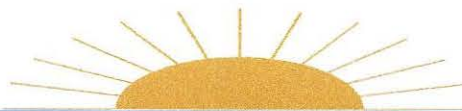


California State
Board of Barbering and Cosmetology

**Responses to Identified Issues
and Recommendations**





State and Consumer Services Agency – Governor Edmund G. Brown Jr.
Board of Barbering and Cosmetology-Department of Consumer Affairs
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April 16, 2013

The Honorable Curren Price, Jr., Senate Chair
The Honorable Richard S. Gordon, Assembly Chair
Members of the Senate Business and Professions Committee
Members of the Assembly Business and Professions Committee

RE: Response to Identified Issues and Recommendations for the Board of Barbering and Cosmetology

Dear Senator Price and Assembly Member Gordon,

On behalf of the Board of Barbering and Cosmetology (Board), I am pleased to provide our final responses to the identified issues and recommendation as a result of the Board's sunset review. We appreciate this opportunity and look forward to working with you and your staff on these important topics.

If you have any questions, I can be reached directly at (916) 575-7111.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Underwood'.

Kristy Underwood, Executive Officer
Board of Barbering and Cosmetology

BACKGROUND PAPER FOR THE BOARD OF BARBERING AND COSMETOLOGY

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

CURRENT SUNSET REVIEW ISSUES

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

BOARD ADMINISTRATION ISSUES

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

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

Board Response: As stated, the Board is in phase one of the implementation plan to roll out the new database. As of the date of the submission of this report, phase one is expected to roll out in mid-May 2013. The Board has dedicated resources to this project and is currently performing user acceptance testing.

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

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

Board Response: In August 2008, the Department of Consumer Affairs Internal Audit Office identified six issues that the Board needed to address. Three of these issues were addressed which included the adoption of a strategic plan, improve enforcement processes, and establish internal controls for cash receipts. The remaining three issues have had progress but require additional work.

Substantial Backlogs: As of the date of the submission of this report, the Board is not experiencing a backlog. However, because of the high volume of workload, this can change in an instant. Managers of each unit monitor processing times on a weekly basis and make adjustments, as needed, to ensure delays are not created.

Deficiencies in the Inspections Program: The Board has made tremendous progress in addressing the findings in the audit; however, one item that is unresolved is the fact that the Board cannot meet its statutory mandate to inspect new establishments within 90 days of licensure. The Board has 22 inspector positions and over 40,000 licensed establishments. The Board must increase its inspector staffing levels in order to meet this mandate. The Board is working on the submission of a budget change proposal to accomplish this and will be happy to report back to the committee on the success of this endeavor.

Improve Licensing Operations: The Board has made improvements in its licensing operations however, with the implementation of the BreEZe database there will be additional opportunities for improvements. The extent of these improvements will not be fully known until the database is implemented.

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

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

Board Response: The Board's main area of concern regarding resources is within the inspection program. Currently, the Board has 4 vacant inspector positions. There are challenges in filling this classification, specifically, because the individual must live in the vacant territory and the pay is not significant. The Board currently cannot meet its statutory mandate for inspections of new establishments due to inadequate staffing levels in the inspections program. The Board will pursue a budget change proposal in 2013 to increase inspector positions. As for the other units of the Board, we believe we have sufficient resources to carry out our mission.

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

Staff Recommendation: *The Board should explain efforts it is taking to use existing resources like Board Members who live in certain parts of the state, the media, its Website, field staff and stakeholders to maintain a presence amongst its licensees and the public. The Board should*

articulate why dual oversight of schools is a barrier to interacting with students in barbering and cosmetology programs in California who will become Board licensees.

Board Response: The Board has taken several steps to maintain its outreach efforts even though there are travel restrictions. For licensees, the Board contacts the promoters of California trade events and provides hand-outs for distribution. While having staff at these events is optimal, we are still able to provide information that is helpful to licensees. In addition, Board members often attend events on their own and will answer questions and distribute material. The Board also uses its website and social media, such as Facebook and Twitter, to provide updates and valuable information to consumers and licensees.

