Development Committee's sunset review background paper. Below are actions which have been taken over the last two years to address a number of these issues. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under "Current Sunset Review Issues."

### **Issue #1. The BBC is included in the first phase of the rollout which is set to take place in early 2013. What is the status of the The BreEZe Project?**

*The BBC implemented the new BreEZe database on October 8, 2013. While the implementation date was later than expected the BreEZe system is working well for the BBC. The BBC took as many steps as possible to prepare for the transition. This issue is addressed further under "current issues."*

### **Issue #2. Has the BBC made the necessary changes to its operations as recommended by prior DCA audits?**

*In August 2008, DCA's Internal Audit Office identified six issues that BBC needed to address. During the BBC's 2013 sunset review, it was determined that the BBC had three issues that remained outstanding. The BBC's response in 2013 resolved two of those issues: substantial backlogs and licensing operational improvements. The remaining issue is regarding deficiencies in the inspection program.*

### **Issue #3. The BBC is taking in a lot of money and may need to evaluate its fees.**

*The BBC reports that its main area of concern regarding resources is within the Inspection Program. The BBC currently cannot meet its statutory mandate for inspections of new establishments due to inadequate staffing levels in the inspections program. The BBC was unsuccessful in obtaining additional inspector positions through the BCP process in 2013. This was due to the fact that vacancies existed at the time the BCP was being processed.*



**Issue #4. The BBC's outreach efforts have been impacted by travel restrictions and budget constraints. Can the BBC do anything outside of travel to stay in touch with and actively engage stakeholders?**

*The BBC reports that it has been very active in outreach to consumers and licensees. The BBC has been able to do this at minimal cost and travel. In the summer of 2013, the BBC launched its Safe Sandal Season campaign. This included several media appearances by the BBC representatives who provided information to consumers on what to look for when receiving a pedicure. In the summer of 2014, the BBC again promoted Safe Sandal Season and was again asked to participate in media coverage. The BBC has updated its website to add information specifically directed at consumer safety. The BBC has (in partnership with the DCA) produced public service videos for the website that provides consumers with information on health and safety within the establishment.*

*In June 2013, the BBC held an open house and staff was on hand to answer questions and provide information to students. The BBC is continuing these events with town halls targeted to non-English-speaking or limited English proficient licensees. On June 2, 2014, and September 8, 2014, the BBC held meetings in Sacramento and Westminster for Vietnamese-speaking licensees. The BBC is planning to hold these meetings for Spanish-speaking licensees in 2015. The BBC is continuing to use social media to provide information and health and safety tips to licensees, which continues to be a successful method of reaching many individuals to educate consumers and licensees.*

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

*The BBC reports that it has taken several steps to increase awareness about potentially harmful products. When the BBC becomes aware of a potentially unsafe product, it conducts research, which includes contacting other states, the FDA, and the CDC. At times, technical advisory committees are consulted, as well as, leading industry professionals. Once the BBC has the knowledge needed on the product, a course of action is determined. This may be an industry bulletin, possibly a regulation change, notification on the BBC's Web and social media sites. For example, the BBC published information on its website regarding the concerns that were raised with Brazilian Blowout services to alert licensees and consumers of the potential harm. The BBC will continue this course of action with any new concerns that are raised in the industry. This issue is addressed further under "current issues."*

**Issue #6. What is the appropriate relationship for the BBC and the BPPE as it relates to school oversight, approval and actions against bad schools?**

*The BBC reports that it does have an MOU with the BPPE. While the BBC does follow the provisions of the MOU, better communication is needed. The BBC receives little information on open enforcement cases that have been reported by the BBC to the BPPE. The BBC requests information on cases and rarely receives responses.*

*The BBC feels that untimely action on the part of the BPPE is harming consumers and students. Several school cases have been reported to the BPPE in which students are clocked in but are not present, thereby gaining hours without actually attending classes. Other cases involve students*

*providing services on paying customers when an instructor is not present.*

*The BBC expends resources on the process of school approvals and inspections but does not have an established fee for this service. To conduct an investigation of a school, the BBC must use the [DOI]. The BBC conducted a recent investigation of a closed school that was found to have sold hours to students. This investigation cost the BBC more than \$100,000. The BBC cannot continue to absorb the costs that are involved in the enforcement of schools. The BBC continues to be of the position that it is better suited to provide full oversight of barbering and cosmetology schools.*

**Issue #7. It is still taking a long time for applicants to receive notice of their examination date. The BBC has also seen a consistently lower passage rate for Spanish language test takers compared to other languages.**

*The BBC reports that its processing time for applicants to take the examination is six to eight weeks; a significant improvement from years past. The BBC monitors passing rates on its examinations on a monthly basis. The BBC saw passing rates decline when the national examinations were implemented. This decline was attributed to the fact that some schools were only teaching to the State BBC examination and not to minimal competency. The passage rates for the examinations have stabilized, with the exception of cosmetology, and are now consistent with prior-year pass rates. The low pass rates on the cosmetology examination can be attributed, in part, to the low pass rates specifically for the Spanish cosmetology examination. This rate is 29 percent lower than the average English language pass rate.*

*The BBC is concerned with the pass rate for the Spanish examination. The BBC contacted the NIC, which completed a review of the Spanish translation, to ensure there were not concerns in this area. The NIC believes the examinations are translated appropriately. In 2015, the BBC plans to conduct targeted outreach to Spanish-speaking students and licensees.*

*The Board has adopted regulations to use criterion-referenced scoring for all grading. However, the implementation was delayed due to the implementation of the BreEZe database. The Board has now implemented the new scoring methodology, effective October 1, 2014. Notices were provided to all schools to inform them in advance of the scoring change. While we anticipate some decline in the barber scores, we believe it will be minimal as we have been encouraging schools to plan for this change. The BBC does not have authority over quality of education however, it believes, that this is an area of concern regarding the low pass rates and we hope to have more communication with the BPPE on this matter.*

**Issue #8. The BBC routinely comes across services being offered that may be within the scope of a BBC license, but is being provided by an individual not licensed by the BBC.**

*The BBC reports that it submitted its required report to the Committees in January 2014, which contained the research that was conducted and the recommendation from the BBC that the existing licensing categories be maintained and not broken up to allow licensure for one aspect of the scope of practice such as waxing or make-up application.*

**Issue #9. Exempt from regulation since 1997, the BBC believes it should once again regulate hair braiders.**

*The BBC conducted a report which included assembling a task force of stake holders, as well as, research conducted throughout the country and from operating hair braiders.*

**Issue #10. The BBC has faced numerous challenges with its inspectors, including inappropriate use of their position, lack of proper training and an inability to fill vacancies.**

*The BBC conducted a study on the inspector classification, which clarified that inspectors are appropriately classified but the pay scale should be increased through the bargaining process.*

*In 2014, the BBC held two "all-inspector" meetings in which training was provided. This training included verbal tactical communication, language access priorities, inspector safety, proper conduct and a review of violations for consistency.*

*The BBC tracks all complaints on inspectors and these complaints are fully investigated. All staff at the BBC, as well as all board participants at disciplinary hearings will encourage an individual to file a complaint if they feel the inspector did not act in a professional manner. The BBC is committed to ensuring that all staff display professional conduct, at all times, and this will remain a top priority for the BBC.*

**Issue #11. How are backlogs impacting the BBC's enforcement work? What are steps the BBC is taking to address the backlog?**

*The BBC reports that it has taken steps to reduce the backlog of appeals. In the second half of 2014, the DRC increased its number of hearings by adding an additional day to the regularly scheduled three days per month. By the end of FY 2013-14, the DRC reduced its existing backlog by 800 cases. The BBC anticipates a significant decrease by the end of 2014, due to the increase on the number of hearings being held.*

*The BBC has implemented appeal by written testimony, allowing a licensee to provide their appeal in writing as opposed to appearing in person. While this has not necessarily reduced the number of appeals, it has streamlined the process for responding to appeals and allows licensees to provide an appeal if they are unable to travel to a hearing.*