The Board, in conjunction with the National Interstate Council of Cosmetology (NIC), holds annual webcast meetings with all schools to provide a review of the examination. The webcast allows school representatives to e mail questions and receive immediate responses on the webcast.

In the Boards sunset report it was stated that due to dual over sight and travel restrictions the board has been limited in its outreach to schools. This is an incorrect statement and we would like to clarify that it is the travel restrictions that have limited the outreach to schools. Specifically, in the past the Board would send representatives to speak to students at schools and hold Q and A sessions. We apologize for this incorrect statement in our report.

In 2013, the Board will be working with the Department of Consumer Affairs Public Affairs Office to utilize the media to raise awareness on beauty services.

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

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

Board Response: The Board has taken several steps to increase awareness about potentially harmful products. When the Board becomes aware of a potentially unsafe product, research is conducted 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 Board 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 Board's website and social media sites. For example, the Board published information on its website regarding the concerns that were raised with the Brazilian Blowout to alert licensees and consumers of the potential harm. The Board will continue this course of action with any new concerns that are raised in the industry.

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

Staff Recommendation: *The Board should provide the Committee with an update on its current working relationship with BPPE. The Board should continue to work with the BPPE under the MOU. The Board should be granted statutory authority to remove its approval of a school, which will then allow the BPPE to take action for offering a training program to students who will not be eligible to sit for licensure and close down bad schools. The Committee may wish to explore providing the Board with additional resources for its school approval program. The Committee may wish to amend statute to clarify that approval of a school by BPPE is contingent upon approval of a program by the Board.*

Board Response: In February 2013, the Board's Executive Officer and the Bureau Chief of the BPPE signed a Memo of Understanding (MOU), which clarifies the sharing of information between the two boards. The MOU has helped to ensure that both programs are communicating for one main goal.

The Board still remains firm that there should be one regulatory entity that oversees barbering and cosmetology schools and that entity should be the Board. The Board asks that the committee allow the Board to continue to work with the BPPE with the recommended statutory changes and re-evaluate the topic of sole oversight when the Board is reviewed again in two years.

In addition, the Board agrees with the staff recommendations that Board approval should be required prior to the BPPE approval and the Board should be granted authority to remove its approval.

LICENSING AND ENFORCEMENT ISSUES

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

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

Board Response: The Board's processing time for applicants to take the examination is eight weeks. We believe this is a significant improvement from years past. The Board has also been able to reduce the backlog that was created by the 3-day a month furlough program.

The Board monitors passing rates, on its examinations, on a monthly basis. The Board saw passage rates decline when the national examinations were implemented. This decline attributed to the fact that some schools were only teaching to the state board examination and not to minimal competency. We do believe that we will see the passage rates begin to rise as schools ensure that they are teaching minimal competency and not just how to pass the test.

The Board has adopted regulations to set all grading at criterion-referenced scoring. However, this implementation will require extensive database changes. As the Department is currently in full implementation of the BreEZe database, no changes can be made to the existing database. Upon implementation of BreEZe, the Board will work with the Department to implement criterion-referenced scoring. The Board believes that the pass rate may initially decline, but believes it will not be significant.

As the Board has been reviewing pass rates it is evident that there is a concern with the Spanish pass rates. The Board contacted the NIC and they completed a review of the Spanish translation to ensure there were not concerns in this area. The NIC believes the examinations are translated appropriately. The next step that the Board will take is to look at the school of those who have requested Spanish examinations. The Board believes that if the examination is accurately translated and the textbooks are available in Spanish, then there must be a concern with the quality of education. The Board does not have authority over quality of education, however, we will work with the BPPE and accrediting agencies to come up with options, if necessary.

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

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

Board Response: The Board agrees with the staffs recommendation to work with national groups, professional associations, the NIC, school owners, and licensees to determine what steps are needed in addressing the issue of licensing categories.

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

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

Board Response: As recommended, the Board will conduct a study and provide its findings to the committee.

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

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

Board Response: The Board had a classification and pay study conducted on the inspector classification that clarified the inspectors are appropriately classified and that the pay scale should be increased through the bargaining process.

Training has been a challenge due to the limitations under the Governor's Executive Order. Most training is done on a one-on-one basis and is usually done via telephone or e mail. However, the Board is initiating monthly conference calls with each of the three inspector units (North, South and Central) where training will be discussed, as well as, a review of any inspector complaints that have been received. The Board is also looking into video conference meetings to provide training, however, because the inspectors are spread throughout California, this option would still require some travel.

The Board tracks all inspector complaints and these complaints are fully investigated. All staff at the Board, as well as, Board members during disciplinary hearings will encourage individuals to file a complaint if they feel the inspector was not professional. The Board is committed to ensuring that all staff conduct themselves professionally, at all times, and this will remain a top priority for the Board.

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

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

Board Response: In 2011, the Board returned to an escalating fine schedule allowing for a lower fine amount for a first offense. One reason for this action was the amount of appeals that were requested simply based on the amount of the fine. The Board's regulations allow for an appeal of a violation for one of three reasons: the occurrence of the violation, the period of time for correction, and the amount of the fine. Lowering the fine amount on a first offense is one step the Board believes will aid in reducing the number of appeals. It should be noted that the lower fines, for a first offense, are not of violations that the Board believe pose an increased risk of consumer harm.

The Board has also implemented the option of 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 Board 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: (BOOTH RENTALS.) Schools and establishment owners continue to report to the Board at its meetings that booth rentals are a problem and need a separate licensing category. What is the Board's current stance on booth rentals?

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

Board Response: The Board has not held recent discussions regarding the options of booth rental; however, we recognize that this is still a growing factor in the industry. The Board will convene stakeholder meetings on this issue and provide our findings and recommendations when the Board is reviewed again in two years.

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

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

Board Response: As noted in the Board's background report, complaints of unlicensed activity are on the rise. In 2010, the Board began a partnership with the Division of Investigation to issue misdemeanor citations when unlicensed activity is found. We are hopeful that over time this process will become more successful in deterring unlicensed activity.

The Board is hoping to conduct additional unlicensed activity sweeps where inspectors conduct multiple inspections at the same time in a concentrated area where there is known unlicensed activity. The Board also believes that if we are successful in increasing our inspector staff, there would be less unlicensed activity as inspectors would have smaller geographical areas.

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

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

Board Response: The Board has discussed this option in the past, but there would need to be additional research conducted to determine if this option is feasible. The Board agrees with staff recommendation to establish a technical advisory committee to explore this option. The Board will pursue this and will report to the committee when it is reviewed again in two years.

WORKFORCE ISSUES

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

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

Board Response: As noted in the Board's background report, we have returned to conducting 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. We are awaiting final applications to be submitted from the CDCR to hold an examination in the summer of 2013. At this time, we do not believe statutory changes are necessary.

BARBERING AND COSMETOLOGY RELATED STATUTORY IMPLEMENTATION EFFORTS

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

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

Board Response: The Board has two customer satisfaction surveys. One is a general survey posted on the Board's website and one is specific to the inspection process. In regards to the general survey, the Board received 273 responses. While the Board received favorable marks regarding information

received (72.2% rated favorably) and web site usefulness (69.1%), there is some work to be done in the timeliness to answering telephone calls. The Board is hopeful that as we continue to reduce processing times, telephone calls will also reduce.

Regarding the inspection survey, this tool has been helpful to the Board to determine what areas of the inspection process need improvement. While we believe that the inspection program is improving, we also understand there is room for growth. The Board will be addressing training needs and options for training (video conference, telephone staff meetings). These training sessions will have a portion dedicated to the survey responses so that inspectors are aware and can make improvements.

CONTINUED REGULATION OF THE BOARD OF BARBERING AND COSMETOLOGY

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

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

Board Response: The Board is thankful to the committee and looks forward to working with staff on the important issues raised in this report.