*Due to the fact that most appeals are requested only to reduce the fine amount, there are not proactive steps that can be taken to reduce appeals. However, once the BBC has sufficient staffing of inspectors, there would be better communication between inspectors and establishments as there would be more regular visits. This would help eliminate violations and ultimately appeals.*

**Issue #12. 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 BBC's current stance on booth rentals?**

*The BBC is recommending that a booth rental license be established. This issue is addressed further under "current issues."*

**Issue #13. BBC states that unlicensed activity is its top enforcement priority and remains a big problem.**

*The BBC reports that unlicensed activity continues to be an issue for the Enforcement Program. In 2010, the BBC began a partnership with DOI to issue misdemeanor citations when unlicensed activity is found. While the BBC was hopeful that partnering with DOI was going to eventually act as a deterrent to unlicensed activity, the number of cases actually prosecuted by district attorneys has been minimal at best.*

*The BBC has also begun to research the possibility of working with unlicensed activity and underground economy tasks forces throughout the state. Reviewing the unlicensed activity regulations of other boards and bureaus may promote some additional ideas to aid in the enforcement of unlicensed activity. The Enforcement Program has assigned an analyst to work with the unlicensed business owners to bring them into compliance.*

**Issue #14. The BBC has discussed offering the option of remedial education in lieu of citations and fines for some violations.**

*The BBC reports that it is not pursuing remedial education at this time.*

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

*The BBC reports it continues to conduct examinations in state correctional facilities. This program has been successful and we continue to work with the California Department of Corrections and Rehabilitation (CDCR) to administer additional examinations. At this time, we do not believe statutory changes are necessary. This issue is addressed further under "current issues."*

**Issue #16. How is the BBC conducting Consumer Satisfaction Surveys?**

*The BBC reports that it conducts two customer satisfaction surveys. One is a general survey posted on its website and one is specific to the inspection process. In regards to the general survey, the BBC received 144 responses for the reporting period of Fiscal Year 2013-14. Forty percent of respondents rated their contact with the BBC as Excellent, 34 percent rated their contact as either Good or Fair, and 26 percent of respondents rated BBC as Poor or Unacceptable. The BBC is focusing on customer service and discusses this as a top priority at every staff meeting.*

*The BBC continues to encourage individuals to refer to the website for information. Sixty-seven percent of respondents found the website useful and 79 percent stated that they received a timely and satisfactory response to their e-mail. The BBC is continuing to make improvements on its website to ensure it is as user friendly as possible.*

*Regarding the inspection survey, this tool continues to be helpful to the BBC to determine what areas of the inspection process need improvement. While the BBC believes that the inspection program is improving, the BBC also understands there is room for growth. The inspection survey generated 291 responses, when asked to rate the professionalism of the inspector between 1 and 5 (5 representing the*

highest degree of satisfaction) the average response was 3.15. The survey also allows individuals to provide comments on the inspection process. These comments are reviewed by the BBC's management and then passed on to inspectors during "all-inspector" meetings.

### **Major changes:**

- Implemented the BreEZe database on October 8, 2013.
- Translated all of its documents into Vietnamese, Spanish, and Korean.
- Established a link on its website for the Vietnamese-speaking community in April 2014.
- Held two Town Hall meetings for Vietnamese-speaking licensees. The first meeting was held on June 2, 2014, in Sacramento, and the second on September 8, 2014, in Westminster. These meetings provided licensees the opportunity to learn about the top violations found in establishments, the inspection process, and the appeal process.
- Beginning in August 2014, added an insert into all citations that states if the recipient of the citation needs assistance in understanding the citation, to call the BBC's Cite and Fine Unit where they will be connected with an interpreter.
- Adopted a five-year strategic plan in October 2012.

For more detailed information regarding the responsibilities, operation and functions of the BBC please refer to the BBC's "Sunset Review Report 2014." This report is available on its website at [http://www.barbercosmo.ca.gov/forms\\_pubs/sunset\\_2014.pdf](http://www.barbercosmo.ca.gov/forms_pubs/sunset_2014.pdf).

## **CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF BARBERING AND COSMETOLOGY**

The following are unresolved issues pertaining to the BBC, or those which were not previously addressed by the Committees, and other areas of concern for these Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The BBC 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.

### **BUDGET ISSUES**

#### **ISSUE #1: PRO RATA. What services does the BBC receive for its share of pro rata?**

**Background:** Through its various divisions, DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other distributions. In 2014, DCA provided information to the Assembly Business, Professions and Consumer Protection Committee, in which the Director of DCA reported that "the majority of [DCA's] costs are paid for by the programs based upon their specific usage of these services." DCA does not break out the cost of their individual services (cashiering, facility management, call center volume, etc.). The BBC reports that it utilizes DCA for a number of

administrative functions, including call center services, public affairs, legal services, and all of the BBC's information technology services. Whereas some other boards have their own IT, the BBC does not. In addition, the DCA assists with budgets, personnel, contracts, and travel for the BBC. While it appears that the DCA provides assistance to the BBC, it is unclear how the rates are charged to the BBC and if any of those services could be handled by the BBC instead of the DCA for a cost savings.

For FY 2013-14, the BBC spent approximately 44% of its budget on DCA pro rata costs. That is up 4% from FY 2012-13, where the BBC spent 40% on Pro Rata costs, and a significant increase from FY 2010-11, where BBC spent approximately 27% of its budget on pro rata. The position count for the BBC has been steadily declining, although pro rata costs have been increasing. The BBC reported in 2010-11, it had 98.7 positions, and in FY 2013/14 they only have 86.1 filled positions. The BBC reports that it is currently authorized for 82.1 positions and was granted approval for four additional positions.

**Staff Recommendation:** *The BBC should advise the Committees about the basis upon which pro rata is calculated, and the methodology for determining what services to utilize from DCA. In addition, BBC should also discuss whether it could achieve cost savings by dealing with more of its services in-house, such as its legal, public affairs, or call center support. The BBC should also explain to the Committees if the BBC's position reduction has led to increased reliance on DCA for administrative services.*

### **EXAMINATION ISSUES**

**ISSUE #2:** PRACTICAL EXAMINATION. *Is the practical examination the most effective way to demonstrate minimal competency?*

**Background:** Currently, the BBC requires individuals seeking licensure as a barber, cosmetologist, esthetician, electrologists, or a manicurist to take and pass both a written examination and a practical examination. The BBC adopted the National Interstate Council of Board of Cosmetology (NIC) practical examination in 2011 and adopted the NIC written examination in 2009. According to the NIC, approximately 40 states utilize both a practical and written examination. Candidates are scheduled to take the practical and written examinations on the same day. Currently, the BBC has two permanent testing sites: one in Northern California (Fairfield) and one in Southern California (Glendale). If they fail either one, they need only to retest the failed portion. The written test is typically multiple-choice and varies in number of questions based on license type. As for the practical examination, applicants are required to demonstrate the hands-on skills and expertise developed during their education. According to the BBC, the esthetician, manicurist and electrologist examinations take two hours or less, and the barber and cosmetologist examinations take four hours or less.

According to the NIC's examination information for cosmetologists, the practical examination tests applicants on industry services such as client protections (disinfecting work areas, disposal of soiled materials), haircutting, thermal curling, chemical waving, hair lightening and color retouch, and blow-styling, among others. Requirements of the practical examination for barbers, estheticians, and electrologists are similarly related to their scope of practice.

For the practical examination, the hands-on skills are demonstrated through the use of a mannequin head or hand, or on a live model. The BBC authorizes the use of a live model only for the barbering and electrologists examinations. The BBC does not provide live models or the mannequin heads or

hands, which are required for the cosmetologist, esthetician, and manicurist examinations. According to the BBC, live models must be an acquaintance or someone hired from an agency, and he or she must be suitable for all the services a test-taker may be required to perform. There are no requirements about where the mannequins come from, but it is the responsibility of the test-taker to bring all of the appropriate supplies (scissors, disinfectants, combs, etc.) necessary to complete the examinations. According to the BBC, one of the ways to obtain a mannequin head or hand for the practical examination is by renting an examination "kit." There are several companies that rent practical examination "kits" containing the supplies and equipment needed to complete the examination. However, these are private businesses not affiliated with the BBC, and the BBC cannot refer or recommend one over another. When utilizing one of these companies, it is the responsibility of the test-taker to make sure the supplies are in compliance. For example, manufacturer's labels are required on all disinfectants and sanitizers. Any deviation of the standards may result in lost points on the examination.

Applicants for licensure are required to bring their own supplies (including the required mannequin or live model, if permitted) for use on the examination. In order to obtain these items, many test-takers choose to rent testing kits. An internet search found a store in Fairfield, CA which rents cosmetology testing kits for \$90 plus an additional \$55 for the use of a mannequin. This expense is in addition to the cost for initial licensure of \$125.

The BBC reports that pass rates have remained relatively stable during the past four FYs.

### PRACTICAL EXAMINATION

Exam Title		National-Interstate Council of State Boards of Cosmetology-Practical				
License Type		Barber	Cosmetology	Esthetician	Electrology	Manicurist
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	6,723
	Pass %	81%	86%	90%	88%	84%
FY 2012-13	# of Candidates	1,866	16,099	5,651	27	6,040
	Pass %	81%	89%	91%	96%	87%
FY 2013-14	# of Candidates	1,890	14,340	5,428	33	6,685
	Pass %	86%	88%	91%	97%	82%
Date of Last OA		2011	2009	2012	2011	2013
Name of OA Developer		National-Interstate Council of State Boards of Cosmetology (NIC)				
Target OA Date		2015	2014	2016	2016	2017

*Note: National written examination administered effective May 1, 2009 and National practical examination administered effective October 3, 2011.*

Only three entities regulated by the DCA require a practical examination: The Speech Language, Pathology and Audiology Board, the Dental Board of California and the BBC. Currently, there are approximately six states that do not have a practical examination. Of the 40 states with practical examinations, five require the schools to administer the examination. In FY 2013-14, the BBC spent more than \$3 million to administer examinations. It is unclear if the practical examination or the written examination is more costly to the BBC to administer or if there is any potential cost savings if an examination administered by the BBC was eliminated. In a prior sunset review of the BBC, the

issue was raised regarding the cost of examinations to the BBC. In the 2012 sunset review background paper, staff commented on the testing structure and reported that "[BBC]'s testing costs are higher than other boards and bureaus within [DCA] largely because the practical examination administration requires that [BBC] maintain and staff exam facilities."

While the original intent of a practical examination is unclear, the BBC has been utilizing this examination since at least 1992. It is unclear if the elements assessed on the practical examination could be administered at the end of school instruction, be assessed by a written examination, or if the practical examination is a better and more accurate instrument for testing a student's minimum competency and expertise in the subject area than the written examination.

**Staff Recommendation:** *The Committees may wish to require the BBC to conduct an occupational analysis of the current practical examination to determine if it is still a reliable and valuable measure of minimal competency or if any changes are necessary. In addition, the BBC may wish to inquire if the elements of a practical examination are something schools could test for at the end of an instructional program as part of the required curriculum.*

**ISSUE #3: SPANISH-LANGUAGE FAILURE RATES.** *What can the BBC do to improve the success of Spanish-language test-takers?*

**Background:** The BBC notes that the low passage rate for individuals taking the Spanish-language written examinations is concerning. The low passage rate for Spanish-language exam takers was raised during the BBC's 2012 sunset review as well. To date, it appears that the passage rate has not improved. The BBC reports that it contacted NIC, and they completed a review of the Spanish translation in the test to ensure there were no issues with the accuracy of translation. According to the BBC, the NIC believes the examinations are translated appropriately. In addition, the BBC contacted schools for input regarding the low Spanish-language pass rate. On April 30, 2014, a letter was sent to all schools that included a survey on Spanish-speaking students. Of the 48 schools that responded, 54% reported they have Spanish-speaking students; nine schools utilize Spanish textbooks; and 11 schools indicated they would be willing to send an instructor to Sacramento to discuss this issue.

The majority of schools that responded to the survey also indicated that the Spanish exam is harder on students than the English exam primarily because most students speak conversational Spanish.

To address this issue, the BBC has added information to all of its examination applications that state: *Please Note: These documents are translated into the most universal or neutral version of each language to be acceptable to the widest possible audience.*

According to information from the United States Census Report in 2011, 43% of Californians, or more than 15 million residents, reported that they spoke a language other than English at home. While the BBC's mission is mainly to protect consumers, it also has a responsibility to its licensing population to ensure that current licensees and potential licensees are able to obtain the appropriate instruction and training necessary to meet California's safety standards, while expanding employment and business opportunities for individuals throughout the State. The BBC has one of the highest licensing populations of all regulatory entities of DCA. Given the large licensing population, the BBC needs to ensure its diverse population obtains the appropriate education and upon completion of a BBC-approved curriculum, is able to pass the required licensing examinations. The Spanish-language pass rate issue has plagued the BBC during the last two sunset reviews and continues to be an issue. It



would be beneficial for the BBC to refocus its efforts with schools and examination providers to better understand the issues presented to Spanish-language test takers (or any other language issues that may arise) to ensure that testing problems do not hinder an applicant's ability for licensure.

**Staff Recommendation:** *The Committees may wish to require the BBC to work with current BBC- and BPPE-approved education providers to ensure that the curriculum and instructional materials meet the needs of students, and any material instructed in a language other than English is consistent with the NIC examinations. Also the Committees may wish to require the BBC to work with education providers who teach in Spanish to improve communication with Spanish-language examinees. The BBC reported that it plans to conduct targeted outreach to Spanish-speaking students and licensees and the BBC should explain to the Committees its timeline for conducting outreach and explain its outreach strategy.*

**ISSUE #4: TAKING THE WRITTEN EXAMINATION PRIOR TO COMPLETING SCHOOL.**  
*Should applicants be permitted to take the written examination prior to completing school instruction?*

**Background:** In the BBC's 2014 sunset review report, the BBC recommended that students should be allowed to take the written examination prior to the completion of a board-approved curriculum program BPC §§ 7321(d)(1), 7321.5(d)(1), 7324(d)(1), and 733(d)(1) currently require students to complete the curriculum (theory and practical) in cosmetology, barbering, skin care, manicuring or electrology before taking the written examination for licensure. The BBC reports that candidates usually have a lower score on the written examination. According to the BBC, members of the industry stress this is likely because individuals who choose this profession are more hands on and therefore visual learners. Because of this, board members feel allowing students to test early in the written portion may allow for a higher pass rate on the written examination. The pass rates for the written examination are as follows:

Examination Data								
National Interstate Council of State Boards of Cosmetology								
Written Exam Pass Results by Language								
	English		Spanish		Vietnamese		Korean*	
FY 10-11	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %
<i>Barber</i>	1,344	<b>80%</b>	75	<b>83%</b>	66	<b>92%</b>	N/A	N/A
<i>Cosmetology</i>	14,907	<b>73%</b>	1,702	<b>33%</b>	968	<b>37%</b>	N/A	N/A
<i>Esthetician</i>	4,367	<b>76%</b>	20	<b>40%</b>	2,354	<b>55%</b>	N/A	N/A
<i>Electrology</i>	23	<b>91%</b>	0	<b>0%</b>	0	<b>0%</b>	N/A	N/A
<i>Manicurist</i>	1,670	<b>69%</b>	62	<b>52%</b>	4,992	<b>64%</b>	N/A	N/A
FY 11-12	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %
<i>Barber</i>	1,321	<b>81%</b>	84	<b>77%</b>	47	<b>94%</b>	N/A	N/A
<i>Cosmetology</i>	16,316	<b>62%</b>	1,494	<b>24%</b>	1,260	<b>41%</b>	N/A	N/A
<i>Esthetician</i>	4,176	<b>78%</b>	20	<b>40%</b>	1,787	<b>64%</b>	N/A	N/A
<i>Electrology</i>	23	<b>91%</b>	0	<b>0%</b>	0	<b>0%</b>	N/A	N/A
<i>Manicurist</i>	1,695	<b>67%</b>	60	<b>45%</b>	4,832	<b>74%</b>	N/A	N/A
FY 12-13	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %
<i>Barber</i>	1,702	<b>81%</b>	117	<b>77%</b>	51	76%	5	<b>20%</b>
<i>Cosmetology</i>	17,633	<b>59%</b>	1,440	<b>29%</b>	1,573	57%	129	<b>68%</b>
<i>Esthetician</i>	4,272	<b>81%</b>	20	<b>45%</b>	1,855	77%	67	<b>72%</b>
<i>Electrology</i>	29	<b>83%</b>	0	<b>0%</b>	0	0%	0	<b>0%</b>
<i>Manicurist</i>	1,938	<b>66%</b>	67	<b>51%</b>	4,770	73%	63	<b>79%</b>

FY 13-14	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %	# of Candidates	Pass %
<i>Barber</i>	1,779	85%	90	74%	35	97%	2	50%
<i>Cosmetology</i>	16,748	58%	1,240	29%	1,219	63%	117	63%
<i>Esthetician</i>	4,119	81%	12	25%	1,516	84%	125	91%
<i>Electrology</i>	37	86%	0	0%	0	0%	0	0%
<i>Manicurist</i>	2,164	70%	50	42%	5,335	66%	70	73%

In 2009, the BBC reports that it transitioned to the national written examination. Since the transition, the BBC has seen a decline in the pass rates of the written examination. The BBC reports that this may result from new material on the examination being "current and relevant to today's practices" as the previous examination had been in circulation for many years and many schools often provided courses on how to pass the old version of the examination. It is unclear what, if any, updates, changes, or revisions were made to schools' curriculum standards or if reference materials were updated as a result of the transition to the NIC examination.

BPC § 7362 specifies that the BBC is required to determine, by regulation, the subjects which must be completed, the approved courses (what material must be taught), including the minimum hours of technical instruction and practical operations, a student must complete for each subject, and how much training is required prior to a student performing work on a paid patron. Often times, persons in a cosmetology curriculum program will "work" at a school which offers low cost services to patrons to gain "hands-on" or practical experience. Under current regulations, 16 CCR § 950.12, students must complete the "freshman period of training and instruction" or 10 percent of the total training hours specified for each course, prior to working on a patron paying for services. However, the regulations do not specify how the curriculum is to be taught or specify how the components of courses are taught, only that technical instruction means instruction by demonstration, lecture, classroom participation, or examination; and practical training means the actual performance by the student of a complete service on another person or on a mannequin.

The BBC would like to permit students who have completed the required "theory hours" or "freshman training" to be eligible to take the written portion of the licensing examination prior to completing a school program. However, the current curriculum regulations do not specify what must be required in the "theory hours;" delineate how the requirements are applicable to the written examination; or specify if any material learned during the "theory hours" is relevant to taking and passing the practical examination, as well as the written examination. In addition, it is unclear if schools provide instruction in the same format. While the BBC determines the subject matter, it does not standardize schools' courses, nor determine or require certain instructional material.

In its 2014 sunset report, the BBC acknowledged that if early testing is implemented, the BBC will sustain a significant fiscal impact as programming changes would be needed for the BreEZe data base along with changes to the application review process, staffing, and examination sites. Given the current pass rate of the written examination, including the Spanish-language version, it may be more prudent for the BBC to review the instructional and curriculum requirements of schools to determine if any curriculum changes are necessary in order to increase passage rates of the current written examination, along with a comprehensive review of school programs. The question arises, if an individual is able to pass the written examination prior to completing a school program, should consideration be given to shortening the required hours of schooling for licensure?

**Staff Recommendation:** *The Committees may wish to require the BBC to conduct an occupational analysis of the written examination along with an assessment of curriculum standards to ensure that*

*the material is relevant to current practices and standards within the industry.*

### SCHOOLS AND CURRICULUM ISSUES

**ISSUE #5: SCHOOL APPROVALS. What is the BBC's current relationship with the BPPE? Does the BBC have a plan to improve its relationship with the BPPE? What steps has the BBC taken to ensure better outcomes if it were tasked with the responsibility of being the sole approving entity for schools?**

**Background:** As the Committees may wish the BBC to begin the process of reviewing curriculum and education standards to ensure students are learning relevant, and up-to-date industry practices; acknowledging past issues with respect to the BBC's school oversight authority and its relationship with the BPPE is timely. In addition, in the BBC's 2014 sunset report, the BBC is once again requesting to have the sole approval authority over schools.

Under current law, BPC § 7362 specifies that a school approved by the BBC is one that is first approved by the BBC and subsequently approved by the BPPE, or is a public school providing BBC-approved instruction. The BBC and the BPPE may simultaneously review a school's application. However, a school is not approved until it has received approval from both entities. Once the BPPE issues an "intent to approve" letter, the BBC will issue its approval. The BBC reports that when it receives an application from a school for approval, a review is conducted followed by an inspection. It is important to underscore that currently, the BPPE and the BBC regulate two separate aspects of the school industry. The BBC approves schools on the basis that a school has met certain curriculum, equipment, enrollment, floor space, text book specifics, among other standards. The BPPE approves a school based on student protection concerns such as tuition issues, student contracts, and catalog requirements. However, the BPPE is the only entity authorized to collect a fee during the approval process.

During the BBC's 2012 sunset review, several issues were raised concerning the school approval process. In a background paper prepared by Committee staff, it specifically addressed concerns with respect to the BBC's approval process for schools and the regulatory relationship between the BPPE and the BBC.

In response to those issues raised in 2012, the BBC responded in its 2014 sunset report that it does have a MOU with the BPPE, and while the BBC does follow the provisions of the MOU, better communication is needed between the two regulatory entities. The BBC receives little information on open enforcement cases that have been reported by the BBC to the BPPE, and when the BBC requests information on cases it rarely receives responses.

Further, the BBC reports that dual oversight contributes to a lot of the confusion, including communication problems and a lack of consistent action on the part of the BPPE enforcement staff. This has created an environment where fraudulently operated schools continue to exist. The BBC states that it does not receive the information it needs to ensure applicants and students are attending approved schools. When a school is found to be out of compliance with the BPPE, the BBC informs the school that it will no longer admit their students to the examination. Students suffer because they are usually informed by being denied admittance to the examinations by the BBC.

The BBC reports that it often inspects schools and finds several recurring problems such as, students

performing services on consumers with no instructor present and students are “clocked-in” but are not present so they are fraudulently gaining hours toward their education. These cases are forwarded to the BPPE. However, the BBC is not always aware of enforcement-related actions taken by the BPPE.

Prior to the early 1990s, schools were regulated solely by the barbering and cosmetology boards. As part of that oversight, schools were required to register each student with the board at the time of enrollment. Therefore, that board would be able to monitor if a student completed the full course of instruction.

Currently, the BBC attempts to conduct annual inspections of existing schools, in addition to the timely inspections of new schools seeking approval. However, the BBC is not authorized to charge a fee for the inspection process, only the BPPE can collect a fee. When the BBC inspects a school and finds a violation, it reports the infraction to the BPPE. The BBC receives complaints from students and consumers on the cleanliness of schools and therefore the BBC’s enforcement staff will request a directed inspection of schools. The BBC reports the following casework statistics for schools:

FY	Schools Opened	Complaints Received	Cases Opened	Cases Closed	Inspections Requested
2007-2008	14	5	3	50	0
2008-2009	26	1	0	0	0
2009-2010	16	169	51	156	29
2010-2011	8	134	69	127	36
2011-2012	10	178	90	177	43
2012-2013	12	84	45	67	57
2013-2014	8	84	42	75	56
<b>Total</b>	<b>94</b>	<b>655</b>	<b>300</b>	<b>652</b>	<b>221</b>

Types of Complaints Received

FY	Health and Safety	Non-Jurisdictional	Instructor	Financial	Hours	Consumer Harm
2007-2008	3	2	0	0	0	0
2008-2009	0	1	0	0	0	0
2009-2010	47	120	19	17	23	0
2010-2011	56	73	8	5	8	2
2011-2012	84	90	6	2	17	2
2012-2013	4	61	0	3	16	0
2013-2014	29	40	0	13	2	0
<b>Total</b>	<b>223</b>	<b>387</b>	<b>33</b>	<b>40</b>	<b>66</b>	<b>4</b>

Currently, the BPPE is required to approve all private, non-profit schools. Only those public or non-profit education providers would be exempt from the BPPE's oversight such as those community colleges programs which offer BBC-approved courses.

What is unclear from the BBC's 2014 sunset review report is what the BBC's transition plan for the sole authority to approve schools would look like. It is unclear how many staff would be necessary; when the BBC would be prepared to transition into a new regulatory role for schools; what type of licensing fee or inspection fee would be required for schools; or how the BBC plans to address its current oversight deficiency of those issues that were once handled by the BPPE such as tuition issues, student contracts, and catalog requirements.

Recently, the business model of some cosmetology schools has been the focus of lawsuits. In a recent Daily Journal Article, *Cosmetology Students Can Sue Beauty School for Pay*, it addresses the concern of students being required to perform services on paid patrons as part of the curriculum, thereby gaining experience, but not being paid for their work. The issue is for further discussion with both the BPPE and the BBC.

***Staff Recommendation:*** *The BBC should further update the Committees about any plans it has to improve its regulatory relationship with the BPPE. The BBC should explain where the communication problems may lie between the two entities and consider establishing an enforcement process and communication system in consultation with the BPPE to help alleviate any communication deficiencies. The BBC should inform the Committees about any transition plan it has in place if it were to be granted the sole approval authority for schools including, the projected costs and staff resources necessary to implement such a program. The BBC and the BPPE should continue to work together and monitor any pending litigation issues that impact the curriculum requirements and licensing model for the barber and cosmetology industry.*

**ISSUE #6: HEALTH AND SAFETY FOR HAIR CARE AND BEAUTY PROFESSIONALS.**  
***What is the BBC's timeframe for updating its current health and safety curriculum manual?***

**Background:** The BBC is required to design the curriculum of a health and safety course that must be covered by schools as part of the hours of required instruction. BPC § 7389 specifies that the BBC is to develop or adopt a health and safety course on hazardous substances, which must be taught in schools approved by the BBC. This curriculum needs to be taught as a stand-alone course, separate from other curricula, in order to fulfill the Health and Safety Hazardous Substances requirement. In order to develop the content for this course, the BBC worked with the health professionals from the Labor Occupational Health Program (LHOP) based at the School of Public Health, University of California, Berkeley (UCB). The LHOP curriculum program is titled, *Health and Safety for Hair Care and Beauty Professionals*. When the program was launched, the BBC praised the curriculum as being the "first of its kind" in California and the nation; however it has not been updated since its release in the 1990s. This issue was raised by a stakeholder group which noted that some of the curriculum content may be in need of updates and revisions. As pointed out, the curriculum does not mention the formaldehydes found in the "Brazilian Blowout" straightener products, and it may not accurately reflect the latest industry-related technology and chemical advancements in the nail care industry.

According to the BBC, it is in the process of updating the curriculum standards. The BBC reports that it has already met with the UCB to discuss; however, the BBC still believes that much of the material is still current but there is information that needs to be added. The BBC reports that it is also working

with the DCA on this issue as they would like to make it a web-based curriculum. At this time, the BBC does not have an estimate of the cost for revision or its timeframe for completion. The manual is accessible online, in PDF format, at <http://lohp.org/wp-content/uploads/2013/10/hairandbeauty.pdf> or it can be ordered through the LOHP for \$35.00, as stated on the BBC's website.

**Staff Recommendation:** *The BBC should advise the Committees as to when it will revise or update the current curriculum in the Health and Safety for Hair Care and Beauty Professionals manual. The Committees may wish to require the BBC to update the instructional material by a specified date.*

### **ENFORCEMENT ISSUES**

**ISSUE #7: ENFORCEMENT TIMEFRAMES.** *Why is the enforcement process for formal discipline taking longer than the targeted 540 days?*

**Background:** According to the BBC's sunset review report, during FY 2013-14, the average time to complete the entire enforcement process for cases resulting in formal discipline, including intake and investigations by the AG, is over the 540-day target. In fact, in the second quarter, cases for formal discipline took an average of 939 days to complete. Although the timeframe to complete formal discipline cases decreased in the third and fourth quarters, it still takes an average of 677 days to complete a formal discipline case. In the BBC's sunset review report, it acknowledged problems with completing formal discipline cases. The BBC stated that its enforcement performance barriers include internal and external issues including workload issues affecting the DCA, the DOI, the OAH, the AG, and DAs resulting in an increase in the age of the BBC's caseloads.

**Staff Recommendation:** *The BBC should advise the Committees about where it believes the bottlenecks are in its investigation processes and disciplinary actions. What does the BBC think are the causes of the delays? In the BBC's opinion, what are viable solutions to the extensive timeframes in its enforcement processes?*

**ISSUE #8: INSPECTOR PROGRAM.** *What are the BBC's current issues with its Inspector Program?*

**Background:** As noted in the BBC's 2014 sunset review report, an important and essential arm of the BBC's enforcement activities is the Inspection Program, whose primary role is enforcing health and safety regulations. This is accomplished through directed, random, initial and targeted inspections of the 50,473 establishments and 283 schools of barbering, cosmetology, and electrology.

The different types of inspections include:

- **Directed** when the BBC receives a complaint regarding consumer harm or alleged violations of the health and safety regulations, enforcement staff will request a directed inspection of the establishment;
- **Random or "routine"** inspectors strive to inspect each establishment on a regular basis to ensure that the establishment continues to be in compliance with health and safety regulations;
- **Initial** BPC § 7353 requires an initial inspection be conducted within 90 days of licensure to ensure that the establishment is in compliance with the required health and safety regulations; and,
- **Targeted** should an outbreak of infection occur, or if knowledge becomes available that there

are a number of unlicensed establishments and individuals, the BBC will do targeted inspections in a specific geographical area.

In order to properly inspect the number of establishments required, the BBC would like each inspector to have a case load of 1,000 establishments. The BBC reports this could potentially result in each establishment being inspected annually while still allowing inspectors to handle consumer complaints and unlicensed activity reports. The BBC recognizes that asking for a significant increase in the total number of inspector positions has been challenging. In the past, BBC has submitted BCPs for 17 positions for FY 2014-15 and additional BCPs for seven positions for FY 2015-16. Both BCP requests were unsuccessful. Due to understaffing, the BBC reports that it has been unable to perform the statutory requirement to inspect every new establishment within 90 days of licensure. The BBC is again pursuing a BCP to obtain additional inspector positions. The BBC continues to face vacancies in the inspector classifications because historically these positions have been hard-to-fill.

Challenges with the Inspector Program are not unique to the BBC and have previously been raised by Legislative Committees and DCA audits. During the BBC's 2012 sunset review, the Committee's background paper cited "continuous problems with the Inspector Program" and requested the BBC to address numerous issues including the inappropriate use of the position, lack of proper training, and concerns with vacancies. In its current sunset report, the BBC responded to the questions raised and reported that it conducted a study of the inspector pay to determine if that was a contributing factor to position vacancies. The BBC reported in February 2012 that it contracted with CPS HR Consulting to have a classification study completed on the inspector classification. This study outcome determined that the inspectors are appropriately classified, but the pay scales should be examined via the bargaining process. Inspector pay scales are one of the main reasons these positions are considered hard-to-fill. The maximum entry-level annual salary for an inspector is \$42,324 a year, which is \$2,000 less than the maximum salary of the entry-level clerical classification. In addition, the BBC reports that inspectors have been assaulted, followed home, and have had damage done to their vehicles.

In addition to the BBC's reported inspection challenges, stakeholders have also shared concerns with the inspection process, especially as it pertains to language barriers. As noted, the BBC regulates a diverse population, which includes many individuals with limited English proficiency; who cannot always understand English-language inspection forms; or are met with communication problems during an inspection. Currently, it appears that the BBC does not have a standardized protocol or systematic process for inspectors when they encounter potential language barriers, which may complicate the inspection process and result in dissatisfactory outcomes for licensees. The BBC reports that in an effort to help better identify concerns of licensees regarding inspectors and the inspection process, it has translated complaint forms into Vietnamese, Spanish, and Korean. In addition, the BBC reported that in August 2014 it added an insert into all citations that states if the recipient of the citation needs assistance in understanding the citation, to call the BBC's Cite and Fine Unit and they will be connected with an interpreter. The BBC reports that it is also working with the DCA to provide training to inspectors. Inspectors have been trained in cultural diversity and procedures for handling hostile situations. In October 2014, they were to receive tactical verbal training.

While this is a step in the right direction, it would be more beneficial to find a solution that will result in fewer complaints and better communication between the BBC inspectors and its licensing population. In addition, it is unclear what the BBC's recruitment plan is to fill vacant inspector

positions if granted its BCP request.

***Staff Recommendation:*** *Given the current challenges with obtaining the approval to hire the BBC's desired number of inspectors, and the recruitment challenges, the BBC should explain to the Committees how it plans to adjust, streamline, or modify its Inspection Program in order to work within the constraints of available resources. The BBC should explain any problems that may arise from a resource-deficient Inspection Program. The BBC should explore ways it can improve the inspection process for individuals with limited English proficiency and explain to the Committees if an inspector protocol around language and diversity is possible, and if not, what those challenges may be to implementing it. The BBC should inform the Committees of any outcomes from its "all-inspector" trainings. Additionally, the BBC should explain to the Committees its hiring plan to fill inspector positions, if granted BCP authority.*

### **TECHNOLOGY ISSUES**

#### **ISSUE #9: What is the status of BreEZe implementation by the BBC?**

**Background:** The "BreEZe Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012–13, and the final release was projected to be complete in FY 2013–14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system, which included the BBC. Release Two is scheduled to go live in March 2016, three years past the initial planned release date. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract is no longer in place, and those regulatory entities that were scheduled for Release Three will not transition to the current BreEZe system.

The BBC reports that it took pro-active steps prior to the launch date of the BreEZe database in order to minimize any risk of generating a backlog. Upon implementation of BreEZe, there were technical issues, as well as, a learning curve for staff; however, because the BBC started without an application backlog, applications were processed timely. The BBC continues to work closely with the DCA in identifying technical issues within the system and is also rolling out new phases of the system which allows applicants and licensees to submit applications online. The online process eliminates the need for manual cashiering and is proving to be very efficient. As additional improvements are made to the



system BBC anticipates more benefits as a result of BreEZe.

Although BBC appears to be moving in the right direction with its BreEZe implementation, there are concerns for other entities which are not a part of Phase One. A recent audit conducted by the California State Auditor titled *California Department of Consumer Affairs' BreEZe System*, reported that "the future implementation of BreEZe is uncertain at best and, as it relates to the regulatory entities originally included in the final release [Release Three], likely unfeasible." To date, the DCA reported that the BBC has spent approximately \$4.5 million between FY 2009-10 through FY 2013-14, to prepare and implement the BreEZe system transition. Additionally, the DCA projects the BBC to spend an additional \$12 million between FY 2014-15 through FY 2016-17 on BreEZe maintenance costs through SPR 3.1. The auditor's report also noted that "Consumer Affairs is not responsible for funding the project costs; rather, the total costs of the project are funded by regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process."

**Staff Recommendation:** *The BBC should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? What are the costs for using the system and has it enhanced operational or administrative efficiencies? Is the cost of BreEZe consistent with what the BBC was told the project would cost? Is the BBC comfortable that any remaining technical issues will be addressed?*

### **WORKFORCE ISSUES**

**ISSUE #10: FREELANCE CERTIFICATION.** *Are more people seeking beautification services outside of the traditional salon establishment? Does the BBC need to update the current establishment requirements to meet consumer demands?*

**Background:** The BBC's 2014 sunset review report identified several new issues pertaining to workforce development which included expanding or altering licensing classifications. Currently in California, all BBC-regulated beautification services are required to be obtained within a BBC licensed establishment. BCP § 7317 specifically states that it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology or electrolysis practices, for compensation, in an establishment or mobile unit which is not licensed by the BBC. Legally, those BBC-licensed establishments or the twenty-one licensed mobile units are the only facilities where consumers can access services of licensed professionals regulated by the BBC.

As reported by the BBC, current trends in the beautification industry have found that consumers are beginning to seek services outside the walls of a traditional brick and mortar establishment such as homes, hotels, businesses, and other non-traditional locations. In order to help the BBC in its regulatory capacity keep up with current industry trends, board members discussed this issue at its June 3, 2013 and its July 16, 2013 licensing and examination committee meetings, and again at the October 21, 2013 board meeting. At the formal meeting, board members decided to support the creation of a new freelance certificate. The BBC reports that the pros of a freelance certification include: individuals practicing outside of an establishment are held accountable to health and safety regulations as traditional establishments are, and it provides a solution to current services taking place outside of a licensed establishment or mobile unit. The BBC reports that this new certification will allow consumers who obtain services in non-traditional settings to have the same ability as in traditional establishments to report any health and safety violation and be assured that the individual has met the

appropriate licensure requirements to practice. There is one exemption under current law (BPC § 7318) which permits a licensed individual to provide beautification services outside of a licensed establishment or mobile unit, when necessary, due to illness or other physical incapacitation, such as in convalescent homes. These services must be obtained from an individual who is employed by a licensed-establishment.

In its 2014 sunset report, the BBC provided information on other states that offer a similar license or registration. Washington offers a personal service license and Oregon offers a freelance authorization, both of which allow consumers to access services outside of a licensed establishment. Ohio offers a temporary special event permit which temporarily allows for cosmetology services to be provided in a location not licensed by the regulatory entity. In addition, New York authorizes licensees to practice in remote locations as long as the applicable requirements are followed. Information has been shared with Committee staff that identifies new business models in other states, where services are conducted outside of a traditional brick and mortar establishment. Individuals are receiving services at business offices, hotels, or other sites not traditionally common to industry practices in California. Changing beautification service areas will require expanding or altering the regulatory landscape of the BBC to ensure consumer safety.

While the BBC offers a mobile unit license, the parameters for operation are limited. The mobile unit allows licensees to offer traditional services outside of a brick and mortar establishment in a mobile unit or "salon on wheels." Mobile units are required to meet certain specifications, pass inspections, and cannot be used for residential purposes. Mobile units allow services to be conducted at someone's home; however, the services must be provided in the unit and not in the consumer's residence. The BBC reported that it had twenty-one licensed mobile units in FY 2013-14, an increase of six from FY 2010-11.

While data is limited in California, examples from other states' licensure requirements and new business models may highlight a growing demand to modify California's licensing standards to reflect industry changes trending in other states. In order for the BBC to continue to effectively regulate the beautification market, it is important to make sure that service demands are consistent with the services being offered by licensed professionals. Currently, a cosmetologist performing a hair style for a bride at a hotel or other venue is guilty of unlicensed activity because they are operating outside of a BBC-licensed establishment. In order to ensure that consumers are able to obtain services at a location outside of a licensed establishment, while still ensuring the relevant safety guidelines and standards are met, there may be a need to revise current laws in order to permit licensees to perform services outside of a physical establishment.

***Staff Recommendation:*** *The BBC should explain to the Committees any new regulations, industry standards or licensing reforms that would be necessary to implement a new freelance certificate and explain how the BBC could regulate such certificates in a matter consistent with its mission. In addition, the BBC should explain to the Committees if it would need to enhance application requirements for freelance certificates, such as expanding the background check program or adding bonding requirements.*

**ISSUE #11: CORRECTIONAL FACILITIES LICENSING PROGRAM.** *What, if anything, can the BBC do to expand this program? How can the BBC assist in increasing the number of test-takers?*

**Background:** The BBC conducts examinations for cosmetology licenses in correctional facilities. Currently, the program is limited to three female-only facilities within the state. According to the BBC, CDCR is responsible for administering the education while the BBC only administers the examination. The BBC states that it works closely with CDCR to schedule and administer these examinations in the correctional facilities. Since 2006, BBC reports that it has administered sixty-eight examinations and licensed fifty individuals. In order to administer the examinations, the BBC staff travel to the correctional facility and provides both the written and practical portions of the examination. The examinations are graded and written exam results are provided on the same day the examination is administered. The NIC practical exam scores are provided within two weeks.

Date of Exam	# of Examinees	Type of Exam	# Passed Written	# Passed Practical
12/13/2006	9	Cosmetology	5	6
7/24/2007	5	Cosmetology	2	4
1/30/2008	2	Cosmetology	1	1
11/6/2008	4	Cosmetology	2	3
	4	Manicuring	4	1
9/23/2009	5	Cosmetology	5	4
	3	Manicuring	3	2
6/21/2011	7	Cosmetology	7	6
6/13/2012	7	Manicuring	7	7
6/13/2013	3	Cosmetology	3	2
6/18/2013	6	Cosmetology	6	6
6/12/2014	7	Cosmetology	7	6
6/19/2014	6	Cosmetology	6	6

**Staff Recommendation:** *The BBC should explain to the Committees its role in the program, how their current partnership with CDCR is working, and ways the BBC believes it can help to improve or expand access to the program.*

**ISSUE #12: BOOTH RENTERS LICENSE. Is there a need to create a separate booth renter's license?**

**Background:** During the BBC's 2012 sunset review, the Committee staff's background papers explored the issue of booth rentals and recommended that the BBC report back to the Committees on its current stance on booth rentals and the status of stakeholder conversations regarding this topic. In response to the Committees' recommendations on April 16, 2013, the BBC submitted its "Responses to Identified Issues and Recommendations for the Board of Barbering and Cosmetology" and advised the Committees that it would convene stakeholder meetings for the purpose of discussing booth rental licensure and would report its findings and recommendations during the next scheduled sunset review hearing in early 2015.

Booth renters are licensed professionals who may not own an establishment but rent space from an owner. According to the BBC's report, a board defined booth renter or independent contractor is a practitioner who qualifies as an independent contractor under California tax law and who is not under the control and direction of a licensed establishment. These booth renters or independent contractors pay their own worker's compensation insurance and taxes; maintain their own business license; establish their own work schedules; and have access to the establishment at any time. The booth renter is literally a separate business entity operating within the establishment.

The barbering and cosmetology industry has reported to the BBC 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 regulations and deal with enforcement actions. It has been reported that 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.

For several years, the BBC has discussed establishing a "booth renter's license" which would identify licensees who are independent contractors, as opposed to those who are employees of salon owners. The BBC specifies that 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. However, 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, especially as consumers will most likely link services to the establishment as well as the licensee providing services.

In September of 2013, the BBC staff polled other state regulatory entities regarding booth rental licenses and found that 22 of 51 states had some sort of booth rental licensure. According to the BBC, implementation of the booth renter's license varied among the regulatory entities. Notable examples are as follows:

- **Ohio** - requires a practitioner who possesses a booth renter's license to also maintain a manager's license.
- **Idaho** – requires the primary establishment owner to submit a detailed floor plan of the entire primary and contiguous shop area. The contiguous area to be licensed must be highlighted and clearly designated on the floor plan.
- **Louisiana** – requires an executed agreement between the salon owner and the practitioner that states both parties agree: (1) that the practitioner is not an employee of the establishment, (2) that the salon owner has no right to control the methodology used by the practitioner to produce a given result and (3) a statement indicating the basis of the practitioner's compensation.
- **North Dakota** – requires booth renters provide proof they are authorized to do business in the state by registering the name of their business with the Secretary of State.
- **South Dakota** – outlines in its general guidelines items that booth renters can share with other booth renters, such as, the reception area, restroom facilities, fire extinguishers, health and safety posters, the "unregulated services sign," and the ventilation system for the total area.
- **Oregon** – requires its independent contractors to post the most recent inspection certificate in public view at the establishment or the contractor's work station.
- **Texas** – requires establishment owners submit a booth renter's list. This list provides the Texas board with the name, license number, expiration date, and date of inspection of all booth renters operating within the establishment.

In the BBC's 2013 report on the regulation of booth rentals to the Committees, it listed the pros and

cons of a booth rental license. Pros included establishment owners are protected against citations and fines caused by renters who chose not to comply with the BBC law; the roles of an owner and renter would be established; and both parties would clearly know what is required of them with regards to scheduling, establishment access, insurance provisions, and the use of supplies and equipment. The cons included a potential increased workload for the BBC; costs increases for changes to the BreZE database; an increase in regulatory oversight on licensees; and additional or increased fees on licensees for the initial license and renewal fees.

What is unclear from this proposal is how the BBC would administer the inspection process for booth renters, given that each booth could possibly be regulated as a separate entity. How would the inspection process be altered for individuals sharing booths? Also, given the reported challenges to the BBC with meeting its 90-day inspection requirements, this would most likely cause a significant increase to the workload of the BBC inspectors given that each booth in an establishment would need to be inspected.

***Staff Recommendation:*** *The Committees may wish to inquire of the BBC how a booth renter's license will provide any enhanced protections for consumers or licensees. In addition, the BBC should explain to the Committees if a booth renter's license would increase the workload of investigators, which the BBC notes is currently understaffed. The Committees may wish to require the BBC to provide additional information to consumers and licensees, on its website, about the difference between booth rental and establishment employment to help clarify the role of establishment owners, employees and booth renters.*

### **ISSUE #13: ADDITIONAL LICENSING SUBCATEGORIES AND INDUSTRY CERTIFICATION. *How would these enhance consumer protection?***

**Background:** During the BBC's 2012 sunset review, the Committees recommended that the BBC complete a study in the licensure of subcategories. The 2012 background paper for the BBC stated:

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 [BBC'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 BBC] 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 [the BBC] 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 [BBC] of these practices may also require the development of a scope of practice and the [BBC] may see a number of duplicative scopes for different services.

In order to address this issue properly, the Committees required the BBC to conduct a study on the subcategories of licensure. In 2013, the BBC submitted a report back to the Legislature on this issue titled *Appropriate Licensing of Subcategories*, and in that report the BBC expressed concern over licensing subcategories of the general cosmetology profession, such as waxing specialist or make-up extension certification as these topics are covered under the esthetician scope of practice. The report

further cited concerns of the BBC with offering a sub-license in that it may diminish the existing scope of practice for licensees and it could significantly increase the BBC's workload.

To help address concerns of individuals who seek to practice a subspecialty of a license, the BBC has proposed creating a BBC-approved industry certification. Essentially, a cosmetologist interested in a hair coloring specialty certification would take an unknown number of courses, from a BBC-approved provider, at an unknown cost to the individual, in order to obtain an industry certification in that specialty. Because the BBC is charged with regulatory oversight over professionals and protecting consumer safety, without legislative-designated parameters it is unclear how the BBC would be able to effectively administer a program of review and inspection to certify industry certification providers. Also, it is unclear how a BBC-approved industry certification would assist or meet the current needs of individuals seeking requests for persons to obtain a sub-license and not complete a full cosmetology or esthetics program.

**Staff Recommendation:** *The Committees may wish to require the BBC to focus on other areas including: improving its Inspection Program, improving its relationship with the BPPE, reviewing the curriculum standards for schools and the hour requirement necessary for licensure; and addressing consumer safety issues.*

### **ADMINISTRATIVE ISSUES**

**ISSUE #14: BOARD COMPOSITION.** *Should professional members be required to be a licensed professional?*

**Background:** The composition of this regulatory body is set in statute. BPC § 7303(b) specifies that the BBC is comprised of nine members — five represent the public and four represent the professional industry. In addition, the statute specifically defines the responsible entity for appointing members to the board such as the Governor, the Speaker of the State Assembly, or the President Pro Tempore (or the Rules Committee) of the State Senate.

The Governor appoints seven members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. While BPC § 7303(b) requires four professional members be appointed, it does not specify what, if any, segments of the professional population must be represented. If the appointing authority decides, all professional appointees could be an establishment owner or school owner who may not be a licensed cosmetologist, barber, manicurist, or electrologist. Currently, the professional representation of the board is comprised of two cosmetologists, (pending confirmation) one barber, one school owner, and one vacancy. The Board currently does not have a representative from other licensing categories such as a manicurist, electrologist, or an esthetician. Representation of these other fields has been inconsistent because there are no guidelines for rotating the professional appointee representation. While all professional appointees represent important segments of the industry including schools and salon/nail establishment owners, the Board may benefit from additional professional input and guidance in reaching important decisions which guide consumer safety and industry standards.

In order to achieve a more diverse representation of professional appointees on the board, appointee requirements could specify that three out of four professional members hold a current professional license such as that of a barber, cosmetologist, esthetician, electrologist, or manicurist. This would still allow a professional representative to be either a school or establishment owner. By diversifying the

professional representation on the board, the board will have more comprehensive input and decision-making capacity that will benefit all stakeholders.

**Staff Recommendation:** *The Committees may wish to consider if requiring the professional appointees to represent a more diverse segment of the licensing population would be beneficial. The Committees may also wish to require the BBC to create a designated industry-advisory committee which specifically focuses on industry-related issues and is comprised of licensed-industry members.*

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**ISSUE #15: LANGUAGE ACCESS.** *How can the BBC enhance language-access services to consumers and licensees?*

**Background:** The BBC's licensing population is over 550,000 individuals. In order to meet the needs of its diverse licensing population, with respect to regulatory oversight, it is critical that the BBC is able to communicate effectively with its licensees throughout the lifecycle of the licensing process. One of the ways, the BBC has sought to increase language access is through the administration of exams. Currently, the BBC offers examinations in four languages – English, Vietnamese, Korean and Spanish. As noted earlier, pass rates for Spanish takers continues to be an issue. The BBC noted in its 2014 sunset review report that it made language access one of its priorities over the last two years. To that end, the BBC has translated all of its documents into Vietnamese, Spanish, and Korean. In April 2014, the BBC reported that it established a separate link on its website for the Vietnamese-speaking community which includes forty-two fact sheets that have been translated into Vietnamese. In June 2014, links were created for the Spanish-speaking community and the Korean-speaking community. The fact sheet topics range from “what to expect during an inspection” to “industry advisory notices.” In addition, the inspection report was translated into Vietnamese so that inspectors can provide a handout of the report that indicates the violations found so that the licensee has the option to read these violations in his or her first language. The BBC reports that it has held two Town Hall meetings for Vietnamese-speaking licensees. The first was held on June 2, 2014 in Sacramento and the second on September 8, 2014 in Westminster. This meeting provided licensees with the opportunity to learn about the most common violations found in establishments, the inspection process, and the appeal process. The BBC staff, including inspectors, was available to answer questions and interpreters were available. The BBC states that it feels these types of events are successful and are of minimal cost. While the BBC has started with the Vietnamese community, it anticipates expanding to other communities where English proficiency is limited. In August 2014, the BBC added an insert to all citations that states if the recipient of the citation needs assistance in understanding the citation, to call the Cite and Fine Unit and he or she will be connected with an interpreter.

While the BBC appears to making progress with language services, stakeholder groups continue to see this as a major issue concerning the BBC and its limited English-speaking populations. During the January 2014, board meeting, stakeholders informed the BBC that they would like to see better translation services during DRC hearings, more bilingual inspectors, and would like assistance in making sure that translation services are accurate.

**Staff Recommendation:** *Although the BBC has made significant improvements in addressing language access issues, it is clear that more can be done. The BBC should explain to the Committees how it plans to continue addressing language access issues, including translation services at disciplinary hearings and any plans to increase the number of bilingual inspectors.*

## CONSUMER SAFETY

**ISSUE #16: CONSUMER AND LICENSEE SAFETY.** *How can the BBC promote safe standards for industry workers and consumers? How does the BBC stay informed about product safety and pass along the information to both consumers and licensees? Is greater outreach necessary?*

**Background:** During the BBC's 2012 sunset review, the committee background paper raised current health and safety issues which continue to plague the beautification industry, especially in nail salons. The report stated, "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 addition, the report discussed the "Brazilian Blowout," which is a hair smoothing process where the product was found to contain unsafe levels of dangerous products. Recent news stories have highlighted other areas of concern. One issue specifically is the safety of UV nail polish dryers. An April 30, 2014, New York Times article reported that a new study showed that "nail salon dryers, which use ultraviolet light to speed the drying and hardening of nail polishes and gels, emit varying levels of radiation that can lead to risky skin damage in as few as eight visits to the manicurist." The concern with dangerous products and their potential health impact affects all levels of BBC's regulatory enterprise as the relative safety effects of chemicals impact both consumers who receive the product during a service and the licensees who administer the product. Given the importance of informing both consumers and licensees, the BBC is well positioned to disseminate important industry-related materials regarding the health and safety of beautification products.

During the 2012 sunset review oversight hearings, the Committees asked the BBC to respond to how it promotes the health and safety of its licensees. The BBC responded,

[The BBC] has taken several steps to increase awareness about potentially harmful products. When [the BBC] becomes aware of a potentially unsafe product, it conducts research, which includes contacting other states, the FDA, and the CDC. At times, technical advisory committees are consulted, as well as, leading industry professionals. Once the [BBC] has the knowledge needed on the product, a course of action is determined. This may be an industry bulletin, possibly a regulation change, notification on [its] Web and social media sites. For example, the [BBC] published information on its website regarding the concerns that were raised with Brazilian Blowout services to alert licensees and consumers of the potential harm. The [BBC] will continue this course of action with any new concerns that are raised in the industry.

As the industry changes and new beautification products are brought to market, the BBC should consider establishing a permanent committee which is designated to review industry trends as they relate to health and safety standards to ensure the timely distribution of information about potential and growing concerns.

**Staff Recommendation:** *The BBC should consider establishing a health and safety advisory committee or adding this important task to one of its existing advisory committees which meets regularly.*



## **ISSUE #17: TECHNICAL CLEANUP.**

**Background:** Currently in the BPC, there are a number of outdated references and obsolete code sections pertaining to the Barber and Cosmetology Act. As a result of previous sunset reviews, the BBC has been required to conduct several studies and reviews and report back to the appropriate policy committees of the Legislature. For example, BPC § 7303.2 requires the BBC to conduct studies and reviews regarding the apprenticeship program, the national examination, the 1600-hour training requirement for cosmetologists, among others and report back to the Legislature no later than September 1, 2005. This section is no longer relevant and is outdated. In addition, BPC § 7404(4)(c) makes an outdated reference to the California Department of Health Services instead of the current Department of Public Health.

It would be both beneficial and prudent to strikeout outdated references and obsolete code sections. The Board should recommend cleanup amendments for this section.

**Staff Recommendation:** *The Board should recommend any additional technical cleanup amendments for BPC § 7301 et seq. to the Committees.*

### **CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT PROFESSION BY BOARD OF BARBERING AND COSMETOLOGY**

**ISSUE #18: 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 BBC membership?*

**Background:** Although the BBC has consistently struggled with turmoil and transition during the late 1990's through the early 2000s, which hindered its ability to meet regulatory expectations as determined by the Legislature, it has begun to show improvement in attempting to assess and understand the rapidly changing industry in order to promote policies and procedures which help to enhance consumer safety. Despite positive improvements, it is clear that there are a number of issues that the BBC needs to continue to improve upon along with new issues that need to be addressed in order to properly license individuals and regulate the beautification industry. Given that, 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 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 DCA 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 BBC's vast licensing population and the contact of licensees with millions of Californians also requires a successful, organized, and forward-thinking regulatory body. Although changes in the beautification industry will continue to challenge the BBC, as new and 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. In addition, its diverse licensing population is one of high importance, and the BBC needs to ensure that each licensee is receiving the appropriate and

relevant regulatory information in a consistent manner that will ensure all professionals are meeting the required health and safety guidelines in order to protect the public health and safety in across all fields regulated by the BBC.

**Staff Recommendation:** *Recommend that the barbering, cosmetology, electrology, manicure and esthetician professions continue to be regulated by the current the BBC in order to protect the interests of the public and be reviewed once again in four years, and that the BBC update the appropriate policy committees of the Legislature in four years on the issues raised earlier in this report.*